



April 2010

Performance Audit of the Subcontractor Outreach Program (SCOPE)

*Program Management
and Reporting Could Be
Enhanced*

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THE CITY OF SAN DIEGO

DATE: April 30, 2010
TO: Honorable Members of the Audit Committee
FROM: Eduardo Luna, City Auditor
SUBJECT: **Performance Audit of the Subcontractor Outreach Program (SCOPE)**

Enclosed is a performance audit report of the Subcontractor Outreach Program (SCOPE) which is administered by the Equal Opportunity Contracting Program (EOCP). This report was conducted in accordance with Section 39.2 of the City Charter. The executive summary is presented on page 1 and program management's response to our audit recommendations can be found in Exhibit A after page 48 of this report.

We would like to thank Equal Opportunity Contracting Program staff and representatives from other City departments who provided their time and contributed their expertise to this report. We greatly appreciate their time and efforts. The audit staff responsible for this audit report is Tiffany Chung and Kyle Elser.

Respectfully submitted,

Eduardo Luna
City Auditor

cc: Honorable Mayor Jerry Sanders
Honorable City Council Members
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Executive Summary

In accordance with the City Auditor's 2009-2010 Audit Work Plan, we have completed a *Performance Audit of the Subcontractor Outreach Program (SCOPE)* – a program administered by the Equal Opportunity Contracting Program.

A disparity study was conducted in the 1990's to examine whether the City engaged in discriminatory construction contracting practices and disparate treatment of Minority and Women Business Enterprises in the marketplace. The disparity study revealed the City was a passive participant of discrimination and disparate treatment. The City adopted the Subcontractor Outreach Program (SCOPE) in early 2000 for the following purposes: 1) address the issues raised in the disparity study, 2) level the playing field, provide contracting opportunities for all segments of the contracting community irrespective of size, ethnicity, or gender, and 3) allow the City to collect data on subcontractor bids that are submitted to prime contractors, among other reasons.

SCOPE is a program managed by EOCP and requires ongoing collaboration with other City departments to administer the program. The purpose of SCOPE is to maximize subcontracting opportunities for all qualified and available firms and to provide an equal opportunity for all subcontractors to participate in the performance of City construction work. Currently, SCOPE applies to only a subset of projects in the City. Two different subcontracting goals are calculated for SCOPE projects: mandatory subcontracting goals and advisory participation levels.

Mandatory subcontracting goals prescribe to primes the percent of total project award that must be spent on work performed by subcontractors. Advisory participation levels are provided to primes as a point of reference regarding the percent of underrepresented contractors who can perform the subcontracting work. In order to be considered responsive to and compliant with the program, prime contractors must achieve eighty (80) out of a possible one hundred (100) points.

Prime contractors whose bids do not achieve at least eighty (80) SCOPe points are deemed non-responsive and will result in the rejection of their City project bids.

We performed a statistical analysis of FY2009 program data and conclude that prime contractors exceed SCOPe mandatory goals but do not attain advisory participation levels. Further, statistically speaking, we found no evidence that prime contractors deliberately under-employ historically under-represented contractor groups.

In addition, we found several areas of the program in need of improvement. First, program management has not focused on collecting contracting data trends in the City. Despite direction from City Council to maintain adequate administrative record keeping in order for the City to compile any necessary information which may be needed for a disparity study, program management is not focused on this effort; the basic program statistics that are reported to City Council may not be sufficient for this purpose. Also, no directive exists that requires program management to collect information expressly for the purpose of compiling evidence of the City's record of discrimination. Further, no active discussion regarding a firm plan and timetable for updating the City's disparity study exists. To mitigate these issues, we recommend the following:

- 1. The City should collect accurate and comprehensive data that measures the contracting practices in the City;**
- 2. The City should perform a comprehensive disparity study; and**
- 3. The City should create policies and procedures for collecting and reporting on data that may be used in a disparity study.**

Second, SCOPe goals have been set subjectively. We found that the methodology for setting mandatory and advisory goals has historically been subjective and in some cases inaccurate. Many of the causes for the subjective nature of goal setting stems from the methodology that was used prior to July 2009. We recommend the following:

4. **EOCP management should develop written policies and procedures to ensure that SCOPe goals formulas embedded in spreadsheets used to generate SCOPe goals are accurate and are reviewed by management;**
5. **E&CP management should review the accuracy of goals generated by specification engineers prior to submitting SCOPe goals to EOCP for final review and approval; and**
6. **EOCP and E&CP should document the rationale for adjustments made to SCOPe goals calculations or factors that impact SCOPe goals on a per-project basis.**

Third, management has not completely implemented the new Caltrans methodology for City-funded projects. As of July 2009, the City has adopted a new methodology to calculate mandatory and advisory goals for City-funded projects. The new City method largely mirrors that of the California Department of Transportation (Caltrans). Instituting the Caltrans subcontracting methodology has helped to streamline both E&CP and EOCP's work in calculating goals and monitoring projects for labor and contract compliance. However, the new method still is not completely objective and management has not established an annual goal for City-funded projects and, thus, is not measuring whether City-funded projects succeed or fail in meeting the annual goal. We offer the following recommendations:

7. **SCOPe goal formulas should be calculated as prescribed by Caltrans to ensure that the City reaps the benefits of streamlining processes if the City continues to use the Caltrans methodology to calculate goals for City-funded projects ; and**
8. **Management should establish an annual goal for City-funded projects in order to measure the progress (or lack thereof) that prime contractors subcontract to the various historically under-represented contractor groups.**

Fourth, SCOPe performance reporting could be improved. The performance data presented to decision-makers may not be capturing actual – and therefore accurate – program performance. EOCP has reported and continues to report contractor goal achievement as the amount contractors list and define in their initial project bid documents. Also, management collects and reports on some basic program statistics. However, this information is insufficient to evaluate

the efficiency and effectiveness of SCOPe. Moreover, we discovered that project subcontracting goals have not been applied to change order work. To address these issues, we recommend the following:

- 9. Management should provide both committed and actual achievement data like those found in the Final Summary Report when reporting to City Council the performance of SCOPe; and**
- 10. Program management should evaluate the extent to which change order work can feasibly be assigned to subcontractors on a per-project basis and require and enforce SCOPe goals to apply to all feasible change order work to the fullest extent of the law.**

Fifth, SCOPe program management could be enhanced. Management has changed little in its approach to helping contractors achieve advisory goals throughout the years. As a result, little change has been seen in advisory participation levels on City public works projects. For this reason, management should consider the approaches employed at different organizations that may help to increase both mandatory and advisory goal achievements, like those approaches found in submissions to the State Agency Recognition Awards (SARA). Furthermore, we found that EOCP has been effective in informing and outreaching to historically under-represented contracting groups at pre-bid conference meetings.¹ However, the outreach efforts have not translated to these categories of contractors winning City public works project bids. In addition, departments should consider sharing information with EOCP when processes start and end. Including EOCP in the roles will largely ensure EOCP is notified of information in a timely manner, reduce duplication of efforts since it will no longer be necessary for departments to provide some information that EOCP needs to administer and manage SCOPe, and increases EOCP's ability to be effective because EOCP is afforded opportunities to intervene and take action when necessary in a more timely and effective manner.

¹ The pre-bid meeting is used to discuss specifications for a specific bid/proposal, and it allows for vendors to ask questions in order to seek clarification. Not all bids have a pre-bid meeting and attendance is not mandatory unless specified.

- 11. Management should review the approaches to increasing contractor diversity outlined in nominations to SARA and continue to consult with other entities for best practice guidance on how to increase the diversity of subcontractors and document the communications;**
- 12. EOCP, E&CP, and P&C should discuss the distinct data EOCP needs to adequately manage SCOPE; and**
- 13. EOCP should obtain direct access to the data it needs to effectively and efficiently administer SCOPE.**

Introduction

In accordance with the City Auditor's 2009-2010 Audit Work Plan, we have completed a Performance Audit of the Subcontractor Outreach Program (SCOPE) – a program administered by the Equal Opportunity Contracting Program.

We conducted this performance audit in accordance with the generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the *Audit Objective, Scope, and Methodology* section of this report.

The Office of the City Auditor would like to thank the staff of the Equal Opportunity & Contracting Program (EOCP), Purchasing & Contracting Department (P&C), Engineering and Capital Projects (E&CP), and the City Comptroller's Office who provided their time and contributed their expertise to this report.

Background

At the direction of the San Diego City Council and Public Safety and Neighborhood Services Committee in the 1990's, the then-City Manager's Office conducted a disparity study to examine whether the City engaged in discriminatory construction contracting practices and disparate treatment of Minority and Women Business Enterprises – businesses owned by minorities and/or women – in the marketplace; also, the City performed a review of model EOCP programs. The disparity study revealed the City was a passive participant of discrimination and disparate treatment. In addition, the Subcontractor Outreach and Enforcement Program in the city of Los

Angeles was found to be a model worthy of replication primarily because it passed judicial review in California on multiple occasions.

On March 6, 2000, the City Council adopted a mandatory Subcontractor Outreach Program (SCOPE) to address the issues raised in the disparity study in a manner that complies with the legal restrictions of Proposition 209² and to level the playing field and provide contracting opportunities for all segments of the contracting community irrespective of size, ethnicity, or gender. This is accomplished through the following three ways:

- Mandatory use of subcontractors at a percentage level determined by a City engineer on a project-by-project basis;
- Mandatory broad-base outreach in the solicitation of subcontractor bids by prime contractors; and
- Mandatory submission of outreach documentation by the prime contractor within five (5) working days from the date of bid opening.

Also, the creation of SCOPE provided the authority to collect data on subcontractor bids that are submitted to prime contractors; subcontractor bid information were not included in bid submittals prior to the establishment of SCOPE. The City Council granted this authority as a means of determining whether contractors have made a good faith effort³ to conduct outreach in a fair, non-discriminatory manner.

SCOPE is a program managed by EOCP and requires ongoing collaboration with other City departments to administer the program. For additional information regarding the SCOPE

² With very few exceptions, Proposition 209 of 1996 eliminated programs that give preference to women-owned or minority-owned companies on public contracts. According to the Legislative Analyst's Office, Proposition 209 would result in savings to the state and local governments totaling tens of millions of dollars annually.

³ Appendix A to Part 26, Title 49, Code of Federal Regulations defines "good faith" efforts to hire DBEs as soliciting through all reasonable and available means to certified DBEs who have the capacity to perform the contract work, breaking out parts of contract work into smaller units to facilitate DBE participation even when a prime might otherwise prefer to perform these work units with its own forces, providing DBEs with adequate information about the project plan, not rejecting DBEs as being unqualified without conducting an investigation of their capabilities, making an effort to assist DBEs in obtaining necessary bonding/lines of credit/ or insurance and equipment/supplies/and materials, among others.

organizational structure and program tasks organized by City departments, please refer to Appendices A and B.

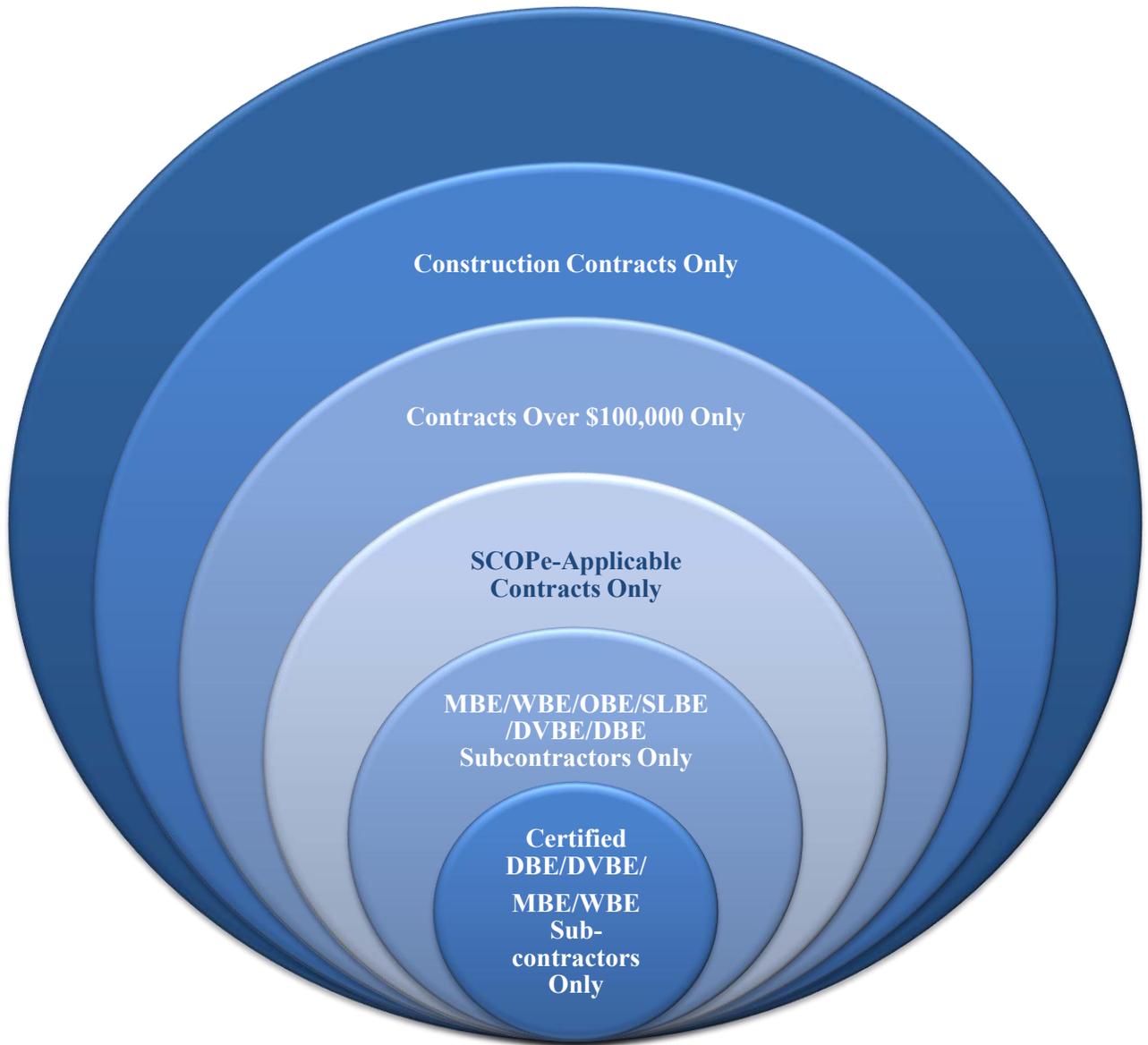
PROGRAM APPLICATION

Currently, SCOPe applies to only a subset of projects in the City. Construction projects equal to or greater than \$100,000 are subject to SCOPe requirements.⁴ The purpose of SCOPe is to maximize subcontracting opportunities for all qualified and available firms and to provide an equal opportunity for all subcontractors to participate in the performance of City construction work. [Figure 1](#) illustrates the project subset and subcontractor population the program currently tracks. Of note, the City is particularly interested in knowing about the trend in competitiveness of historically under-represented firms on City public works projects – those firms that do not have bond, insurance, administrative support, project startup/up-front capital, prior public works experience, audited financial statements, and relationships with the City and with prime contractors; as stated in an earlier section of this report, the City was found to have passively participated in discriminating against this group of firms. A brief description of the different certifications and the category OBE follows and [Appendix C](#) outlines a sample of certifying agencies.

Figure 1: Universe of Contractors – Defining SCOPe Subcontractor Population

Note: Disabled Veteran Business Enterprise (DVBE) and Disadvantaged Business Enterprise (DBE) are federal- and/or state of CA- certified business ownership category designations; businesses possessing these or other certifications have demonstrated to the certifying body that it meets all income, capacity, and disability/racial/ethnic requirements. Other Business Enterprise (OBE) is a catchall category for businesses that do not otherwise qualify as a DBE, DVBE, MBE, or WBE.

⁴ Federally funded projects must comply with federal guidelines and, therefore, are exempt from SCOPe. Some state-funded and city-funded projects are exempt from SCOPe, as identified in each project's bidding document managed by the Purchasing and Contracting Department.



In FY 2009, there were 73 construction projects in the City totaling \$203,268,890; of these, 55 projects totaling \$201,774,450 were subject to SCOPe requirements. Altogether, 75 percent of construction projects in the City were subject to SCOPe and represented 99 percent of the total construction dollars in the City in FY 2009.⁵

⁵ Based on Notice to Proceed dates, Engineer Estimates for each project, and E&CP staff guidance.

PROGRAM COMPONENTS

Two different subcontracting goals are calculated for SCOPE projects: mandatory subcontracting goals and advisory participation levels. City engineers, in consultation with program management, determine both mandatory subcontracting goals and advisory participation levels. Before a bid opportunity is advertised, City engineers must review construction projects and determine pieces of the project that can be performed by subcontractors based on information from past construction projects involving prime contractors and subcontractors. A SCOPE goal calculation process flowchart is presented in [Appendix D](#) of this report.

Mandatory subcontracting goals prescribe to primes the percent of total project award that must be spent on work performed by subcontractors. Advisory participation levels are provided to primes as a point of reference regarding the percent of underrepresented contractors who can perform the subcontracting work.

The advisory participation percentages are based on amounts of prior City public works projects that were subcontracted to certified and non-certified disadvantaged construction businesses.⁶ The historic certified and non-certified disadvantaged business information is available from primes and subcontractors whose race, ethnicity, and gender are known.

For every construction project that must comply with SCOPE, the sum of advisory participation levels equals the mandatory SCOPE goal:

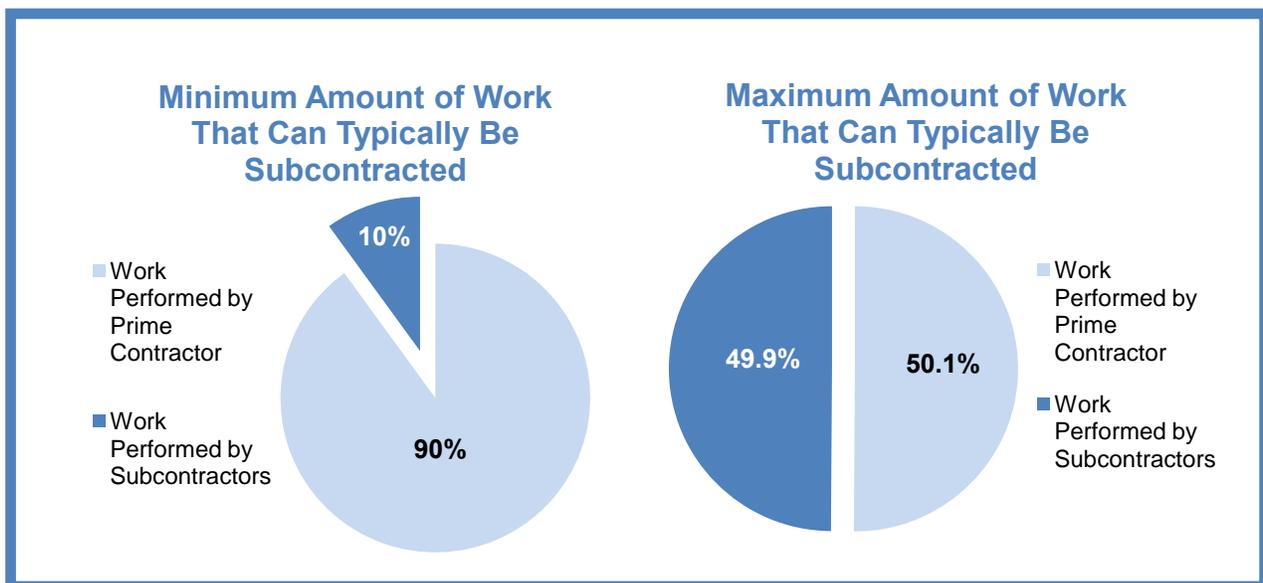


⁶ Disabled Veteran Business Enterprise (DVBE) and Disadvantaged Business Enterprise (DBE) are federal and/or state of CA- certified business ownership category designations; businesses possessing these or other certifications have demonstrated to the certifying body that it meets all income, capacity, and disability/racial/ethnic requirements. Other Business Enterprise (OBE) is a catchall category for businesses that do not otherwise qualify as a DBE, DVBE, MBE, or WBE.

In other words, the mandatory subcontracting goal will always be the same as the aggregate of advisory participation levels:

$$\begin{array}{ccc} \textit{Aggregate Advisory} & & \textit{Mandatory} \\ \textit{Participation} & = & \textit{Subcontracting} \\ \textit{Level} & & \textit{Participation Goal} \end{array}$$

At the low end, 10 percent of a project can typically be subcontracted; at the high end, subcontractors can be hired to complete 49.9 percent⁷ of a project. Primes must perform 50 percent of the project work. This requirement protects the City from paying more for contractors by ensuring that the City avoids doing business with trade brokers. Mandatory goals are mandatory and must be achieved by primes to satisfy SCOPe. While subcontracting is mandatory, there are no conditions as to whom the work can be subcontracted.



⁷ Exceptions are made for B-license contractors working on vertical construction projects.

EVALUATION SYSTEM

Program management uses a points system to evaluate the adequacy of a prime contractor’s attempt in meeting the good faith effort in outreach requirement of the program. Points are tied to ten (10) subcontracting outreach indicators. These indicators are presented in the following table (Table 1). For each indicator, points are either awarded in full or not awarded at all (i.e. awarding partial points is not allowed). [Appendix E](#) outlines the SCOPE compliance evaluation process employed by EOCP.

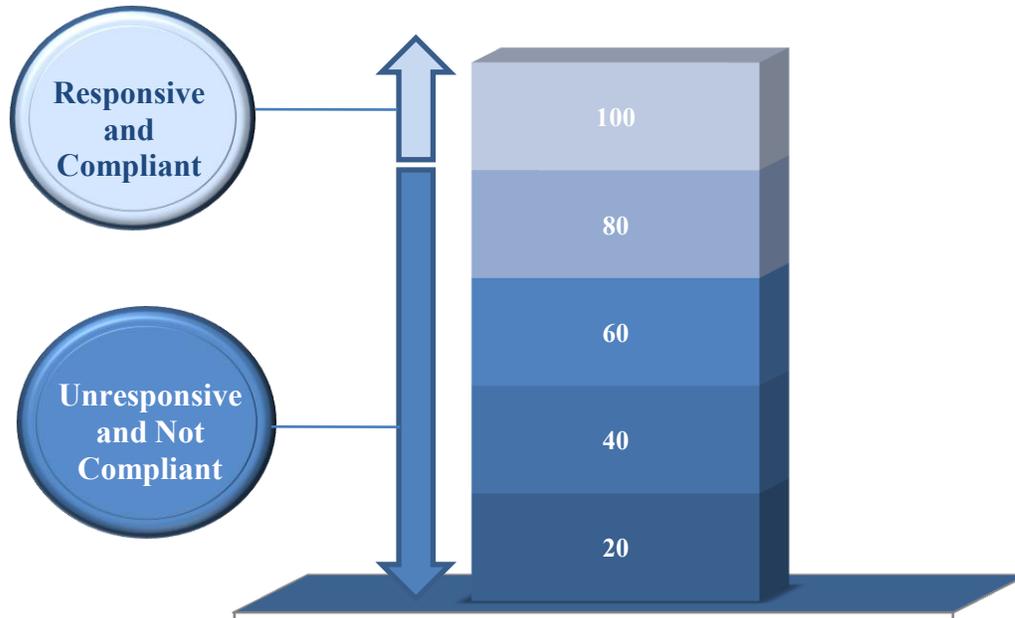
Table 1: SCOPE Indicators and Maximum Point Allocation

	Indicator	Points
1.	Achievement of advisory DBE/DVBE/MBE/WBE/OBE ⁸ subcontractor participation levels	No Points
2.	Pre-bid meeting attendance	5 Points
3.	Identification of sufficient subcontracting work	10 Points
4.	Broad-based advertisement	10 Points
5.	Written notice to subcontractors	10 Points
6.	Follow-up to initial solicitations	10 Points
7.	Provision of plans, specifications, and requirements	10 Points
8.	Request for assistance from recruitment/placement agencies	10 Points
9.	Documentation of subcontractor negotiation	25 Points
10.	Assistance with bonds, credit lines, and insurance	10 Points
	POSSIBLE TOTAL	100 Points

⁸ DBE- Disadvantaged Business Enterprise; DVBE- Disabled Veteran Business Enterprise; MBE- Minority Business Enterprise; WBE- Women Business Enterprise; OBE- Other Business Enterprise.

In order to be considered responsive to and compliant with the program, prime contractors must achieve eighty (80) out of a possible one hundred (100) points. Prime contractors whose bids do not achieve at least eighty (80) SCOPE points are deemed non-responsive and will result in the rejection of their City project bids. This criterion is depicted in [Figure 2](#).

Figure 2: SCOPE Point Allocation Outcome



The City Charter requires the City to employ a low bid system to award City construction contracts. Under this system, contracts are awarded to the “lowest, responsible” bidder, which is defined as the bidder having the lowest dollar bid while also complying with federal, state, and City imposed regulations such as bonding, insurance, and Equal Opportunity Contracting Program (EOCP)⁹ requirements. Because SCOPE is a program within EOCP, it can be inferred that SCOPE is an EOCP requirement. Therefore, project bids that do not meet SCOPE requirements can be interpreted as a violation of a City imposed regulation. Consequently, construction contracts are awarded to prime contractors who submit the lowest dollar bid and whose bids meet SCOPE requirements.

⁹ EOCP is a City program within the Office of Administration Department.

Objectives, Scope, and Methodology

At the request of the Director of Administration, a performance audit of the Subcontractor Outreach Program (SCOPE) was included in the City Auditor's Fiscal Year 2009 Audit Work Plan. According to the City Auditor's 2008 Citywide Risk Assessment, the Equal Opportunity Contracting Program (EOCP) Contract – the program which managed SCOPE – ranked 130 out of a possible 458 by the City Auditor as posing a risk to the City based on factors including budget and staff size.

Our audit objectives were to 1) determine the statistical reasonableness (or unreasonableness) of prime contractors' achievement of mandatory and advisory goals set for City public works projects that were subject to SCOPE in FY 2009, 2) assess the disposition of a future disparity study, 3) determine the cause of unclear and/or inaccurate program statistics, 4) identify more objective approaches to administering and managing the program, 5) identify alternative methods to increase subcontracting in the City, and 6) identify methods to increase the efficiency and effectiveness of administering SCOPE.

We performed the following audit procedures to achieve our audit objectives:

- Reviewed pertinent regulations, laws, policies, and regulations related to SCOPE management, administration, and related activities;
- Identified, collected, and analyzed budget information and reports related to EOCP and the Administration Department;
- Reviewed archived documents including but not limited to Report to City Council, Memorandum of Law, City Attorney Opinion, and City Attorney reports to council committee;
- Interviewed EOCP, P&C, and E&CP management and key staff responsible for SCOPE administration and operations;

- Evaluated administrative policies and procedures related to SCOPE business practices; and
- Contacted other government agencies to for additional information pertaining to public works contracting best practices.

We evaluated internal controls related to the audit objectives. Our conclusions on the effectiveness of these controls we reviewed are detailed in the following audit results.

SCOPE has undergone many changes over the years. The most recent changes to the program became effective November 2008. As a result, we intended to define the audit review period as November 2008 through October 2009 in order to control for any program requirements (or lack of requirements) not reflected in the most recent program change. However, some exceptions to this audit time period were made to accommodate relevant program evaluations and analyses. Deviations from the general audit review period are noted, where applicable.

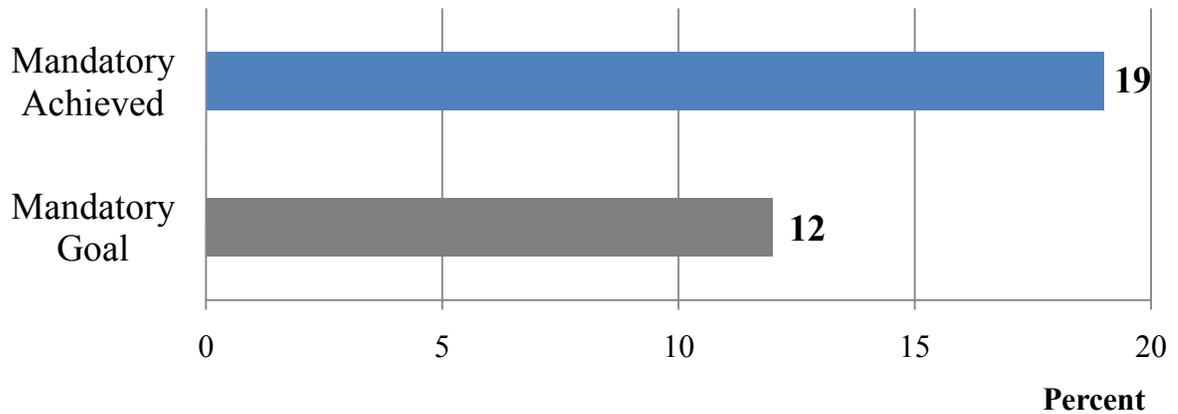
Additionally, we noted that changes to the SCOPE goal calculation methodology were developed in December 2008 and adopted in July 2009. This report mostly discusses the former methodology – which was in place since 2001 – but makes reference to aspects of the new methodology. Focusing on the former methodology allowed us to gather relevant historical data to assess the effectiveness and efficiencies of SCOPE and helped us to overcome any data limitations posed by the newly adopted SCOPE calculation methodology.

Audit Results

Prime Contractors Succeed In Meeting Mandatory Subcontracting Participation Levels

We found that prime contractors have exceeded the mandatory goals set on City public works projects and has resulted in increased subcontracting on public works projects. We found that SCOPE is effective in increasing the amount of work performed by subcontractors on a project, as a percent of the project's total cost. The city of San Diego requires that bidders subcontract a minimum percentage of a project to any qualified, available subcontractor(s). Failure to do so will cause the bid to be declared non-responsive. As a result, SCOPE creates employment opportunities for many more contractors when it requires subcontracting on public works projects. [Figure 3](#) shows that in FY 2009 contractors exceeded the mandatory subcontracting goal set for the public works projects. Specifically, the median prime contractor committed to paying 19 percent (19%) of a project's award to subcontracts when the City only required 12 percent (12%). Based on this information, we conclude that prime contractors hired more subcontractors than was required.

Figure 3: Median Mandatory Goal & Goal Achievement for Public Works Projects in FY 2009



Source: Auditor analysis of EOCP data.

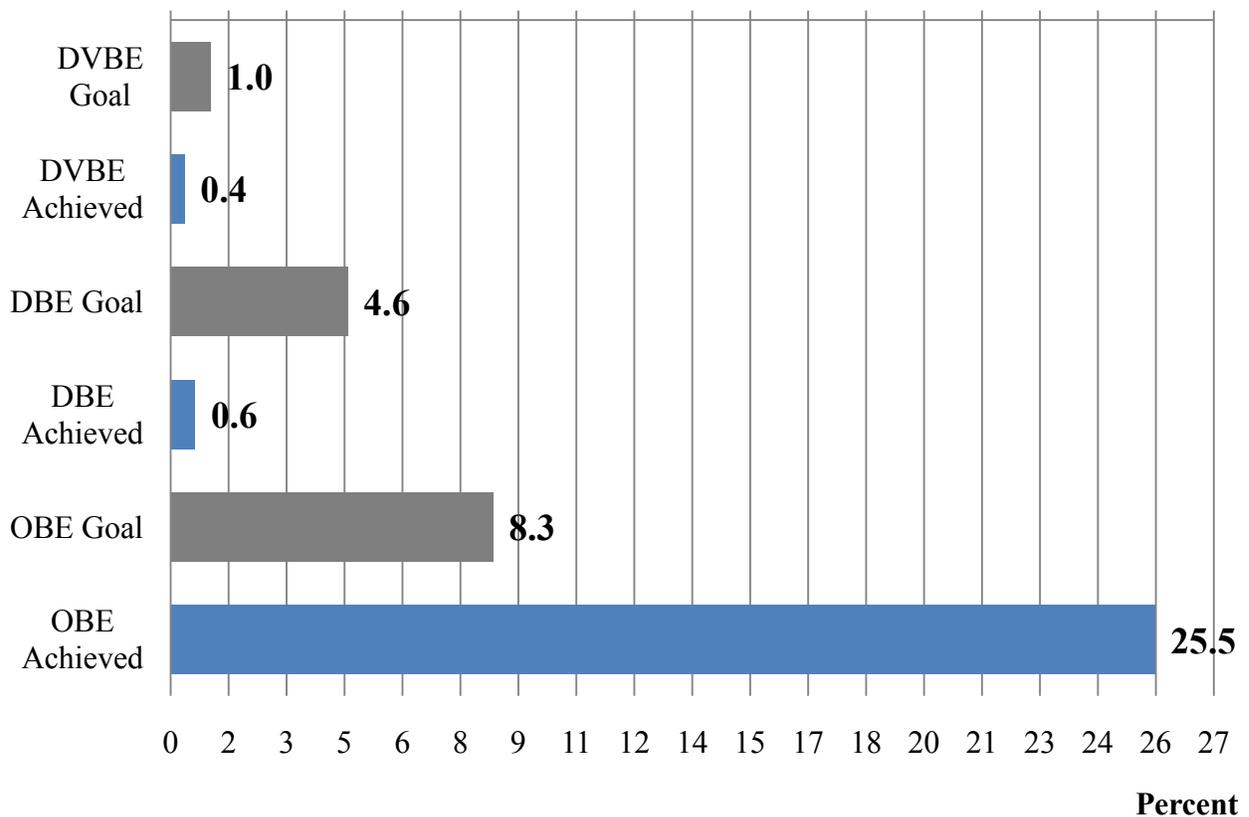
Prime Contractors Did Not Attain Advisory Participation Levels

We found that prime contractors did not always achieve advisory participation levels on construction projects that were subject to SCOPE. The City is committed to promoting diversity in its operations both internally and externally. Some stakeholders expected or highly anticipated that SCOPE would increase subcontracting opportunities for historically under-represented contractor groups. However, SCOPE does not mandate prime contractors to achieve advisory participation levels. We reviewed current program data to evaluate the effectiveness of SCOPE in increasing the amount of City construction dollars paid to historically under-represented businesses. We found that in contrast to SCOPE's success with increasing subcontracting opportunities (see Figure 3), the percent of historically under-represented businesses that were hired by prime contractors to perform work on public works projects was significantly below the levels anticipated by SCOPE. Figures 4 and 5 are evidence of this finding.

As shown in Figure 4, prime contractors hired, on average, 0.4 percent (0.4%) of Disabled Veteran Business Enterprise (DVBE) certified subcontractors and 0.6 percent (0.6%) of Disadvantaged Business Enterprise (DBE) certified subcontractors to perform work on City

public works projects. These percentages fell short of the City’s expected participation by these certified businesses – the City expected, on average, one percent (1%) of DVBE certified businesses and 4.6 percent (4.6%) of DBE certified businesses to perform work on City public works projects. In contrast, prime contractors hired, on average, 25.5 percent (25.5%) of Other Business Enterprise (OBE) subcontractors when the City only anticipated 8.3 percent (8.3%) participation by this subcontracting group.

Figure 4: Average Mandatory Goal and Goal Achievement by Certification in FY 2009



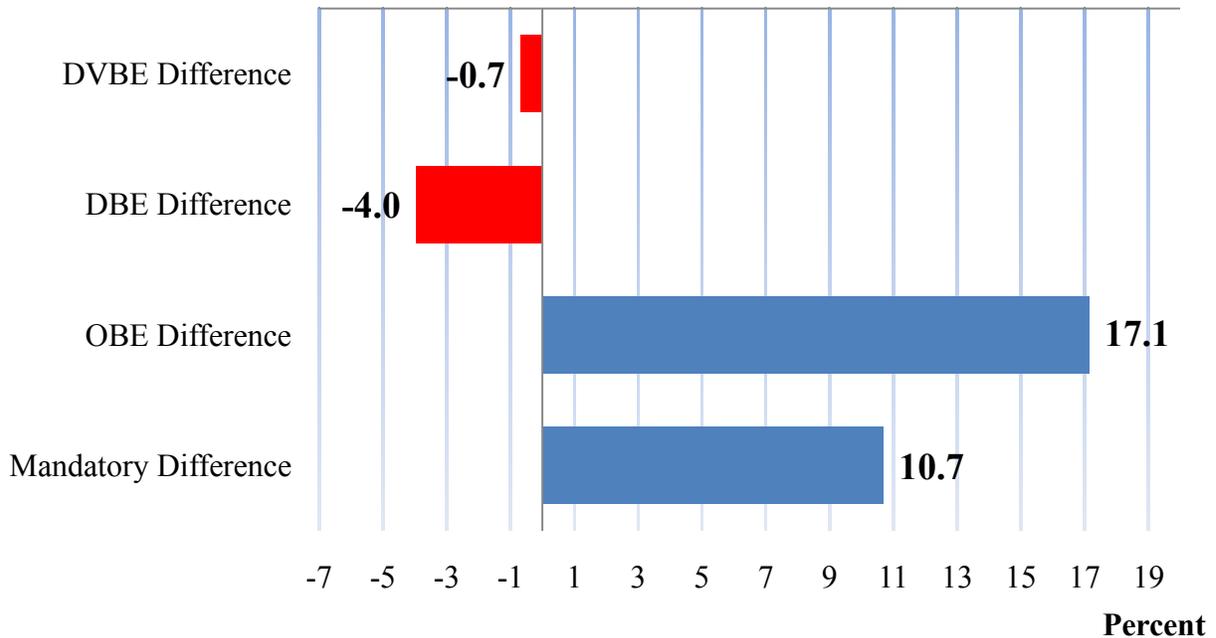
*Only data for quarters 1, 2, and 3 is reflected in the graph

Source: Auditor analysis of EOCP data.

Figure 5 shows that prime contractors did not meet advisory subcontracting goals set for the public works projects. Prime contractors hired 0.7 percent (0.7%) less of Disabled Veteran Business Enterprise (DVBE) certified subcontractors than was expected by the City and four percent (4%) less of Disadvantaged Business Enterprise (DBE) certified subcontractors to

perform work on City public works projects. In contrast, prime contractors hired 17.2 percent (17.2%) more of Other Business Enterprise (OBE) subcontractors and exceeded the average mandatory subcontracting goal by 10.7 percent (10.7%). In essence, prime contractors meet SCOPe mandatory subcontracting goals but fail to meet advisory subcontracting goals.

Figure 5: Percent Difference of Goal Achievement by Certification in FY 2009*

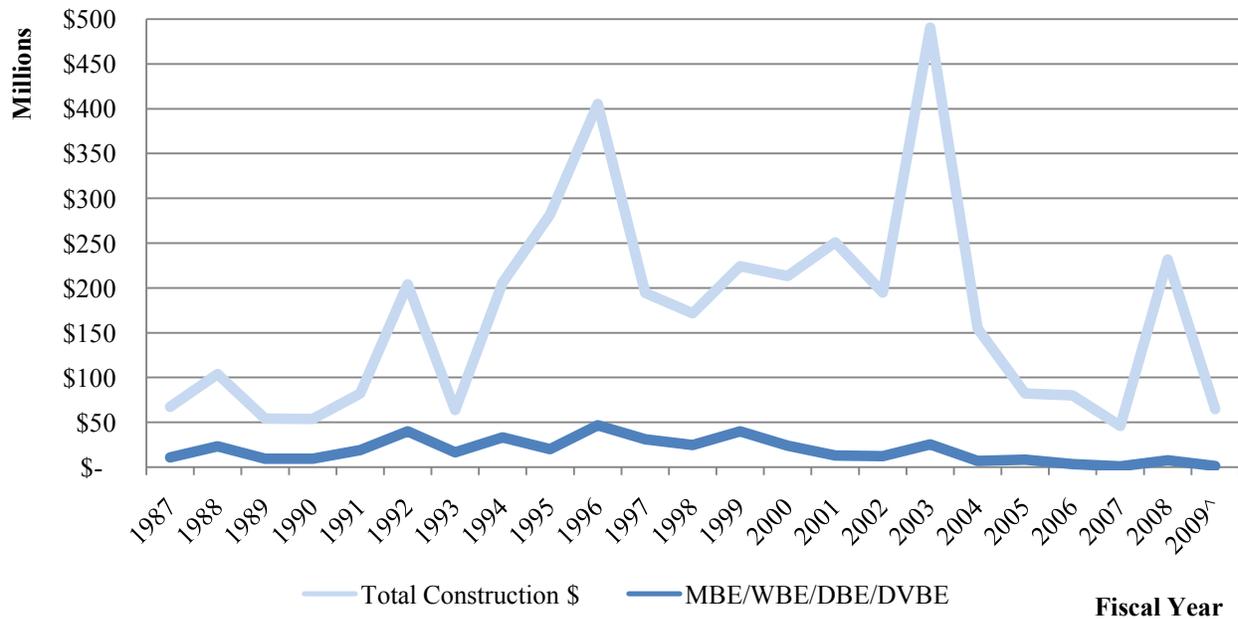


***Only data for quarters 1, 2, and 3 is reflected in the graph**

Source: Auditor analysis of EOCP data.

Figure 6 presents the annual construction project award amount that Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) have received compared to the annual award for construction projects in the City over time. In general, the trend shows that MBE/WBEs have continued to capture a disproportionately low amount of money available for construction projects in the City.

Figure 6: Annual MBE/WBE/DBE/DVBE Award Compared to Annual Construction Award



^Only includes first quarter FY2009 data.

Source: Auditor analysis of EOCP and Disparity Study data.

Upon further review of the FY 2009 advisory goals achieved by prime contractors, we determined that the pattern of low advisory goal achievement is not statistically unreasonable compared to what we could statistically expect prime contractors to achieve. In fact, prime contractors achieved higher advisory participation levels than was expected in a few cases.

[Appendix F](#) contains the graphical presentation of our statistical analysis.

In summary, we conclude that prime contractors did not deliberately hire less historically under-represented groups than was available and willing to work on City public works projects, statistically speaking. Any deliberate efforts to hire less historically under-represented groups at a statistically unreasonable rate would have been captured in our analysis and would have fallen below our lower limit prediction boundary. No data points fell under our lower limit prediction boundary.

Program Management Is Not Focused on Collecting Contracting Data Trends in the City

The former City Attorney recommended that in order to best insulate itself from legal challenge to newly instituted race/gender-conscious preference and /or outreach programs, the City should supplement current data with a new disparity study and base any new race/gender conscious programs on such data. Or, alternatively, the City should supplement currently available data to assess current marketplace realities, availability of historically under-represented and women-owned enterprises, and utilization rates. This type of data will facilitate an understanding of subcontractor demographic and economic circumstances. Moreover, if implemented soon, the City will be able to capture many more years of meaningful and accurate data than it otherwise would if construction trend data collection were postponed.

Despite direction from City Council to maintain adequate administrative record keeping in order for the City to compile any necessary information which may be needed for a disparity study, program management is not focused on this effort; the basic program statistics that are reported to City Council may not be sufficient for this purpose. For example, current program statistics that are reported to City Council do not include actual utilization to the availability of historically under-represented business enterprises in targeted locations and industries. In the past, EOCP has focused its energies on processing action documents. EOCP's focus has since shifted to labor and contract compliance. Collecting data on current contracting trends in the City – which may or may not show documented patterns of discrimination in the City (also called records of discrimination) will assist with a future disparity study.

In an archived Memorandum of Law, the City Attorney's Office stated the following: "More information is needed to build a factual record of discrimination to ensure that any race/gender-conscious program adopted by San Diego would withstand legal challenge" (City Attorney, 2007, p.21).

Furthermore, the program management did not expect the program to eliminate discrimination in the marketplace when it was created. Rather, the program was seen as a key component to data collection, analysis and documentation in the City's construction arena.

Of note, the City has postponed commissioning a new disparity study since at least 2007 in order to be fiscally prudent and to await the outcome of a key court case that is currently before the California Supreme Court. This court case has been in the court queue since May 2007; it is uncertain when a final decision will be rendered. To put the time of this case into perspective, the origin of this case dates back to 2004.

The integrity, reliance, and confidence of factual records of discrimination in the City may be compromised when such information is collected in an unplanned, happenstance, and unintentional manner. Likewise, undocumented, incomplete, and/or inaccurate discrimination data and information compromises the ability of decision-makers and the general public to understand whether discrimination exists in the City and to what extent (if any) such discrimination exists. As a consequence, decision-makers and the general public may make poor decisions for the City because they may have relied on the incomplete and/or inaccurate information they received. Further, any City efforts to mitigate discrimination or discriminatory practices for which accurate and sufficient evidence has not been collected or for which such evidence is insufficient may expose the City to legal liability and may not withstand legal scrutiny.

Program management is not focused on collecting data and information to build the City's record of discrimination. Moreover, no directive exists that requires program management to collect information expressly for the purpose of compiling evidence of the City's record of discrimination. Further, no active discussion regarding a firm plan and timetable for updating the City's disparity study exists.

The City should focus its energies on capturing accurate and comprehensive SCOPE data that measures the contracting practices in the City to the fullest extent possible. The data can be used to identify any patterns of discrimination or disproportionate treatment on sectors of the

contracting community and justify any future mandatory historically under-represented participation levels for SCOPE, if warranted, to correct any disproportionate treatment.

Absent this data, SCOPE's performance cannot be accurately gauged, reasonable assurances against inefficiencies and ineffectiveness cannot be concluded, and data collection on discrimination patterns in City contracting is being postponed despite an impending disparity study.

The City should perform a comprehensive disparity study to document and determine whether there is evidence that the City has participated in discrimination against specific groups of contractors and to use the results from the study to justify any race/gender-based measures, as discussed in prior City Attorney's Office documents.¹⁰ Also, we learned that written policies and procedures that outline data collection, data analysis, and reporting processes do not currently exist.

We believe that such a study will prove to be less financially, politically, and socially costly to the City in the long run as a result of averting potential legal liabilities and investing City resources into an effort that is guaranteed to benefit the City. Currently, the City spends a portion of its resources on developing and administering programs and outreach efforts that do not guarantee benefits to the City and fall into the grey area of existing laws on the subject of preferential treatment in public contracting work.

¹⁰ City of San Diego – Office of the City Attorney (2007, July 31). *Report to the Committee on Rules, Finance, and Intergovernmental Relations: Overview of Law Concerning Subcontractor Outreach Programs and Data Collection*. Retrieved from City Clerk Website: <http://docs.sandiego.gov/cityattorneyreports/RC-2007-20.pdf> and City of San Diego – Office of the City Attorney (2007, Sept. 10). *Memorandum of Law - Overview of Law Concerning Equal Opportunity in Contracting: Existing Programs and Recommendations*. Retrieved from City Clerk Website: <http://docs.sandiego.gov/memooflaw/ML-2007-13.pdf>

Recommendations:

1. **The City should collect accurate and comprehensive data that measures the contracting practices in the City;**
2. **The City should perform a comprehensive disparity study; and**
3. **The City should create policies and procedures for collecting and reporting on data that may be used in a disparity study.**

Of note, management advised that the data tracking software that will be used to manage the new Small Local Business Enterprise program has the capability to track the information required to conduct a disparity study.

SCOPE Goals Have Been Set Subjectively

We found that the methodology for setting mandatory and advisory goals has historically been subjective and in some cases inaccurate. Many of the causes for the subjective nature of goal setting stems from the methodology that was used prior to July 2009.

Specifically, we found the following:

- The former goal setting methodology was subjective – setting mandatory subcontracting goals and advisory participation levels for projects heavily relied on the accuracy and completeness of information contained in spreadsheet formulas and data inputs such as construction cost estimates, a project’s scope of work, and work elements that have historically been subcontracted. Various City staff were responsible for creating and providing many of these key elements. Also, setting project subcontracting goals and advisory participation levels had, at times, required City staff to exercise personal discretion. As a result, mandatory goals and advisory participation levels could not be set in a consistently accurate manner due to the element of human error. The following example is provided to illustrate the subjective elements of the prior goal setting methodology:

❏ Omissions or inaccuracies in identifying items like project work elements and scope of project work impacts the SCOPE goals set for a project. Specifically, EOCP management could request changes to project goals so that the new goals would include historical projects E&CP omitted from the original calculations and/or so that the goal would be adjusted higher or lower depending on EOCP management's professional judgment. As such, inconsistent opinions about what to include or exclude in items like project work elements and scope of project creates inconsistent project goals.

- Under the former methodology, program management used multiple sources of data to identify willing and available businesses in the region. The problem was that the population of businesses included in each data source varied depending on which source was used. Additionally, the population captured by each data source differed to some degree and, thus, posed a challenge in comparing data among the sources.
- Weights were used to calculate advisory goals prior to July 2009. It is unclear why weights were used in calculating advisory goals and the origin of the practice is unclear – the practice was instituted by a prior EOCP management team and no documentation of the purpose, policy, and procedure of employing weights were available. Despite this, subjective and undocumented advisory goal weights continued to be used in calculating advisory goals until July 2009.
- Both the former and the current goal setting methodologies are subjective - EOCP can request that specification engineers recalculate the SCOPE goals for a specific project so that the goals would reflect EOCP's knowledge of historical subcontracting trends or include construction job type(s) that were omitted in the original goal calculations. According to different department staff, these events have taken place on occasion in the past. Furthermore, the following example is provided to illustrate the subjective elements of the new goal setting methodology:

🔗 Although E&CP used preformatted Excel spreadsheets embedded with formulas to generate SCOPE goals, we found subjective multipliers embedded inside the spreadsheets. Concrete evidence to support the use of the subjective multipliers was not provided.

Additionally, we found that EOCP does not review the accuracy of the goal formulas embedded in E&CP's spreadsheets which are used to calculate SCOPE goals. Furthermore, E&CP management does not internally review goals before sending them to EOCP for review and approval. SCOPE goals and the tools used to generate goals (e.g. spreadsheet formulas, list of NAICS codes, etc.) should be reviewed by EOCP and E&CP management for accuracy. We found that EOCP relies on E&CP to calculate project goals. Although EOCP management is familiar with the general concept and process of calculating goals, EOCP is not confident about how E&CP calculates SCOPE goals. Moreover, E&CP relies on EOCP to review and approve goals on a per-project basis – EOCP is the chief authority on this matter and, thus, finalizes and approves goals for every project that is subject to the requirements of SCOPE.

Monitoring the ongoing effectiveness of control-related policies and procedures is necessary for two reasons:

- Changes in [SCOPE management or administration] circumstances can render inadequate or obsolete some control-related policies and procedures that once were satisfactory; and
- Control-related policies and procedures have a natural tendency to deteriorate over time unless management properly maintains them (Gauthier, 2005, p. 389).

Reviewing goal formulas and goals generated for projects for accuracy could reduce the occurrence of subjective and unfair goal setting practices and lessen the potential legal liabilities for the City. Furthermore, additional documentation of the origin and justification for formula caps will promote governmental transparency.

Subjectively setting mandatory or advisory goals is unfair to contractors, negatively impacts the City's ability to monitor and accurately capture program data, and can open the City to legal liability. Furthermore, subjectively setting goals does not promote government transparency – a characteristic which directly impacts the public's trust in the City and its operations.

Recommendations:

- 4. EOCP management should develop written policies and procedures to ensure that SCOPE goal formulas embedded in spreadsheets used to generate SCOPE goals are accurate and are reviewed by management;**
- 5. E&CP management should review the accuracy of goals generated by specification engineers prior to submitting SCOPE goals to EOCP for final review and approval; and**
- 6. EOCP and E&CP should document the rationale for adjustments made to SCOPE goal calculations or factors that impact SCOPE goals on a per-project basis.**

Of note, management advised us that EOCP and E&CP meet to discuss the general SCOPE goal calculation methodology every six months and revise the methodology as appropriate.

Firm availability data is a required component of calculating SCOPE goals for a project. Program management expressed difficulty in defining willing and available businesses in the area; also, we noted that the former data collection approach EOCP employed included businesses outside San Diego County. We obtained and analyzed license data from the California Contractors State License Board (CSLB) to obtain the population of contractors available to perform work on City public works projects. Our analysis yielded the following:

- 213,702 business licenses were both registered and active in CSLB's database;
- 20,620 of the 213,702 (or 9%) active business licenses were registered in the county of San Diego; and
- 18,073 of the 20,620 (or 88%) active business licenses registered in San Diego County were specifically registered in the city of San Diego.

The CSLB data allowed us to further identify the construction classifications of the active licenses registered with the agency. [Table 2](#) contains a list of the license classification titles, number of licenses in each classification, and the number of licenses in each classification as a percent of the total construction businesses registered in San Diego County.

Table 2: CA State Licensing Board Construction Licenses Registered in San Diego County (As of September 2009)

Code	Classification Title	Count	As % of SD County Total Construction Businesses
A	General Engineering	1038	5.7%
B	General Building	8211	45.4%
C-4	Boiler, Hot Water Heating & Steam Fitting	39	0.2%
C21	Building Moving & Demolition	100	0.6%
C-6	Cabinet, Millwork & Finish Carpentry	575	3.2%
C-8	Concrete	511	2.8%
C31	Construction Zone Traffic Control	12	0.1%
C-9	Drywall	291	1.6%
C12	Earthwork & Paving	193	1.1%
C10	Electrical (General)	1573	8.7%
C45	Electrical Sign	57	0.3%
C11	Elevator	17	0.1%
C13	Fencing	132	0.7%
C16	Fire Protection	107	0.6%
C15	Flooring & Floor Covering	660	3.7%
C-5	Framing & Roof Carpentry	87	0.5%
C47	General Manufactured Housing	47	0.3%
C17	Glazing	220	1.2%
C-2	Insulation & Acoustical	83	0.5%
C27	Landscaping	992	5.5%
C35	Lathing & Plastering	186	1.0%

C61	Limited Specialty (aka D-)	0	0.0%
C28	Lock & Security Equipment	29	0.2%
C7	Low Voltage Systems	0	0.0%
C29	Masonry	237	1.3%
C23	Ornamental Metal	80	0.4%
C33	Painting & Decorating	1215	6.7%
C32	Parking & Highway Improvement	32	0.2%
C34	Pipeline	25	0.1%
C36	Plumbing	1042	5.8%
C38	Refrigeration	120	0.7%
C39	Roofing	271	1.5%
C42	Sanitation System	27	0.1%
C43	Sheet Metal	102	0.6%
C46	Solar	42	0.2%
C50	Steel, Reinforcing	23	0.1%
C51	Steel, Structural	95	0.5%
C53	Swimming Pool	175	1.0%
C54	Tile (Ceramic & Mosaic)	618	3.4%
C20	Warm-Air Heating, Ventilating & Air Conditioning	644	3.6%
C55	Water Conditioning	17	0.1%
C60	Welding	70	0.4%
C57	Well Drilling (Water)	48	0.3%
ASB	Asbestos Certification	72	0.4%
HAZ	Hazardous Substance Removal Certification	126	0.7%

Source: Auditor analysis of CA State License Board data

We analyzed California Department of Transportation (Caltrans) data to determine, more accurately, the number of historically under-represented business groups available to perform work on City public works projects. We found a total of 251 DBE firms that were certified by Caltrans.¹¹ Within this population, the following information was found:

¹¹ As of May 15, 2009

- 38 firms were located in the city of San Diego;
- The majority of owners at 59 firms were females;
- The majority of owners at 32 firms were of Asian Pacific or Asian Subcontinent race/ethnicity;
- The majority of owners at 50 firms were Black;
- The majority of owners at 123 firms were of Hispanic race/ethnicity;
- The majority of owners at 11 firms were of Native American race/ethnicity; and
- 132 firms were identified as Underutilized DBE firms (UDBE).¹²

Moreover, we analyzed Caltrans data to determine the population of Minority Business Enterprise and Women Business Enterprise firms certified by Caltrans. We found the following¹³:

- 19 firms were located in the city of San Diego;
- The majority of owners at 60 firms were females;
- The majority of owners at 25 firms of Asian Pacific or Asian Subcontinent descent;
- The majority of owners at 22 firms were Black;
- The majority of owners at 83 firms were of Hispanic descent;
- The majority of owners at 6 firms were of Native American descent;
- 127 firms were identified as MBE; and
- 48 firms were identified as WBE.

Our analysis provides one alternative approach to identifying an accurate account of the availability of contractors in San Diego that are licensed and therefore qualified to work on City

¹² Underutilized DBE firms (UDBE) is a designation used by Caltrans and includes four identified groups: African-American, Asian-Pacific American, Native American, and women-owned businesses.

¹³ As of May 14, 2009

public works projects. The approach we illustrate in our analysis could be carried out for the specific locations, contractor categories, and trade categories of interest to the City.

Management Has Not Completely Implemented the New Caltrans Methodology for City-Funded Projects

In addition to determining a more accurate account of qualified contractors in the region, we reviewed the E&CP SCOPE spreadsheet formulas for accuracy. As of July 2009, the City has adopted a new methodology to calculate mandatory and advisory goals for City-funded projects. The new City method largely mirrors that of the California Department of Transportation (Caltrans). Instituting the Caltrans subcontracting methodology has helped to streamline both E&CP and EOCP's work in calculating goals and monitoring projects for labor and contract compliance. Also, the advisory goals are less subjective because the City utilizes Census Bureau firm availability data and California Unified Certification Program (CUCP) to determine the advisory goals for a project; this reduces the need to based goals on professional judgment. The new process for calculating mandatory and advisory goals is depicted in [Appendix D](#).

Although the new goal methodology mitigates some of the subjective elements of the former methodology, the new method still is not completely objective. We found that, on the whole, the formulas are set up to generate goals in a predictable manner. However, the formulas themselves do not mirror those prescribed by Caltrans.

We noted that the City's historically under-represented participation methodology for Caltrans-funded projects for fiscal years 2009 and 2010 was submitted to and approved by Caltrans in October 2009. Further, we noted that management has not established an annual goal for City-funded projects and, thus, is not measuring whether City-funded projects succeed or fail in meeting the annual goal.

Caltrans is required to review the City's historically under-represented participation calculation methodology and that the City is required to have two distinctly different types of historically

under-represented participation goals: an annual goal (aka AADPL) and a goal determined on a per-project basis. The annual historically under-represented participation goal is approximately equal to the sum of the historically under-represented participation goal for construction projects in a given year. This requirement specifically applies to all Caltrans projects. The City should enforce the same policies and procedures if it decides to use Caltrans's goal calculation methodology for projects not funded by Caltrans.

Caltrans requires the City to submit the annual goal methodology the City proposes to use for the fiscal year for Caltrans-funded projects to its agency for review and approval. Caltrans does not require the City to submit an annual goal methodology for projects that are not funded by its agency.

Moreover, we noted that program management does not document justification for adjustments made to the calculation methodology for projects on a per-project basis. We found that E&CP's formulas contained caps and other multipliers for projects with specific characteristics like funding source. These restrictions are not part of the Caltrans formula for calculating the availability of businesses. Further, we found that the origin and justification for these restrictions were either incomplete or completely missing from existing department SCOPe calculation policies and procedures.

We consulted with Caltrans experts about whether the City's use of OBE and B-license contractor caps were in compliance with the agency's standards for calculating historically under-represented subcontracting goals. We learned that while this and other adjustment practices are permitted, documentation is required to justify the adjustments on a per-project and/or annual basis.

Recommendations:

- 7. SCOPe goal formulas should be calculated as prescribed by Caltrans to ensure that the City reaps the benefits of streamlining processes if the City continues to use the Caltrans methodology to calculate goals for City-funded projects ; and**

- 8. Management should establish an annual goal for City-funded projects in order to measure the progress (or lack thereof) that prime contractors subcontract to the various historically under-represented contractor groups.**

SCOPE Performance Reporting Could Be Improved

We reviewed EOCP reports to City Council and determined that the performance data presented to decision-makers may not be capturing actual – and therefore accurate – program performance. EOCP has reported and continues to report contractor goal achievement as the amount contractors list and define in their initial project bid documents. Also, management collects and reports on some basic program statistics. However, this information is insufficient to evaluate the efficiency and effectiveness of SCOPE. Furthermore, management does not compare the practices and performance of SCOPE to other entities with similar programs or efforts.

We found that EOCP reports on the committed subcontracting levels and not actual subcontracting levels because EOCP does not always receive actual subcontracting level information in a timely and consistent manner. Also, EOCP relies heavily on other departments for information that is essential to administering and managing SCOPE. Additionally, EOCP does not have direct access to the data systems and information sources which contain data relevant to administering and managing SCOPE. Moreover, the default race for uncertified firms in City data systems is “Caucasian;” this creates an opportunity to over-report the true population of Caucasian subcontractors and/or under-report the true population of historically under-represented contractors that work on City public works projects. For these reasons, SCOPE’s performance has continued to be reported in an incomplete and inaccurate manner.

Moreover, we discovered that project subcontracting goals have not been applied to change order work¹⁴ – project work that adds to or alters the original project scope of work. We learned that at

¹⁴ A change order is any revision made to an existing contract which ultimately affects the contract’s scope of work, price, and/or quantity. Change orders that result in more than \$200,000 in one transaction requires City Council approval; changes to a project which amounts to less than \$200,000 in a single transaction are known as field orders and do not require City Council approval.

least one change order is used for each public works project in the City. E&CP informed us that prime contractors use the same subcontractors to perform change order work. The pattern of increased project work for subcontractors – however small or large – is not reflected in the program performance reports presented to City Council; EOCP does not include actual goal achievement in its program reporting to City Council. This illustrates an example of inaccurate subcontractor achievement reporting to City Council.

We conclude that additional subcontracting opportunities exist in change order work and, therefore, program management should evaluate the extent to which change order work can feasibly be assigned to subcontractors on a per-project basis and require and enforce SCOPE goals to apply to all change order work to the fullest extent of the law.

Appropriate, complete, and accurate data should be used in reporting the performance of SCOPE to City Council. Specifically, a more accurate account of how prime contractors are performing in terms of subcontracting project work is to include the information prime contractors report in the Final Summary Report (this report contains, among other things, information about the actual dollars paid to subcontractors for work performed on the project). For this reason, future reporting on the performance of SCOPE should utilize actual achievement data, like those found in the Final Summary Report. Implementing recommendations 1 and 2 proposed earlier in this report will be sufficient to mitigate these data weaknesses.

Incomplete and inaccurate reporting of SCOPE's performance compromises a decision-maker's ability to make sound policy and financial decisions about the program. Further, management is unable to accurately assess the program's efficiency and effectiveness. A potential consequence is that City resources may be wasted on programs that do not work, are inefficient, and/or are ineffective. Waste of City resources contribute to diminished opportunities to sustain or grow other promising or successful programs or initiatives, threaten the public's trust in the City, and retard the City's ability to advance in the social, economic, and political arenas.

Further, the U.S. GAO (1999) states the following:

- Relevant, reliable, and timely communications relating to internal and external events are required for an entity to run and control its operations;
- Information is needed throughout the agency to achieve all of its objectives; and
- Effective communications should occur in a broad sense with information flowing down, across, and up the organization (p.18-19).

Recommendations:

- 9. Management should provide both committed and actual achievement data like those found in the Final Summary Report when reporting to City Council the performance of SCOPe; and**
- 10. Program management should evaluate the extent to which change order work can feasibly be assigned to subcontractors on a per-project basis and require and enforce SCOPe goals to apply to all feasible change order work to the fullest extent of the law.**

SCOPE Program Management Could Be Enhanced

Management has changed little in its approach to helping contractors achieve advisory goals throughout the years. As a result, little change has been seen in advisory participation levels on City public works projects. For this reason, management should consider the approaches employed at different organizations that may help to increase both mandatory and advisory goal achievements, like those approaches found in submissions to the State Agency Recognition Awards (SARA).

Furthermore, we found that EOCP has been effective in informing and outreaching to historically under-represented contracting groups at pre-bid conference meetings.¹⁵ However, the outreach efforts have not translated to these categories of contractors winning City public works project bids. We conclude that the City could consider alternative approaches to increasing diversity in the population of contractors that win City public works projects. For instance, the City could divert some of its outreach resources to identify the challenge these types of contractors experience during the bid submission process (e.g. organizing required documents for bid submission, meeting bid application deadlines, etc.) and/or discover new approaches to reduce or mitigate technical hurdles these types of contractors face in doing business with the City (e.g. referring contractors to specialized insurance companies that offer affordable project insurance and bonds, offering networking opportunities, expanding the Minor Contractor Program to help more contractors obtain the experience required to carry out larger City public works projects, etc.).

In general, management collects and reports on data in the same manner and to the same extent it has in the past. Changes in administrative reporting of EOCP, high turnover of EOCP staff, current staff shortages, and lack of program metrics and performance evaluation documentation have historically limited management's ability to effectively evaluate and manage SCOPE.

¹⁵ The pre-bid meeting is used to discuss specifications for a specific bid/proposal, and it allows for vendors to ask questions in order to seek clarification. Not all bids have a pre-bid meeting and attendance is not mandatory unless specified.

Recommendation:

- 11. Management should review the approaches to increasing contractor diversity outlined in nominations to SARA and continue to consult with other entities for best practice guidance on how to increase the diversity of subcontractors and document the communications.**

The City has implemented a new and comprehensive SAP system – one in which E&CP, P&C, and the Comptroller’s Office may input project information that is relevant to the administration and management of SCOPE. We conducted a cursory review of the existing roles and definitions available for the SAP Financial and Logistics module (FILO) to identify process points and the responsible personnel that may provide EOCP the information it needs to manage and administer SCOPE.

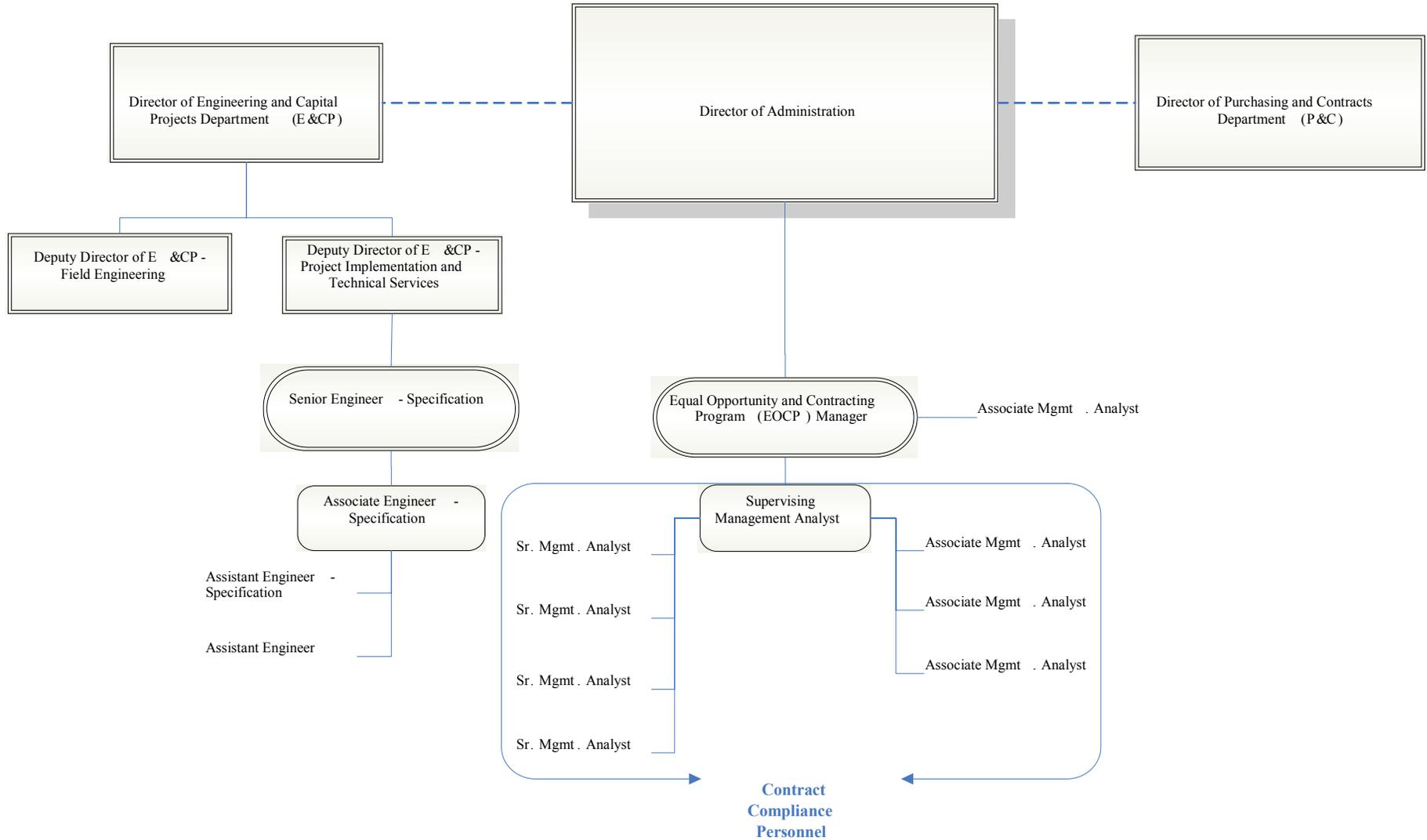
We found three distinctly different FILO roles in which EOCP would benefit from being included in the process. The roles and definitions are presented in [Appendix G](#). At the very least, departments should consider sharing information with EOCP when processes start and end. Including EOCP in the roles will largely ensure EOCP is notified of information in a timely manner, reduce duplication of efforts since it will no longer be necessary for departments to provide some information that EOCP needs to administer and manage SCOPE, and increases EOCP’s ability to be effective because EOCP is afforded opportunities to intervene and take action when necessary in a more timely and effective manner.

Recommendation:

- 12. EOCP, E&CP, and P&C should discuss the distinct data EOCP needs to adequately manage SCOPE; and**
- 13. EOCP should obtain direct access to the data it needs to effectively and efficiently administer SCOPE.**

Of note, management advised us that EOC, P&C, and E&CP meet periodically to discuss SCOPE and address any questions and concerns about administering and managing the program.

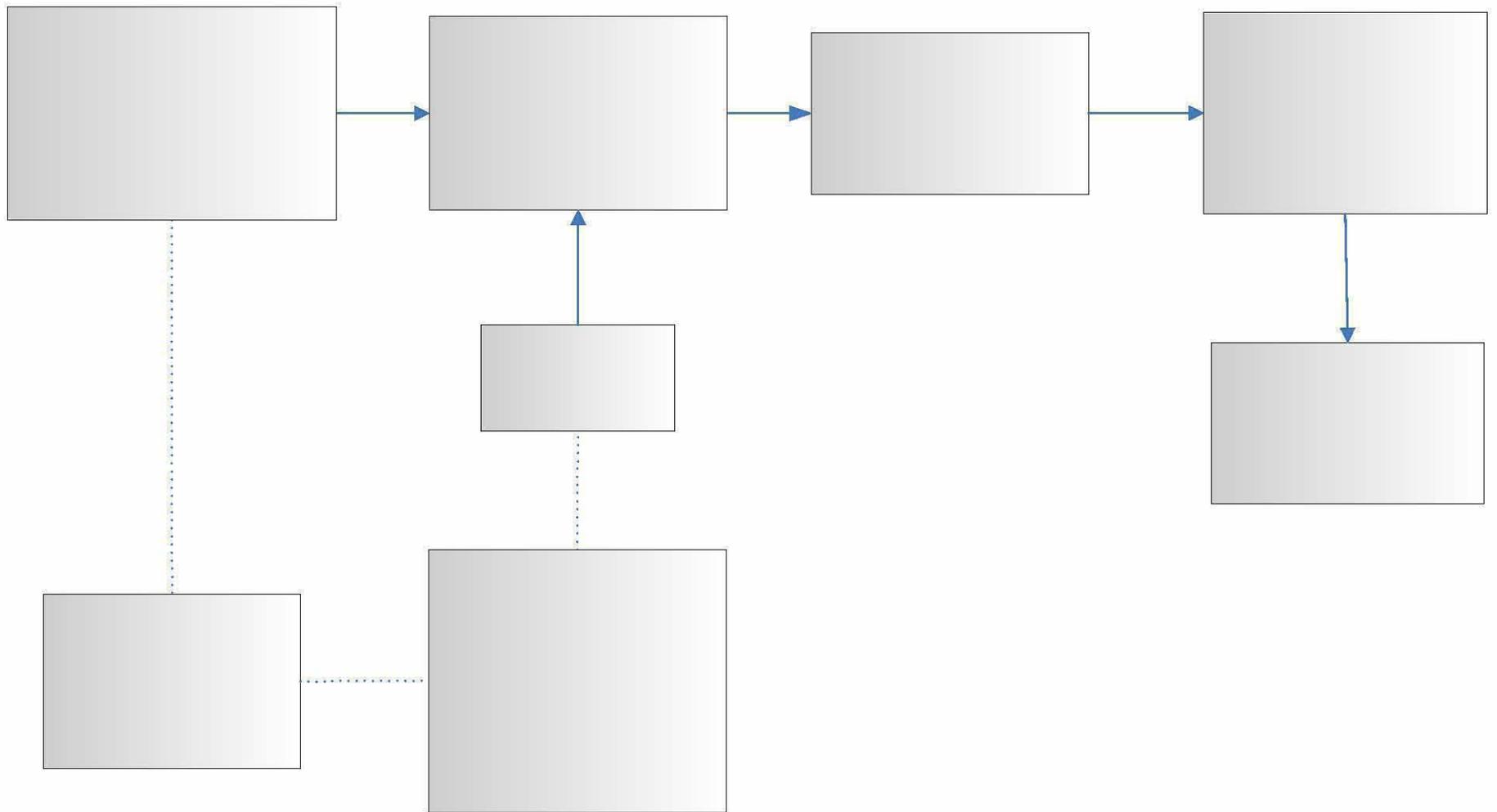
**Appendix A: Organizational Chart of the City Departments and Key Staff for the Subcontractor Outreach Program (SCOPE)
(As of November 2009)**



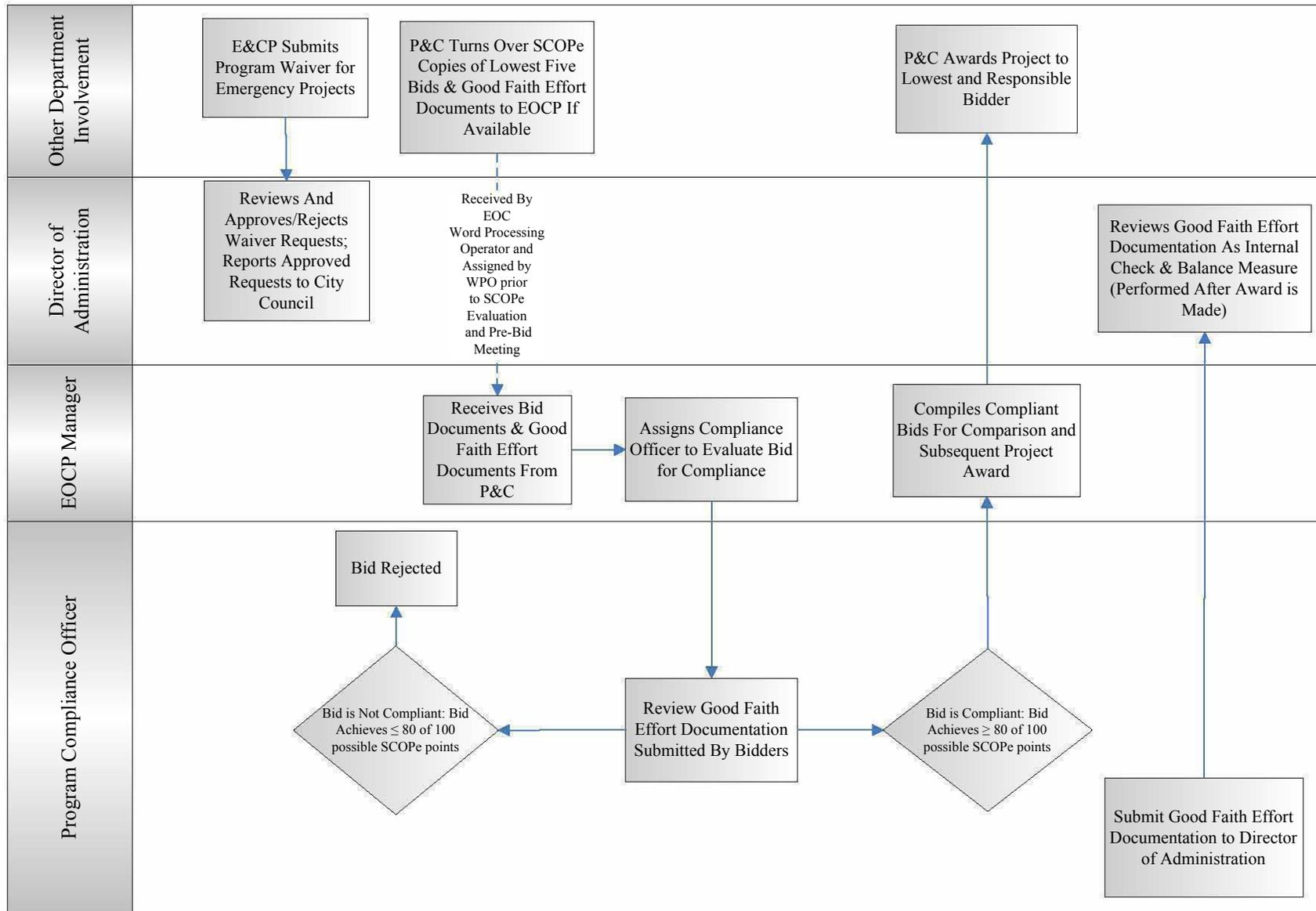
Appendix C: Sample List of Certifying Agencies

Agency Type	Agency Name	Specific Agency Section	Certification Name	Common Abbreviation
Federal	US Department of Transportation (DOT)	California Unified Certification Program (CUCP)	Disadvantaged Business Enterprise	DBE
State	California Department of General Services (DGS)	Procurement Division - Office of Small Business and DVBE Services (OSDS)	Small Business Enterprise	SBE
State	California Department of General Services (DGS)	Procurement Division - Office of Small Business and DVBE Services (OSDS)	Disabled Veteran Business Enterprise	DVBE
City	Office of Contract Compliance (OCC), city of Los Angeles	Centralized Certification Administration (CCA)	Minority Business Enterprise	MBE
City	Office of Contract Compliance (OCC), city of Los Angeles	Centralized Certification Administration (CCA)	Women Business Enterprise	WBE

Appendix D: SCOPE Goal Calculation Process Flowchart (As of July 2009)



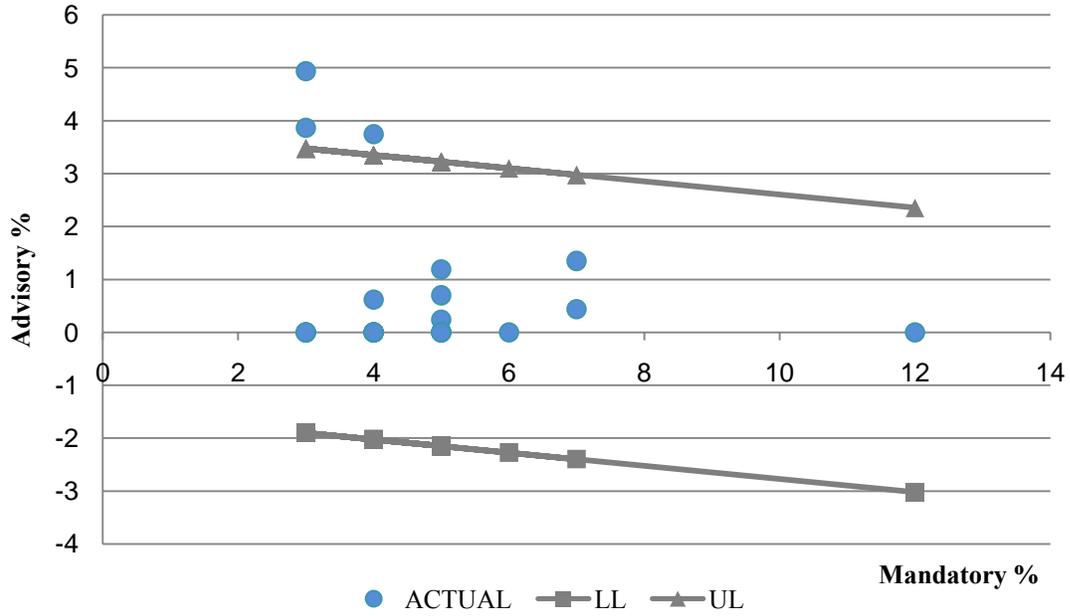
Appendix E: Evaluation of Project Bids for SCOPE Compliance (As of November 2009)



Appendix F: Statistical Analysis of Current Advisory Goal Achievements

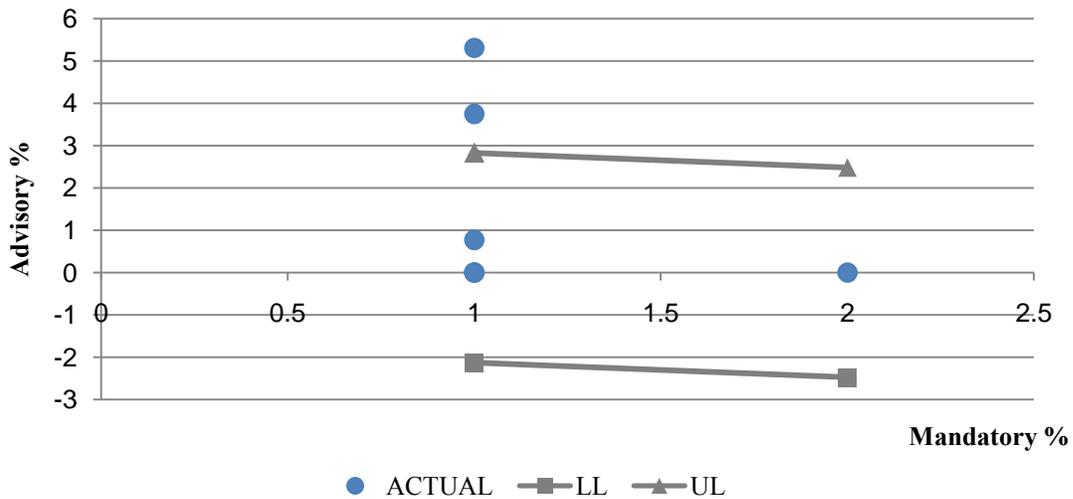
Advisory DBE Goal Achievement

***Prime contractors hiring practice of certified DBE subcontractors are reasonable**

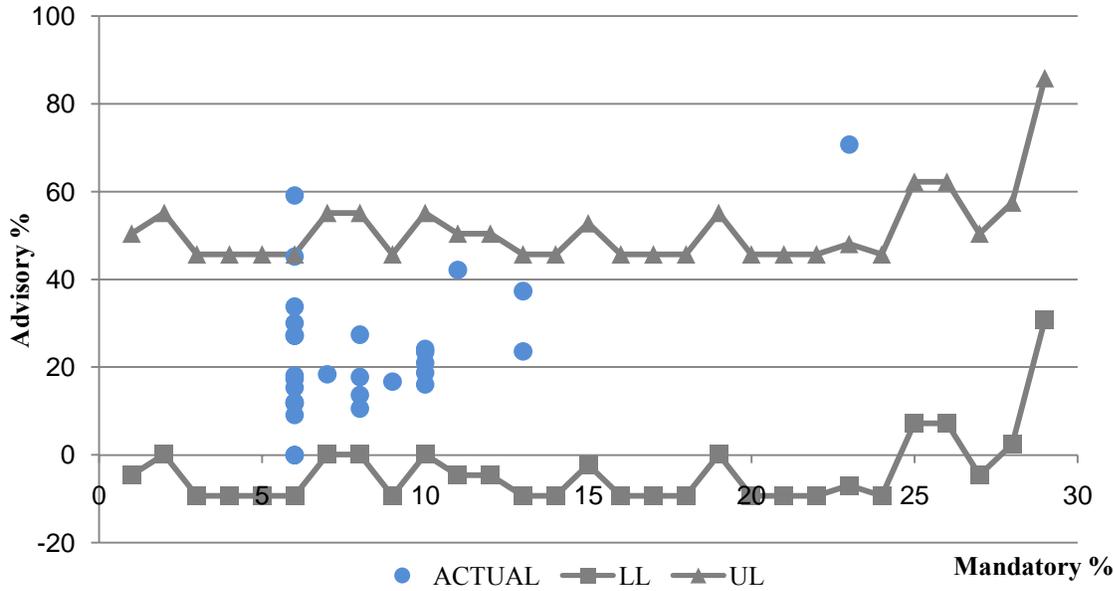


Advisory DVBE Achievement

***Prime contractors hiring practice of certified DVBE subcontractors are reasonable**



Advisory OBE Achievement
***Prime contractors hiring practice of certified OBE subcontractors are reasonable**



Appendix E Note

Actual – mandatory and advisory goal achievements realized on City public works projects

Lower Limit boundary (LL) – Low boundary of reasonable goal achievement

Upper Limit boundary (UL) – High boundary of reasonable goal achievement

We conducted a regression analysis to assess the reasonableness of mandatory and advisory goals achieved by prime contractors on a sample of FY 2009* SCOPe projects. Based on our analysis, we conclude that achievement patterns are not unreasonable, statistically speaking (95% Confidence Interval). We did not find evidence that prime contractors deliberately hired less historically under-represented groups than was available and willing to work on City public works projects. Any deliberate efforts to hire less historically under-represented groups at a statistically unreasonable rate would have been captured in our analysis and would have fallen below our lower limit prediction boundary. No data points fell under our lower limit prediction boundary.

*Only data for quarters 1, 2, and 3 is reflected in the graph

Appendix G: SAP FILO Role Definitions That May Help EOCP Better Manage SCOPe

	Role Name	Role Definition	Parameters	Recommendations	Auditor Observation
Source:	SAP FILO Role Definitions	SAP FILO Role Definitions (Excerpt)	SAP FILO Role Definitions (Excerpt)	SAP FILO Role Definitions	Audit Staff
1	Accounts Payable Invoice Administrator	The AP Invoice Administrator role is responsible for the entry of vendor invoices with or without a purchase order...the AP Invoice Administrator role can create, park, and modify parked invoices. Parking means that a document is created and data is entered and saved for further changes or review before it is posted. This same role will be responsible for entry of credit memos against a purchase order or directly into accounts payable, and also responsible for reversing and cancelling vendor invoices.	Any subsequent changes after the document has been posted will require resetting by AP Invoice Approvers, before the AP Invoice Administrator can reverse or cancel the vendor invoices.	This role is the initiator of vendor invoices within the departments	Including EOCP in this role will 1) Ensure EOCP receives invoice information for projects in a timely manner 2) Reduce duplication of efforts and increases efficiency - department staff will no longer have to inform EOCP of project status changes 3) Increases EOCP's effectiveness since EOCP is able to provide input and take action in a more timely and effective manner

2	Project Systems Administrator - Change	People with this role will establish and change cost estimates, enter plan, forecast and actual dates, as well as enter change statuses on Project elements as required, including marking as Technically Complete (substantially complete), and Ready to Close.	These statuses send notifications to the Senior Engineer, Project Manager, CIP accountant and CIP Analyst that these projects have reached a point when the process of readying the project for Capitalization and eventual closure should begin.	This role has wide assignment base. Mostly PM's, CIP Analysts and Field Engineers should be given this role assignment.	Including EOCP in this role will 1) Ensure EOCP receives project status change notifications in a timely manner 2) Reduces duplication of efforts and increases efficiency - department staff will no longer have to inform EOCP of project status changes 3) Increases EOCP's effectiveness since EOCP is able to provide input and take action in a more timely and effective manner
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3	Project Systems Controller	The Controller will put a project on Hold, should the funding be removed or priorities dictate that work on this project be suspended. This role is the only one authorized to formally close a project or re-open one once closed.	They will also perform the final settlement of projects once Technically Complete, in order to begin depreciation and close the projects.	This role is reserved exclusively for Comptroller Department CIP staff.	Including EOCP in this role will 1) Ensure EOCP is notified of final settlement of projects 2) Provides EOCP an opportunity to intervene when necessary (e.g. Request final settlement delay for a project that has not fully complied with SCOPE) 3) Reduces duplication of efforts and increases efficiency - department staff will no longer have to inform EOCP of projects that are ready for final settlement processing 4) Increases EOCP's effectiveness since EOCP is able to provide input and take action in a more timely and effective manner
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Management's Response to the City Auditor's Performance Audit
Of the Subcontractor Outreach Program

This following is Management's response to the City Auditor's Performance Audit on the Subcontractor Outreach Program. Each heading corresponds with the headings in the audit report.

"Introduction"

As requested by the Administration Department, the City Auditor conducted a performance audit of the Subcontractor Outreach Program (SCOPE), a program managed by Equal Opportunity Contracting Program (EOCP) staff that applies to City funded construction projects. This is the first and only independent performance audit conducted on the program and was requested to identify areas where improvements could be made and ensure compliance with program requirements adopted in November 2008.

Because this audit is limited in both scope and timeframe, staff has provided additional background, context and clarification. We would like to thank the City Auditor for conducting this audit and, while we do not necessarily agree with all the findings and recommendations, we appreciate their analysis and suggestions. We all share the common goal of making continuous improvements on the program.

"Background"

EOCP administers programs designed to ensure equal access to contracting opportunities and monitors/enforces federal, state and local equal opportunity, public contracting and labor compliance laws related to the advertisement, solicitation and award of construction, consultant, vendor, and supply contracts. The Subcontractor Outreach Program is one program that applies to City funded construction projects. The City awards construction, consultant, goods and services contracts with federal, state and local funds.

To more fully describe the historical background of the City's decision to conduct a disparity study in the early 1990s, it is important to include that this decision was based upon a lawsuit filed against the City's existing Minority and Woman Owned Business (MBE/WBE) Program. The lawsuit, filed by the Associated General Contractors of America (Case No. 93-1152K(POR)), resulted in a decision by Judge Judith Keep on September 28, 1993, to enjoin the administration and enforcement of the Program for City funded public works projects. A disparity study was necessary for the City to develop a legally defensible MBE/WBE Program. The original study was awarded for a not to exceed amount of \$500,000 and covered the time period of 1987-1993. At that time, studies typically examined a ten year timeframe for an initial study, however, the City did not have verifiable data prior to 1987. An additional statistical analysis was conducted as recommended by EOCP staff to cover the period after the program was enjoined (1994-1997) and was included in the final report submitted to City Council.

“Program Application”

The report uses the term historically under-represented contractors. For informational purposes, staff has included the industry terms and definitions used to describe disadvantaged businesses typically included in equal opportunity contracting programs (Attachment 1).

“Program Components”

Advisory Participation Levels: The report states that the advisory participation levels are based on amounts of prior City public works projects that were subcontracted to certified and non-certified disadvantaged construction businesses. This may have been true in the earlier years of the program, however, a 2008 document prepared by Engineering and Capital Projects Department indicates that advisory participation levels were based on a review of DBE, DVBE and OBI registered firms in San Diego. Documentation of the process between 2001 and 2008 could not be located.

“Objectives, Scope and Methodology”

SCOPE Changes: Changes were made to the SCOPE goal calculation on two occasions during the defined audit review period (11/2008-10/2009). The initial change occurred in December, 2008 after a reassessment of the methodology developed in 2001. This change incorporated data from the Caltrans/State DVBE certified trade counts as of October 7, 2008 and the Blue Book of Building Construction California License Contractors San Diego region. The attached December 1, 2008 memo documents that change. The subsequent change occurred in 2009.

“Prime Contractors Did Not Attain Advisory Participation Levels”

The use of a regression analysis based on a snapshot of information may not be the most appropriate method to determine the reasonableness (or unreasonableness) of prime contractor goal achievement and/or their intent.

While we acknowledge the effort to conduct such an analysis, relying solely on statistics to draw conclusions on such a complex matter is a disservice to decision makers, the diverse business community and the public. The analysis is based on limited information (less than 1 year of projects and results of low bid only). Absent additional information, (i.e. review of all prime and subcontractor bids submitted, interviewing prime and subcontractors, gender and ethnic breakdown of DBEs, etc.) whether or not prime contractors deliberately hired less DBEs/DVBEs cannot realistically be determined. It diminishes the reality of the challenges and experiences of disadvantaged, disabled veteran, woman and emerging business owners. A potential consequence of predicting intent without researching additional relevant information is that incorrect assumptions can be made. The potential consequences of making incorrect assumptions could be that prime contractors would no longer be compelled to put effort into extending themselves to a more inclusive group of potential subcontractors and therefore increase the challenges faced by small and emerging businesses in already difficult economic times. In addition, the public's trust in the City's commitment to ensure a diverse group of

subcontractors are extended a fair opportunity to bid on City public works contracts could be threatened.

“Program Management Is Not Focused on Collecting Contracting Data Trends in the City”

Clarification: The report references direction from City Council to maintain adequate administrative record keeping for the City to compile necessary information for a disparity study. The source document used for this direction is a Council resolution adopted November 29, 1993. The resolution was in response to the enjoinder of the MBE/WBE Program and in preparation for the disparity study. There was insufficient data to conduct the study over a 10 year period as was industry standard at that time and the City Council wanted to ensure the City continuously collected such data.

While staff does not routinely report all the SCOPE related data required and received (i.e. subcontractor bids included in SCOPE documents, monthly invoice/final summary reports, number of SCOPE submittals received/reviewed/approved, etc.) for reports to City Council, this and other data is collected, saved, and available as required.

Recommendation 1: The City should collect accurate and comprehensive data that measures the contracting practices in the City.

Response: We agree with the recommendation, however, we disagree with the City Auditor’s implication that contracting data trends is not collected. EOCP does and will continue to collect accurate and comprehensive data that measures the contracting practices in the City. The semi-annual reports to City Council provide overall programmatic updates and current contract activity. The recently purchased contract compliance software is a valuable tool that will enhance our ability to collect, analyze and provide comprehensive automated reports. This software will be implemented by July 30, 2010.

Recommendation 2: The City should perform a comprehensive disparity study.

Response: We disagree with the recommendation.

Background/Context: Disparity studies can be costly and conducting a disparity study does not guarantee the ability to establish and implement a race-conscious goal based program. The City’s early disparity study recommended several race-neutral remedies based, in part, on the passage of Proposition 209. The recent Caltrans study, conducted by BBC Research in association with Holland + Knight, LLP; GCAP Services; Boston Research Group; and Customer Research International, resulted in both race neutral and race conscious remedies. The final report dated June 29, 2007 also states that the Federal DBE Program requires Caltrans to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. This study is currently being challenged by the Associated General Contractors of America, California, and San Diego Chapter.

SANDAG also conducted a disparity study. Their final report (conducted by the same expert consultant as Caltrans) includes the following:

Race- and gender-based remedies. At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits SANDAG from implementing programs including race, ethnic or gender preferences related to its locally-funded contracts. However, SANDAG should monitor developments in a case involving San Francisco's implementation of a race- and gender-conscious program for its locally-funded contracts. At the time of this disparity study report, the issues raised in this case were under review by the California Supreme Court.^{1*}

It also states that the USDOT requires agencies to meet the maximum feasible portion of their overall annual goal by race-neutral means.

In an effort to determine if the City could utilize part or all of the results to establish a DBE program, staff requested the City Attorney to review both studies. The Attorney's opinion was that the City could not. The San Diego Airport Authority has also completed a disparity study which has not been released. Information regarding their disparity study is expected to be posted May 7, 2010. The same question will be asked of the City Attorney once this study is released as it is focused solely on the San Diego Region.

The results of the U. S. Department of Transportation's disparity study for Caltrans and FAA funded projects require the City to adopt and implement a specific DBE program that includes both race-conscious and race-neutral elements. The City established both annual and contract-by-contract goals which have been submitted and approved by the awarding agencies. In addition, EPA and HUD DBE goals are incorporated in the appropriate bid and/or proposal specifications. As stated earlier, the federal government requires agencies "to meet the maximum feasible portion of their overall annual goal by race-neutral means".

A post-Adarand report issued by the U.S. Commission on Civil Rights, states ".....the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Peña* (Adarand) clarified the constitutional standard for evaluating race-conscious programs in federal contracting. The court held that all racial classifications imposed by federal, state or local governments must be subjected to "strict scrutiny", a standard used by the courts in deciding whether a law or policy is constitutional. The burden of proof is on the government to demonstrate that the classification is the least restrictive way to serve a "compelling public interest". Government programs must be narrowly tailored to meet that interest."²

The City recently adopted a Small Local Business Enterprise (SLBE) Program - a race neutral tool, developed in cooperation with a national business development expert and the City Attorney, intended to further the City's compelling interest to stimulate economic development through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments of the contracting community.

¹ SANDAG Disparity Study Final Report dated 1/22/10 Section ES, pg.11

*This relevant court case, *Coral Construction v City of San Francisco*, is set for oral argument on 5/04/10

² US Commission on Civil Rights Federal Procurement After Adarand, 09/2005, Executive Summary ix

Prior to engaging in further discussions regarding a disparity study, it would be prudent to continue to wait for the outcome of the California court case (Coral Construction) which will have an impact on current and future disparity studies and analyze the results of the race neutral SLBE Program after one year.

Recommendation 3: The City should create policies and procedures for collecting and reporting on data that may be used in a disparity study.

Response: We agree with the recommendation. EOCP will document the current policies and procedures for data collection and reporting within 45 days. The new contract compliance software will require changes and once fully live, the policies and procedures will be updated. The compliance software allows for a variety of automated, comprehensive contracting reports on commitments, payments change orders, goal achievement, etc.

“Scope Goals Have Been Set Subjectively”

The original documentation for the goal setting methodology utilized when SCOPE was first implemented is not available. Engineering & Capital Projects staff prepared a document in 2008 describing the standard process in effect from 2001-2008. The methodology was developed after consultation with the City of Los Angeles. Their process has been included as Attachment 3. Staff concurs that there has been a subjective element to goal setting, however, the report concludes that inaccuracies exist in goals that have been established without identifying the inaccuracies found. We acknowledge the imperfection of the process, however, we have reviewed and made improvements to the process on two occasions since the Program was moved under the Administration Department. Both changes are transparent, documented and include step by step procedures.

Availability Analysis: The report provides a simplistic and narrow approach for identifying firm availability. It is based on limited information – a method not recommended by subject matter experts or the U. S. Commission on Civil Rights and can lead to unintentional misrepresentations. This indicates a fundamental misunderstanding of the complexity of the term “ready, willing and able” as it relates to equal opportunity contracting. While staff did indicate difficulty in identifying ready, willing and able contractors, it was not due to a lack of a knowledgeable process, rather it was due to the full understanding of the complexity involved in ensuring a thorough, fair analysis is conducted. The methodology conducted in the report was restricted to the Caltrans database and did not include: Disabled Veteran Owned Businesses, other certifications that the City accepts (City of Los Angeles MBE/WBE, California Public Utilities Commission MBE/WBE, San Diego Region Minority Supplier Diversity Council MBE/WBE and State of California’s Department of General Services DVBE), Purchasing & Contracting’s list of businesses who registered with the City, EOCP’s list of firms who specifically indicated interest in doing business with the City and subs who have submitted bids, but were not selected (available in SCOPE documentation). In addition, it should be noted that the wait time for Caltrans certification is a minimum of 9 months and can be as long as 18 months.

Best practices and industry standard includes not only gathering data from lists, but also includes collecting anecdotal information through surveys/interviews, reviewing all bids received by prime contractors and reviewing agency vendor data bases to identify ready, willing and able firms. Again simply reducing complex issues to limited statistical analyses diminishes the reality of the challenges small and emerging contractors face, particular in difficult economic times.

Recommendation 4: EOCP management should develop written policies and procedures to ensure that SCOPE goals formulas embedded in spreadsheets used to generate SCOPE goals are accurate and are reviewed by management.

Response: We agree with this recommendation. Written policies and procedures will be developed to outline how EOCP and E&CP management will conduct and document random reviews of goal formulas embedded in spreadsheets. These policies and procedures will be developed within 90 days.

Recommendation 5: E&CP management should review the accuracy of goals generated by specification engineers prior to submitting SCOPE goals to EOCP for final review and approval.

Response: We agree with this recommendation. E&CP will continue to have the section head (Deputy City Engineer) review the goals generated by the specific engineer.

Recommendation 6: EOCP and E&CP should document the rationale for adjustments made to SCOPE goals calculations or factors that impact SCOPE goals on a per-project basis.

Response: We agree with this recommendation. Effective immediately, when adjustments are made to a goal on a specific contract that falls outside the existing procedures, written documentation of the rationale will be attached.

“Management Has Not Completely Implemented the New Caltrans Methodology for City-Funded Projects”

Clarification: As indicated in the report, SCOPE and the goal methodology was based on the City of Los Angeles’ (LA) program which includes caps on a number of different types of projects. The City’s SCOPE program includes a mandatory subcontracting goal, and to meet the legal requirements of Proposition 209, other business enterprises (OBEs) are included. Caltrans has a DBE program, a distinct difference. Our annual goals and contract-by-contract goals submitted to Caltrans do not include MBE/WBE/DVBE/OBEs and follow their requirements.

Recommendation 7: SCOPE goal formulas should be calculated as prescribed by Caltrans to ensure that the City reaps the benefits of streamlining processes if the City continues to use the Caltrans methodology to calculate goals for City-funded projects.

Response: We partially agree with this recommendation. We are currently utilizing a modified version of the Caltrans goal calculation which is more appropriate. The Caltrans methodology limits the field of available firms to Caltrans certified DBEs. It excludes DVBEs/MBEs/WBEs certified by other agencies and therefore narrows the field. As stated earlier the current wait time

for Caltrans certification is a minimum of 9 months and can be as long as 18 months. It should be noted that the City of Los Angeles recently discontinued processing Caltrans certifications which will lengthen the wait time for eligible firms. We will continue our process of evaluating the calculation process and availability data every six months and make changes as necessary. Any changes will be documented.

Recommendation 8: Management should establish an annual goal for City-funded projects in order to measure the progress (or lack thereof) that prime contractors subcontract to the various historically underrepresented contractor groups.

Response: We agree with this recommendation. We will be establishing an annual goal for the SLBE Program for FY2011, we will also establish an annual aspirational goal for SCOPE at that time.

“SCOPE Performance Reporting Could be Improved”

SCOPE Performance Reporting: Reports to City Council are primarily programmatic updates. That is, rather than single out any one element (i.e. SCOPE) an update is provided on the overall program. Typically when a single program element is presented to City Council, the Mayor has determined it is important information to be shared. City Council and/or Committee has specifically requested the information, it is a response to Council/Committee questions or it requires legislative approval. In the past, at City Council request, the effectiveness of SCOPE was analyzed and reports (Managers Report Nos. 03-038, 03-163 to Natural Resources & Culture Committee) provided to determine the future of the Program. Most recently staff presented a report to Rules Committee and City Council to strengthen SCOPE (Report to Council No. 08-099)

EOCP reports commitments as listed in prime contractor bid documents. California Public Contract Code Sections 4100-4114 more commonly known as the "Subletting and Subcontracting Fair Practices Act" requires prime contractors to list subcontractors which will perform work in excess of one-half of one percent of the total bid (or, in the case of streets, highways, or bridges, work in excess of one-half of one percent of the total bid or \$10,000, whichever is greater) on all state and local public agency contracts and allows substitutions of the listed subcontractor under very limited circumstances. The prime contractor must state also the portion of the work to be performed by each subcontractor. If a prime contractor fails to specify subcontractors, then fails to perform the relevant contract work, the prime contractor is subject to subcontractor substitution and other penalties. Further, if a prime contractor lists a subcontractor but does not utilize them without written permission from the public agency, they are subject to fines and penalties. Finally, Section VIII of the provisions of SCOPE also addresses the issue of maintaining the level of listed subcontractor participation. Reporting commitments provides current, real time information which is one of the reasons why they have been and continue to be reported.

Staff also conducts a manual verification process on reported statistics which includes pulling the bid documents, verifying certification status via Caltrans on-line Inquiry and in some cases sending letters to contractors specifically requesting their ethnicity (sample documents attached).

For these reasons, the information reported is accurate. Further when a prior P&C Department Head indicated to City Council that historical data (FY03-06) could not be gathered and reported, current staff recovered, downloaded, reviewed, verified (to the best of our ability) and provided statistics that are used in Figure 6 of the report.

Staff has discussed program elements and statistics with the City of Los Angeles on several occasions. Evidence can be found in the Report to City Council No. 08-099, Attachment F, and emails (samples attached). In addition, the consultant hired to assist with enhancing the availability and utilization of small, local, minority and women-owned contractors and vendors in City contracts also made contact with the City of Los Angeles and other cities while carrying out the scope of work.

Recommendation 9: Management should provide both committed and actual achievement data like those found in the Final Summary Report when reporting to City Council the performance of SCOPE.

Response: We agree with this recommendation. The FY10 annual report to City Council will include final summary report information.

Recommendation 10: Program Management should evaluate the extent to which change order work can feasibly be assigned to subcontractors on a per-project basis and require and enforce SCOPE goals to apply to all feasible change order work to the fullest extent of the law.

Response: We agree with this recommendation. Effective May 1, 2010, EOCP and E&CP will evaluate the extent to which change order work that adds to the scope of work and results in an increase to the contract price deviates significantly from SCOPE goals. If deviations are identified, EOCP and E&CP will evaluate the extent to which change order work can feasibly be assigned to subcontractors on every project beginning July 1, 2010. Subsequently, EOCP and E&CP will require and enforce SCOPE goals to apply to change order work as allowed by law.

“Scope Program Management Could Be Enhanced”

Correction: Staff has considered alternative approaches to increasing diversity in the population of contractors that win public works projects. City Council Report Nos. 08-048, 08-156, 09-076, 09-121, 09-148 document our efforts and subsequent implementation of several initiatives.

Recommendation 11: Management should review the approaches to increasing contractor diversity outlined in nominations to SARA and continue to consult with other entities for best practice guidance on how to increase the diversity of subcontractors and document the communications.

Response: We agree with this recommendation. A cursory review of the SARA nominations indicates that they appear to be tailored to consultant, goods and services contracts rather than construction. The awards are internal recognition programs. Construction contracts are primarily awarded through the low bid process as required by City Charter. A number of actions

have been taken over the past several months to increase the diversity of prime and subcontractors on City projects including but not limited to:

- Providing a six month preview of upcoming construction projects on City's website (www.sdsmallecontracts.com);
- Breaking contracts into smaller sizes on an ongoing basis;
- Signed a Strategic Alliance Agreement with U.S. Small Business Administration with an emphasis on bonding assistance;
- Conducting ongoing bonding and insurance workshops;
- Creating both a small and large general requirements contracts; and
- Developing the recently adopted Small Local Business Enterprise Program, (which was recently mentioned in the March 2010 edition of the Insight Center for Community Economic Development's Inclusive Business Initiative e-Newsletter) which has a July 1, 2010 implementation date (details can be found on the City's website under the "Business" tab); and
- Raising the prequalification limit from \$250k to \$1m for City of San Diego certified Small and Emerging Local Businesses

Recommendation 12: EOCP, E&CP and P&C should discuss the distinct data EOCP needs to adequately manage SCOPE.

Response: We agree with this recommendation. These discussions began early this year and have been ongoing with the implementation of the contract compliance software.

Recommendation 13: EOCP should obtain direct access to the data it needs to effectively and efficiently administer SCOPE.

Response: We agree with this recommendation. We are working with the Office of the CIO, SAP staff, and our software consultant to ensure this occurs. We anticipate having full access by July 2010.


Debra Fischle-Faulk, Director
Administration Department


Date

DEFINITIONS

The U.S. government defines “socially and economically disadvantaged” individuals under the Small Business Act (15 USC 637) as:

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(4) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

Individuals not mentioned in the act may be considered on a case-by-case basis.

California Department of Transportation defines a disadvantaged business enterprise (DBE) as:

A for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged- - In the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

City of San Diego Additional Definitions:

Disabled Veteran Business Enterprise (DVBE) means:

A certified business which is at least 51% owned and operated by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies) The firm shall be certified by the State of California's Department of General Services, Office of Small and Minority Business.

Minority Business Enterprise (MBE) means:

A certified business which is at least 51% owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more members of the identified ethnic groups.

Women Business Enterprise (WBE) means:

a certified business which is at least 51% owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more women.



THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

MEMORANDUM

DATE: December 1, 2008

TO: Debra Fischle-Faulk, Director of Administration

FROM: James Nagelvoort, Deputy Director, Engineering and Capital Projects Department

SUBJECT: SCOP Mandatory and Voluntary Goals

Our understanding is that the new SCOP requirement approved by City Council and made effective November 1, 2008, requires five voluntary subcontracting goals to be reported. These goals are for the Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), Other Business Enterprise (OBE), Women Business Enterprise (WBE) and Minority Business Enterprise (MBE) contractors.

On Monday, November 17, 2008, Beryl Rayford, Mohsen Maali, Sadegh Jahadi, Berric Doringo, and I met and discussed the new Sub-Contracting Outreach Program (SCOP) requirements. It was decided to incorporate data provided by Equal Opportunity Contracting Program from the CALTRANS Certified Trade Counts dated October 7, 2008 with the OBE data from the Blue Book of Building Construction California License Contractors San Diego region. Please see Attachments A and B.

The following weighted percentage distribution for the five voluntary goals was calculated based on the number of firms counted with respect to the total figure as follows:

DBE	SMBE	SWBE	DVBE	OBE
286	285	81	223	2403
9%	9%	2%	7%	73%

We are proposing going forward with those percent distribution for all of our future contracts.

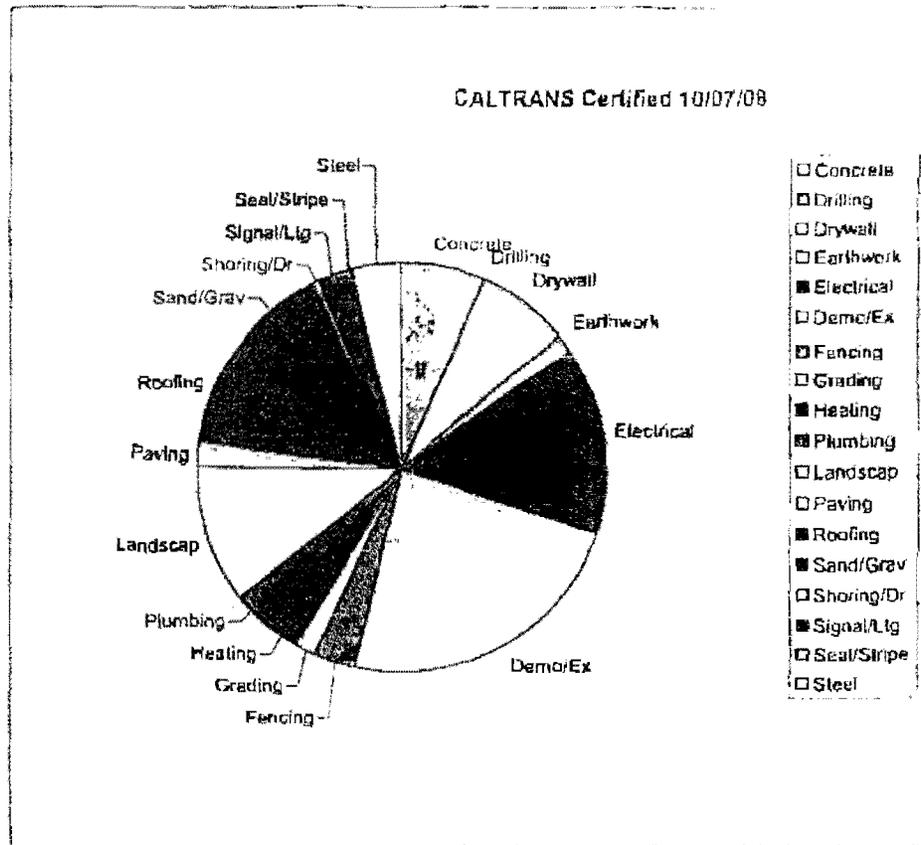
The actual mandatory and voluntary goals with respect to the Contract amount are calculated as described in the attached procedure and example. Please see Attachment C.

If you have any questions or concerns, please feel free to contact me at your earliest convenience.

*To be reviewed every six months.
dff 12/04/08*

CALTRANS Certified Trade Count 10/07/08

	DBE	SMBF	SWBE	DVBE
Concrete	19	24	1	22
Drilling				1
Drywall	21	32	3	7
Earthwork	4	6	5	3
Electrical	42	11	3	62
Demo/Ex	67	97	40	19
Fencing	10	6	4	8
Grading	5	21	3	7
Heating	8	6	0	11
Plumbing	8	6	1	25
Landscape	31	36	5	16
Paving	6	11	5	17
Roofing	22	10	3	13
Sand/Grav	22	8	3	0
Shoring/Dr	2	2	2	1
Signal/Ltg	7	3	2	0
Seal/Stripe	1	0	0	1
Steel	11	4	1	10
Totals	286	285	81	223



The Blue Book of Building and Construction
California License Contractors

Construction Categories	Central Valley (Sacramento, Fresno)	San Francisco, Oakland, San Jose	Los Angeles, Ventura, Santa Barbara Counties	Orange, Riverside and San Bernardino Counties	San Diego and Imperial Counties	Totals
Concrete	413	393	668	651	229	2354
Drilling	59	58	91	80	41	359
Drywall	166	226	255	237	96	980
Earthwork	390	325	404	438	190	1747
Electrical	661	810	1293	984	360	4114
Demolition	131	161	332	269	117	1010
Excavating	390	325	404	438	190	1747
Fencing	206	164	257	199	137	963
Grading	27	19	55	102	31	234
Heating	365	348	491	401	152	1757
Plumbing	372	420	752	456	206	2206
Landscape	419	397	491	472	233	2012
Paving	210	193	191	208	79	891
Roofing	208	222	307	231	118	1086
Sand/Grav	83	59	79	103	35	359
Shoring	13	27	50	37	23	150
Signal/Ltg	70	77	97	99	77	420
Seal	15	28	38	28	17	127
Stripe	49	50	74	71	29	273
Steel	36	74	85	74	37	306

2,403

Attachment 1

MANDATORY SUB CONTRACTING OUTREACH PERCENTAGE

Project Manager: Mahmoud Oriqat
 PM Work Location: 600 "B" street
 Project Title: Water group 549
 Bid Number: _____

Tel No. (619) 533-5232
 Date of CCSI: January 3, 2008
 Work Order No. **185481**
 Date: January 4, 2008

Total Estimated Construction Cost: **\$2,313,106.00**

Bid Item	Sub Contracting Item	Cost
15	Traffic control for slurry seal	\$10,000.00
21	Slurry seal and striping	\$152,331.00
22	Bond for slurry seal	\$3,500.00
23	Crack sealing	\$12,500.00
24	AC patching for slurry seal	\$7,500.00
25	Damaged AC pavement replacement	\$10,000.00
26	Traffic detector loops	\$5,000.00
27	Cold milling asphalt concrete pavement	\$12,950.00
28	1-1/2 inch AC overlay	\$90,000.00
29	Pavement fabric	\$15,750.00
30	Curb ramp/ type D	\$8,000.00
31	Curb ramp/ type C1	\$72,000.00
32	Curb ramp/ type A	\$20,000.00

Total Cost of Sub-Contracting items **\$419,531.00**
 Calculated M.S.O.P. **16.1%**

Voluntary Goals:

D.B.E. 1.5%
D.V.B.E. 1.1%
 S.M.B.E. 1.5%
 M.W.B.E. 0.3%
 O.B.E. 11.8%
Total 16.1%

13	1	LS	7-10.1.3	Flashing Arrow Boards at		\$5,000.00
14	1	LS	7-10.1.3	Traffic Control (Part of Plans) at		\$60,000.00
15	1	LS	7-10.1.4	Traffic Control for Resurfacing and/or Slurry Seal at		\$10,000.00
16	1	LS	7-20	Video Taping of Preexisting Conditions at		\$3,000.00
17	1	LS	9-3.4	Mobilization at		\$56,450.00
18	1	LS	9-3.5	Bonds (Payment and Performance) at		\$40,000.00
19	1	AL	9-3.6	Field Orders at	\$125,000.00	\$125,000.00
20	6	EA	301-1.7	Adjusting Existing Manholes Frames & Cover to Grade at	\$1,250.00	\$7,500.00
21	304662	SF	302-4.5	Slurry Seal and Striping at	\$0.50	\$152,331.00
22	1	LS	302-4.5.1	Bond for Slurry Seal at		\$3,500.00
23	5000	LF	302-4.7	Crack Sealing at	\$2.50	\$12,500.00
24	25	TON	302-4.8	AC Patching for Slurry Seal at	\$300.00	\$7,500.00
25	1000	SF	302-5.1.1	Damaged AC Pavement Replacement (SDG-107) at	\$10.00	\$10,000.00
26	10	EA	302-5.2.4.1	Traffic Detector Loops at	\$500.00	\$5,000.00
27	3700	LF	302-5.2.6	Cold Milling Asphalt Concrete Pavement at	\$3.50	\$12,950.00
28	600	TON	302-5.9	1-1/2 Inch AC Overlay at	\$150.00	\$90,000.00
29	6300	SY	302-7.3	Pavement Fabric at	\$2.50	\$15,750.00

46	400	SF	306-17.4	Pavement Restoration for City Forces Final Connection at	\$15.00	\$6,000.00
47	3	EA	306-24	2-Inch Blowoff Assembly at	\$4,000.00	\$12,000.00
Estimated Total Base Bid:						\$2,438,106.00

ADDITIVE ALTERNATE "A":

1	6	EA	306-20.1	Cut And Plug Of The Existing System By Contractor at	\$3,414.98	\$20,489.88
2	4	EA	306-20.2	Cut And Install To The Existing System By Contractor at	\$19,783.91	\$79,135.64
3	6	EA	306-20.2	Connections To The Existing System By Contractor at	\$5,926.58	\$35,559.48
4	20200	LF	306-25.4	Hi-Lining Maintenance and Repairs at	\$3.95	\$79,790.00
5	20200	LF	306-25.4	Hi-Lining Installation and Dismantling at	\$2.43	\$49,086.00
6	1	LS	306-25.4	Furnishing Hi-Lining Materials at	\$66,015.00	\$66,015.00
Estimated Total Additive Alternate "A":						\$330,076.00

Estimated Construction Total - Base Bid Including Additive Alternate "A":

\$2,768,182.00

Fischle-Faulk, Debra

From: Fischle-Faulk, Debra
Sent: Friday, January 16, 2009 8:07 AM
To: Hannah Choi
Cc: Lynda McGlinchey
Subject: RE: Subcontractor Outreach

Can you tell me exactly how your goals are developed????

-----Original Message-----

From: Hannah Choi [mailto:hannah.choi@lacity.org]
Sent: Friday, January 16, 2009 8:04 AM
To: Fischle-Faulk, Debra
Cc: Lynda McGlinchey
Subject: RE: Subcontractor Outreach

Yes it does.

>>> "Fischle-Faulk, Debra" <DFFaulk@san Diego.gov> 1/16/2009 8:01 AM >>>

A follow-up question - is the overall subcontracting goal that is established include vendors???

-----Original Message-----

From: Hannah Choi [mailto:hannah.choi@lacity.org]
Sent: Thursday, January 15, 2009 2:20 PM
To: Fischle-Faulk, Debra
Cc: Lynda McGlinchey
Subject: Re: Subcontractor Outreach

Yes. We follow federal guidelines which give 100% to manufacturers, 60% to suppliers and for brokers, whatever percent they make on the deal.

>>> "Fischle-Faulk, Debra" <DFFaulk@san Diego.gov> 1/15/2009 1:57 PM >>>

Hi Ladies,

I have another quick question, when you conduct your evaluation of contractor documentation do you count a percentage of vendor participation toward achieving the mandatory subcontracting goal??? If so, what is the percentage?

Thanks,
 Debra Fischle-Faulk
 Director, Administration

CALCULATION

- (1) List all items that can be performed by sub-contractors/consultants.
- (2) List the dollar value for each item listed above and calculate the total.
- (3) Calculate percentage of sub-contractors/consultants by dividing the total calculated in item 2 above by the total construction cost/value of the task, then multiply the result by 100.
- (4) Select MSM from “Mandatory Subcontracting Scales”, “ATTACHMENT” to Board Report dated June 4, 1997.
- (5) Calculate $MBE = \frac{2}{3} \times$ number calculated in item 4 above.
- (6) Calculate $WBE = \frac{1}{3} \times$ number calculated in item 4 above.
- (7) Calculate $DBE = MBE + WBE$.
- (8) Verify calculations on 5, 6, or 7 above by checking Bureau of Contract Administration web site at <http://parc1.lacity.org/bca/ots/mframe2.htm>

MSM, MBE and WBE

Project Title: Figueroa Street 59 Th Street to 69 Th Street Sewer Rehab.

Work Order: E2001360

Council district #s: 8 & 9

Bid Date: May 7, 2003

Pre-Bid date: April 15, 2003

Work Description: Rehabilitating/replacing of existing 8", 10" and 12" sewers .

Total Estimated Cost: \$ 596,000

Sub-Contracting Items for Liner contractor:

Shoring of open excavation	\$ 36,336
Repair ex. Damage	\$ 25,000
10" VCP	\$ 131,500
8" VCP	\$ 40,320
Reconnect HC	\$ 14,750
Remodel MH	\$ 3,450
New MH	\$ 12,900
Ahandon HC	\$ 2,400
Temporary resurfacing	<u>\$ 2,000</u>

Total sub-contracting items: \$ 268,656

Sub-Contracting Items for Open Cut contractor:

Line ex. 12 cement sewer	\$ 180,030
Line ex. 10" cement sewer	\$ 15,566
Line ex. 8" cement sewer	<u>\$ 38,908</u>

Total sub-contracting items: \$ 234,504

Calculated MSM = \$ 234,504 / \$ (596,000 - 50,000) = 42.95%

MSM = 24%

MBE = 2/3 (24 - 2) = 14%

WBE = 1/3 (24 - 2) = 8%

OBE = MSM - (MBE + WBE) = 2%

ATTACHMENT

TO

BOARD REPORT ON

"Mandatory Subcontracting Outreach Program for all City-Funded
Public Works Construction Contracts Greater than \$100,000"

MANDATORY SUBCONTRACTING SCALES

SCALE "A"

Public Works Projects - Large and Complex

(Large projects over \$50,000,000

and those with multiple

subcontracting disciplines)

HTP

<u>MAXIMUM SUBCONTRACTING POTENTIAL (MSP) PERCENTAGE</u>	<u>MANDATORY SUBCONTRACTING MINIMUM (MSM) PERCENTAGE</u>
0 - 21.99%	MSP less three ² whole numbers (round down)
22.00% - 23.99%	19.00%
24.00% - 25.99%	20.00%
26.00% - 27.99%	21.00%
28.00% - 29.99%	22.00%
30.00% - 31.99%	23.00%
32.00% - 33.99%	24.00%
34.00% - 35.99%	25.00%
36.00% - 37.99%	26.00%
38.00% - 39.99%	27.00%
40.00% - 43.99%	28.00%
44.00% - 47.99%	29.00%
48.00% - UP	30.00%

ATTACHMENT

SCALE "B"

Public Works Projects - Regular

(Limited Number of subcontractable Work Items)

Sever, Street, SD

<u>POTENTIAL (MSP) PERCENTAGE</u>	<u>MANDATORY SUBCONTRACTING MINIMUM (MSM) PERCENTAGE</u>
0 - 21.99%	MSP less three ²
	whole numbers (round down)
22.00% - 23.99%	19.00%
24.00% - 25.99%	20.00%
26.00% - 29.99%	21.00%
30.00% - 33.99%	22.00%
34.00% - 38.99%	23.00%
39.00% - 43.99%	24.00%
44.00% - 50.00%	25.00%

Maximum
Subcontracting
Potential

~~three~~ ²

SCALE "C"

Municipal Buildings

(Libraries, Police and Fire Stations, etc.)

<u>POTENTIAL (MSP) PERCENTAGE</u>	<u>MANDATORY SUBCONTRACTING MINIMUM (MSM) PERCENTAGE</u>
0 - 21.99%	MSP less three ²
	whole numbers (round down)
22.00% - 23.99%	19.00%
24.00% - 25.99%	20.00%
26.00% - 29.99%	21.00%
30.00% - 34.99%	22.00%

35 00%	99%	00%
00%	99%	00%
45 00%	99%	25 00%
00%	99%	26 00%
55 00%	59 99%	00%
00%	99%	28 00%
65 00%	99%	29 00%
70 00%		00%



08/25/08

THE CITY OF SAN DIEGO

August 19, 2008

3D Enterprises Inc
2180 Garnet Ave
San Diego, CA 92109

Reference: City of San Diego Bid #K084029C

We are currently in the process of re-ensuring we have complete and accurate statistical data to report to the Mayor and City Council. In reviewing our records we have determined that we need additional information from you regarding the above referenced bid. Please provide us with the ownership classification of the following businesses listed on your bid:

<u>Business Name</u>	<u>Male/Female Owned</u>	<u>Ethnicity*</u>
Rocket Enterprise	Male	Caucasian
Scott Mech	Male	Caucasian
Deese Henessy	Male	Caucasian
Crown Fence	Male	Caucasian
B.P. Fence Electric	Male	Caucasian
Robertsons	Partnership	

This information is due no later than Wednesday August 29, 2008. You can either email your response to me at dfaulk@sanidiego.gov or by fax (619) 236-7344. Thank you for your cooperation with this matter. If you have any questions, feel free to contact me at (619) 533-6387).

Sincerely,

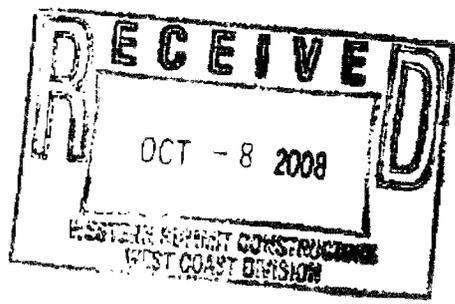
Debra Fischle-Faulk
Director, Administration

cc: Patti Boekamp, Director, Engineering
Beryl Rayford, Equal Opportunity Contracting Program Manager





THE CITY OF SAN DIEGO



October 3, 2008

Western Summit Constructors, Inc.
2820 La Mirada Drive
Suite H
Vista, CA 92081

Reference: City of San Diego Bid K082604C -- Otay WTP Upgrades Phase I and II

We are currently in the process of re-ensuring we have complete and accurate statistical data to report to the Mayor and City Council. In reviewing our records we have determined that we need additional information from you regarding the above referenced bid. Please provide us with the ownership classification of the following businesses listed on your bid:

<u>Business Name</u>	<u>Male/Female Owned</u>	<u>Ethnicity*</u>
Western Foundation	MALE	HISPANIC / NATIVE AMERICAN
CMC Fontana Steel	*1	

This information is due no later than Wednesday October 10, 2008. You can either email your response to me at dffaulk@sandiego.gov or by fax (619) 236-7344. Thank you for your cooperation with this matter. If you have any questions, feel free to contact me at (619) 533-6387).

Sincerely,

Debra Fischle-Faulk
Debra Fischle-Faulk
Director, Administration

*1 - CMC FONTANA STEEL, A COMMERCIAL METAL CORPORATION, IS A PUBLICLY TRADED COMPANY LISTED ON THE NYSE, INITIALS CMC - PER FONTANA STEEL

cc: Patti Boekamp, Director, Engineering
Beryl Rayford, Equal Opportunity Contracting Program Manager

*Categories include African American, Alaskan Native, Asian, Caucasian, Filipino, Hispanic, Native American, Pacific Islander. Please note, "... The many peoples with origins in Europe, North Africa, or the Middle East make up the dominant white population " (www.archives.gov/eoo/terminology.html)





THE CITY OF SAN DIEGO

October 21, 2008

American Asphalt South, Inc.
 14436 Santa Ana Ave.
 Fontana, CA

Reference: City of San Diego Bid K084181C - Slurry Seal Group I

We are currently in the process of re-ensuring we have complete and accurate statistical data to report to the Mayor and City Council. In reviewing our records we have determined that we need additional information from you regarding the above referenced bid. Please provide us with the ownership classification of the following businesses listed on your bid:

<u>Business Name</u>	<u>Male/Female Owned</u>	<u>Ethnicity*</u>
Safe USA, Inc.	- male/female	Caucasian/Hispanic
Clearline Sweeping	- male	CAUCASIAN
Chandler Aggregates	- Corp	

This information is due no later than Wednesday October 10, 2008. You can either email your response to me at dfaulk@sandiego.gov or by fax (619) 236-7344. Thank you for your cooperation with this matter. If you have any questions, feel free to contact me at (619) 533-6387.

Sincerely,

Debra Fischle-Faulk
 Director, Administration

cc: Patti Boekamp, Director, Engineering
 Beryl Rayford, Equal Opportunity Contracting Program Manager

*Categories include: African American, Alaskan Native, Asian, Caucasian, Filipino, Hispanic, Native American, Pacific Islander. Please note: "The many peoples with origins in Europe, North Africa, or the Middle East make up the dominant white population." (www.archives.gov/eo/terminology.html)



Fischle-Faulk, Debra

From: Lynda McGlinchey [lynda.mcglinchey@lacity.org]
Sent: Wednesday, January 21, 2009 11:19 AM
To: Fischle-Faulk, Debra
Cc: Hannah Choi
Subject: Re: GFE Helpful Hints
Attachments: GFE Helpful Hints Final Revision(82608.doc)

Hi Debra,

Attached is the Word document of our Helpful Hints. This is the one that is posted on our website and is specific to construction bids. We are working on a generic one for our other City departments to use that would be for an RFP, but it is still being drafted.

Our statistics are a little old. For the three fiscal years ending June 30, 2007, the average MBE/WBE participation level was 4.74 percent with MBE and WBE firms receiving an average of 10.14 percent of all of the subcontracting dollars. Although our participation levels have decreased in the last few years, I believe that is mostly due to the majority of our contract awards having been for sewer work or mega-sized municipal facilities. There are few MBE/WBE certified subcontractors that deal with sewers and most of our certified firms do not have the ability to bid on subcontracts that are in the tens of millions of dollars.

Hope this helps,

Lynda

>>> "Fischle-Faulk, Debra" <DFFaulk@sandiego.gov> 1/14/2009 10:22 AM >>>
Hi Linda,

Would it be possible for you to send to us your Helpful Hints guide in word so we can modify it for our City's use? As you know we have a similar program and would like to make this available to our contractors. Also, do you have participation statistics?

Thanks,
Debra Fischle-Faulk
Director of Administration
City Of San Diego
619-533-4541

Fischle-Faulk, Debra

From: Fischle-Faulk, Debra
Sent: Friday, March 13, 2009 9:00 AM
To: Lynda McGlinchey; Hannah Choi
Subject: Helpful Hints
Attachments: SKMBT_SCOOB09031308120.pdf

Hi,

Quick question.....how do you evaluate Indicator #5??? – especially requirement to send at least 3 – how do you determine availability?

Thanks,
Debra