

Revised waiver language based on City Council direction that is currently on file with the City Clerk

XI. Program Waivers

Every construction contract bid package where City engineers estimate the costs to be in excess of \$100,000 shall be submitted to EOCP for review and concurrence of Mandatory Subcontracting Participation Goals and establishment of Advisory Participation Levels in advance of public release of bid documents.

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The intent of this program shall be to maximize the opportunity for subcontract participation to enhance contractor availability and to promote greater capacity development and competition in the construction industry. Accordingly, EOCP, in consultation with the City department issuing the bid, shall only consider issuing formal waivers of this program on a limited contract-by-contract basis when one or more of the following conditions is present:

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A. Based upon an historical analysis of contracts of a similar size and industry type, there are no significant opportunities for subcontractors to perform a commercially useful function on this contract;

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B. Based upon an analysis of prior City contracts of a similar nature and current availability data, there are no subcontractors available to perform a portion of the work;

C. Based upon an historical analysis of contracts of a similar size and industry type, the nature of available subcontract opportunities will lead to gross inefficiencies that will significantly and adversely affect the overall cost of the project; and/or

D. EOCP has determined that the best interests of small contractors' capacity development will be served by suspending the Subcontracting Outreach Program, placing the contract in the Minor Construction program or some other small business program, and limiting competition for the prime contract to small construction firms that are enrolled in that program.

Except in the case of emergency contracts, as defined by San Diego Municipal Code section 22.3003, no waiver will be granted without first obtaining City Council approval. In the event EOCP issues a waiver of this program's application to a given contract, that program waiver and the basis for the waiver shall be clearly stated in the bid documents. Moreover, the Director of EOCP shall prepare a justification memorandum that explains the basis and factual findings supporting that waiver decision.

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Except in the case of emergency contracts, program waiver justification memoranda shall be submitted to the Mayor and the members of the City Council prior to approval of the waiver. In the case of emergency contracts, such documentation must be submitted to the Mayor and City Council as soon as practically possible, but in no event later than when the emergency contract is being considered for ratification by City Council in accordance with San Diego Municipal Code section 22.3212(c).

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