



THE CITY OF SAN DIEGO

## CITIZENS' EQUAL OPPORTUNITY COMMISSION

### MEETING MINUTES

Wednesday, November 4, 2015

6:00 – 8:00 p.m.

City Administration Building

12<sup>th</sup> Floor Committee Room

202 C Street – 12th Floor

San Diego, CA 92101

**CALL TO ORDER at:** 6:00 by Chair Warner

**ROLL CALL:**

Laura Warner, Chair

Kristine Custodio, Vice Chair

Lan Jefferson

Susan Jester

Dan Ortiz

Rafael Perez

Cynthia Suero-Gabler

**EXCUSED:**

Monte Jones

**STAFF & GUESTS:**

Henry Foster III, Program Manager, Equal Opportunity Contracting

Claudia Abarca, Supervising Management Analyst, Equal Opportunity Contracting

Christian Silva, Senior Management Analyst, Equal Opportunity Contracting

Annie Aguilar, Principal, San Dieguito Engineering (SDE)

Tiong Liem, Allied Geotechnical Engineers, Inc.

Karen McPartland, TSAC Engineering

Steve McPartland, TSAC Engineering

**APPROVAL OF:** Meeting Minutes of October 7, 2015 ([Attachment A](#))

Minutes approved unanimously, with Vice Chair Custodio abstaining (6/0)

**Motion made by Commissioner Jester to approve the October 7, 2015 Meeting Minutes, seconded by Commissioner Suero-Gabler. Minutes approved unanimously.**

**NON AGENDA PUBLIC COMMENT:** Annie Aguilar, Principal, San Dieguito Engineering ([Attachment B](#))

- Ms. Aguilar raised concerns regarding the preclusion of her SLBE-certified firm and three other SLBE/ELBE certified firms in participating in the North City Conveyance System (H156508) solicitation due to the precluded participation clause. Ms. Aguilar submitted a petition including 17 firms signatures (15 small firms and two larger firms) Ms. Aguilar noted that if the City continues with the precluded participation clause, the pool of certified SLBE/ELBE firms who participate as sub consultants would diminish.
- Chair Warner thanked Ms. Aguilar for her efforts in putting the petition together. Chair Warner explained that consultants who participate in the 30% design portion of the contract are precluded from bidding on any following work associated with the project.

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

- Mr. Liem stated that his firm encountered a similar experience to San Dieguito Engineering and reiterated that the pool of SLBE/ELBE firms to participate in contracting with the City will be limited as a result of the precluded participation clause.
- Chair Warner noted she recently attended a Construction Management Association of America (CMAA) event. A discussion took place that mentioned there will be an increase of work in the region which will utilize small firms. The issue of precluding firms will make it difficult to utilize specialists & small firms and energize economic development of local small businesses. Chair Warner asked Ms. Aguilar what laws she was referring to, how are other jurisdictions interpreting this law, and how are they handling this issue?
- Commissioner Perez asked Ms. Aguilar for clarification regarding her request. Commissioner Perez asked Ms. Aguilar if she would recommend that the CEOC move the petition forward for response.
- Commissioner Jefferson asked Ms. Aguilar for clarification regarding the work her firm performs and how it relates to the design phase of a project. Ms. Aguilar stated that her firm provides topographic mapping services, which is a service that exists and is not part of the development of the project design. Commissioner Jefferson asked for Ms. Aguilar to clarify that the topographic mapping was considered to be a preliminary design, which ruled her firm out of moving forward. Ms. Aguilar stated that no one from the City gave her firm a direct answer as to why they were mentioned as being precluded in question 17 of the Q&A in Addendum 1 of the North City Conveyance System (H156508) solicitation. The petition was created after the addendum was issued.
- Chair Warner asked staff what the protocol would be for the Commission regarding the public comment. Could the Commission ask questions regarding this item of the City Attorney's Office prior to publicly bringing the item forward during a future meeting? Mr. Foster stated this would need to be reviewed by staff as protocol for certain instances are being determined based on the last correspondence from the City Attorney. Mr. Foster noted that the Commission may want to consider making this an item on the next agenda for further dialogue. Chair Warner noted that the Business & Political Leadership Subcommittee should have a more in depth discussion of this issue for further review by the Commission. Mr. Foster noted that he had discussions with Public Works regarding the impacts on consulting and other construction delivery methods. Public

Works will be conducting a comprehensive review of the impacts and requested for the City Attorney's Office to provide a Legal Memorandum.

- Commissioner Jefferson asked Ms. Aguilar for clarification regarding the impacted firms, as there was mention of 15 impacted firms but only 4 were identified in the mentioned solicitation addendum. Mr. Foster asked where the number of 15 firms came from. Commissioner Jefferson stated that this came from Ms. Aguilar's report. Ms. Aguilar stated that 15 SLBE/ELBE firms had signed the petition. Mr. Liem noted that his firm (Allied Geotechnical) was not noted as one of the 4 firms precluded from participating in the solicitation, but was still impacted by the precluded participation clause as they were told verbally they could not participate in the final design pursuit.

**NON AGENDA PUBLIC COMMENT:** Steve McPartland, TSAC Engineering

- Mr. McPartland raised concerns regarding his certified SLBE firm being impacted by the preclusion participation clause. Mr. McPartland's firm was also impacted by the same solicitation after providing CAD services to a larger firm, resulting in TSAC Engineering missing out on a substantial amount of work.
- Chair Warner thanked Mr. McPartland for speaking to the Commission as it is a serious issue for the City. Mr. Foster asked Mr. McPartland if in conversations with Public Works, have they indicated that the prime contractors are all impacted? If prime contractors needed to put something together, are prime contractors also precluded from bidding on the future item as well? Mr. Aguilar confirmed that this is correct; Mr. Nagelvoort confirmed that prime contractors are not exempt from this. Ms. Aguilar noted that on the Torrey Pines North Course project, a professional golfer was involved in design and is now precluded from participating. Ms. Aguilar posed the question, what are the benefits of this precluded participation clause to the City? An answer will assist firms in working with the City and making decisions for their respective firms. Chair Warner stated that ironically the intent of the precluded participation clause is to increase competition and opportunities for other firms. Ms. Aguilar asked Chair Warner when she could expect a response from the City. Chair Warner stated that she did not have a timeframe; the Commission will coordinate with City staff and provide a response to Ms. Aguilar. Mr. McPartland made a suggestion that firms with low percentages of participation in the project could be exempt from this. Commissioner Ortiz noted that the Commission needs to have a better understanding of what the intent of the language is and the interpretation of the language may be different from the intent. Commissioner Ortiz asked what the definition of "precluded participation" is and how narrow or wide is this interpreted.

**ACTION ITEMS:** Item A: [Letter to Human Resources Director](#) in response to previous correspondence from Human Resources Director to Commission ([dated 10/8/15](#)).

- Chair Warner requested for Commissioners to make motion for approval of the letter.

**Motion made by Commissioner Jester to approve the letter to the Human Resources Director requesting relevant policies related to previous Commission requests, seconded by Commissioner Suero-Gabler.**

- Vice Chair Custodio asked for background as to why this letter was drafted. Chair Warner explained that the Commission had requested via staff for policies regarding what type of information can be released by City staff about another City employee. The Commission received correspondence in response but it did not contain policy information but purported that the Commission requested confidential information. Chair Warner expressed that the Commission did not request nor possesses any confidential information and only requested information regarding City policies.
- Chair Warner asked for the Mayor and City Council to be copied on the letter. Chair Warner stated that SDMC § 26.16 states that the Commission is to coordinate with the Civil Service Commission, which the Human Resources Director reports to. Chair Warner asked staff if this is correct. Mr. Foster provided clarification that the Civil Service Commission is a Mayoral department; the Personnel Director reports to the Civil Service Commission. Chair Warner stated that in relation to employment matters, the Commission is to coordinate with the Civil Service Commission per the Municipal Code. The correspondence received from the Human Resources Departments indicates that the Commission does not have the right to inquire about policy related to human resources or personnel issues. Mr. Foster asked Chair Warner if she was referencing policies regarding recruitment (Item 4). Chair Warner stated that Items 2-5 indicate that the Commission is to coordinate with the Civil Service Commission and Item 5 indicates that the Commission is to promote the City as an equal opportunity employer. The Civil Service Commission's purview is to deal with personnel issues. Commissioner Perez asked if it would be an issue for the Human Resources Director to respond as a specific individual is named in the Commission's letter. Chair Warner indicated that the purpose of the letter is to set context as to why the Commission was making its request about policy. Chair Warner indicated that the Commission should still be able to receive information regarding policy even though an individual may be named in the request. Commission Jester noted that the Commission inquired and responded to the two visits from the City Attorney's Office stating the Commission was seeking no personal information. Commissioner Jester also noted that she would be interested to know who in the Mayor's Office would receive this correspondence. Mr. Foster stated this would most likely go to Marshall Anderson, who in turn would share the information with the Mayor. Vice Chair Custodio conveyed her support of this letter and indicated that some spelling errors would need to be corrected.
- Vice Chair Custodio asked for the following revisions to be made to the letter:
  1. Section: Page 1, Paragraph 1

Original Comment: It has been brought to our attention though newspaper reports...

Revised Comment: It has been brought to our attention through newspaper reports...
  2. Section: Page 2, Paragraph 3

Original Comment: ... about any City employee.

Revised Comment: ... about any City employee. (space removed)
- Commissioner Jefferson suggested for the following revisions to be made to the letter:

1. Section: Page 1, Paragraph 1

Original Comment: Additionally, these reports included information about the purported reasons for his termination...

Revised Comment: Additionally, these reports included information about the alleged reasons for his termination...

2. Section: Page 1, Paragraph 3

Original Comment: It is our obligation under the City of San Diego, Municipal Code to take up matters such as these...

Revised Comment: It is our obligation under the City of San Diego, Municipal Code to advise on matters such as these...

3. Section: Page 1, Paragraph 3

Original Comment: specific to understanding existing policies and making policy recommendations that can protect employees from this kind of detrimental treatment and the penalties to employees...

Revised Comment: specific to understanding existing policies and making policy recommendations that can protect employees from this kind of detrimental treatment and the consequences to employees...

- Commissioner Perez suggested for the following revisions to be made to the letter:

1. Section: Page 1, Paragraph 3

Original Comment: making policy recommendations that can protect employees from this kind of detrimental treatment and the consequences to employees...

Revised Comment: making policy recommendations that can protect employees from detrimental treatment and the consequences to employees...

- Commissioner Ortiz suggested for the following sentence to be updated to be clear that the Commission did not have any confidential information:

1. Section: Page 1, Paragraph 2

Original Comment: At our last Commission meeting on October 7, 2015, I took a poll of all Commissioners to verify and clarify this fact.

- Commissioner Jester suggested adding that the Commission did not desire to have such information, seeking policy and not personnel information.

- Vice Chair Custodio asked for the following revisions to be made to the letter:

1. Section: Page 1, Paragraph 2

Original Comment: At our last Commission meeting on October 7, 2015, I took a poll of all Commissioners to verify and clarify this fact.

Revised Comment: At our last Commission meeting on October 7, 2015, I took a poll of all Commissioners present to verify and clarify this fact.

**Motion made by Commissioner Jester to accept the friendly amendment to the letter to the Human Resources Director requesting relevant policies related to previous Commission requests, seconded by Commissioner Jefferson. Vote 7/0; motion passes unanimously.**

**ACTION ITEMS:** [Item B: Follow-Up Letter to Mayor & City Council from Commission](#) addressing recommendations in [previous correspondence \(dated 3/4/15\)](#).

- Mr. Foster indicated that past practice has been that any letter that is sent on behalf of the Commission goes through the action item process to give all Commissioners an opportunity to review the letter and be in consensus. Chair Warner asked protocol questions that were sent to the City Attorney's Office for response. The City Attorney's Office indicated that any questions should be forwarded for review to prevent Brown Act violations. Mr. Foster indicated that staff is looking to streamline legal requests for response.

**Motion made by Commissioner Jester to approve the follow-up letter to the Mayor & City Council addressing recommendations in [previous correspondence \(dated 3/4/15\)](#), seconded by Commissioner Ortiz. Vote 7/0; motion passes unanimously.**

**DISCUSSION ITEMS:** City Attorney's decision to review the Municipal Code change to not add Women and Disabled Veterans to section 26.16(b) and to remove all the currently listed groups as those that should have representation on the Commission.

- Vice Chair Custodio requested for background information on this item. Chair Warner stated that the addition of Women and Disabled Veterans to Municipal Code §26.16 has been recommended by the Commission since the February 2015 meeting with the Mayor's Office. At the last meeting, Mr. Foster read a statement from the City Attorney's Office as part of an item on the agenda. Mr. Foster indicated this statement was part of the meeting minutes of October 7, 2015. Chair Warner noted that subsequent to this, the Business & Political Leadership Subcommittee held a broader discussion on this item. Vice Chair Custodio asked if the underlying concern was Proposition 209. Chair Warner indicated the Commission did not know what law the City Attorney's Office was referring to.
- Vice Chair Custodio asked if the Commission requested clarification from the City Attorney's Office with regards to his admonition. Commissioner Ortiz mentioned this was part of the discussion at the last meeting; the Commission did not receive a letter from the City Attorney, only a statement from staff via email. Commissioner Ortiz indicated that it would be helpful if the

City Attorney's Office provided a letter to the Commission stating concerns regarding the issues. Commissioner Suero-Gabler stated the Commission requested a letter for response at the last meeting. Mr. Foster referred the Commissioners to the statement in the meeting minutes, which indicated that issues would be discussed in a legal memorandum. Vice Chair Custodio requested for this discussion item to carry over to the December meeting and be updated to include the City Attorney memorandum. Chair Warner asked when the commission will receive the legal memorandum. Mr. Foster indicated staff does not have information at this time. Mr. Foster indicated that in previous correspondence from the Deputy Chief Operating Officer that this item originally would be completed in December. Commissioner Ortiz asked staff if the memorandum would be a legal opinion. Mr. Foster stated it would be an official legal memorandum from the City Attorney. Commissioner Perez asked if the language from the email was included in the minutes. Chair Warner stated that this was included in the minutes.

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

- Mr. Silva provided an update on SLBE program, contracting updates, training sessions and outreach updates.
- Commissioner Suero-Gabler noted that she attended the CALTRANS Procurement & Resource Fair on 10/21/15 included in the program update. Commissioner Suero-Gabler requested a deadline for the CEOC Corner in the *Diversity Works* newsletter. Chair Warner suggested developing an editorial calendar for content in the CEOC Corner. Chair Warner mentioned that the Commission requested to note which agency hosted each event in the program update to track what outreach the City conducts versus other agencies.

**CHAIR ANNOUNCEMENTS:**

- Chair Warner mentioned that she attended the Construction Management Association of America (CMAA) event this morning. Chair Warner noted that the CMAA hosts events that may be beneficial for SLBE firms.
- Vice Chair Custodio announced that Chair Warner was recently recognized by San Diego Magazine as a finalist for "Women Who Mean Business."

**SUBCOMMITTEE REPORTS:**

**Data Subcommittee**

- Vice Chair Custodio (Subcommittee Chair) noted that the subcommittee met on October 20<sup>th</sup>. After reviewing the items the subcommittee was tasked with as a result of the retreat, the subcommittee wanted to know what is in their purview after discussion with City Attorney's Office regarding the Commission's responsibilities. The subcommittee also had questions regarding SLBE/ELBE spend, PRISM and SAP integration & timeline for completion, and City interdepartmental responsibility in regards to equal opportunity. Vice Chair Custodio asked what data EOC reports and where does it come from. Mr. Foster stated that EOC tracks external contractor data in regards to contract awards for construction and goods & services for a variety

of departments. Questions regarding SAP upgrades would need to be deferred to the Purchasing & Contracting Department.

- Vice Chair Custodio informed the Commission of the subcommittee's current action items, which include the following: establish timeline or received clarification for SAP and PRISM integration, request copy of the City's last disparity study, request of status of appointments of additional commissioners from the Mayor's Office, establish schedule of commissioners attending the Budget & Government Efficiency Committee meetings, working on a master calendar of action items to carry forward on agendas, and commissioners availability for benchmarking equal opportunity programs with other agencies of similar size. Mr. Foster recommended for commissioners to contact the City Clerk's Office for a copy of the disparity study and informed the commissioners that the legislative calendar is posted on the City website, which lists dates & times for all City Council & Committee meetings.

#### **Business & Political Leadership Subcommittee**

- Commissioner Perez (Subcommittee Chair) will send an update to staff for distribution to the Commission. The subcommittee discussed feedback regarding the letter from Human Resources and held a broader discussion on the statement read to the Commission from the City Attorney's Office.

#### **Public Outreach Subcommittee**

- Commissioner Suero-Gabler (Subcommittee Chair) noted that the subcommittee did not meet this month.

#### **Ad Hoc Annual Report Subcommittee**

- Commissioner Jefferson (Subcommittee Chair) noted that the subcommittee did not meet this month and is working to coordinate a schedule. Commissioner Jefferson requested a copy of the last CEOC Annual Report. Chair Warner advised the subcommittee to include a current issues section in the report.

Chair Warner reminded the subcommittee chairs to set a continuous meeting date and yearly goals for all subcommittees.

**Motion made by Commissioner Suero-Gabler to adjourn the meeting, seconded by Commissioner Perez.**

**ADJOURNMENT:** 7:27 p.m.

**NEXT MEETING:** December 2, 2015

#### **MATERIALS PROVIDED:**

- [Attachment A](#) – October 7, 2015 Meeting Minutes
- [Attachment B](#) – Non-Agenda Public Comment – Annie Aguilar Handout
- [Attachment C](#) – Equal Opportunity Contracting Program Update – November 2015