

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: October 8, 2007

IBA Report Number: 07-96

Rules Committee Agenda Date: October 10, 2007

Item Number: 1

Subject: Update Report from the Mayor's Office regarding Committee Direction for Item No. 1 from the August 1, 2007, Rules Committee Meeting on the EQUAL OPPORTUNITY CONTRACTING PROGRAM

OVERVIEW

On August 1, 2007 the Rules, Open Government, and Intergovernmental Relations (Rules) Committee heard presentations from the Mayor and the Independent Budget Analyst (IBA) on the status of the City's Equal Opportunity Contracting (EOC) Program. At that meeting the committee approved five action items regarding the EOC program and directed staff to return to the Rules Committee on October 10, 2007 to address the items. These items included:

1. Accept recommendations of the Mayor and the IBA.
2. Direct the City Attorney to provide a legal review of the issues surrounding the Equal Opportunity Contracting Program ("EOCP") and the recommendations in item 1 by early September.
3. Refer the issue of an audit of the EOCP's compliance with federal regulations to the Audit Committee;
4. Direct the Mayor's staff to work with stakeholders regarding the EOCP and return to the Rules Committee on October 10, 2007, to address the following:
 - a) The recommendations included in item 1 above,
 - b) A proposal to amend the Municipal Code to reduce the dollar amount of contracts requiring City Council approval,
 - c) A report to the committee identifying contracts under \$250,000 in value and who received the contract,
 - d) The performance of the Redevelopment Agency, Centre City Development Corporation and Southeastern Economic Development Corporation related to EOCP.
5. The Committee further requests the Mayor return to the committee before engaging the services of an outside consultant to assist in these matters even if that contract would fall within the Mayor's sole authority.

On October 5, 2007 the Mayor released a report updating the Rules Committee on the status of the action items approved on August 1, 2007. The update report generally indicates that progress is being made on the action items approved by the Rules Committee to address the City's deficiencies in Equal Opportunity Contracting. However, the IBA has some concerns with the timing and implementation of the action items. This report provides additional questions and recommendations based on the Mayor's report and the City Attorney's Memorandum of Law.

FISCAL/POLICY DISCUSSION

Consultant's timeline, implementation process, and expenses related to reforms

According to the Mayor's update report an Equal Opportunity Consultant, Franklin Lee, has been retained to review/draft policies, enhance access, and facilitate new capacity related to the Equal Opportunity Contracting Program. After analysis the recommendations for appropriate reforms will then be implemented. The IBA offers the following questions and recommendations regarding the consultant's timeline, implementation process, and expenses related to reforms:

- Will the City Council or Committee be involved in reviewing recommendations, or will the Mayor decide which to implement and when?
- Will the expenses related to the implementation of the recommendations be absorbed within the Purchasing and Contracts Department's existing budget or will additional funding be required?
- What is the timeline for identifying reforms and implementation?
- **Recommendation:** The IBA recommends that the consultant present to the City Council or committee the results of his analysis before implementing reforms. This should be done as soon as the consultant has completed his analysis.

Mayor and City Attorney Recommendation on a New Disparity Study

The City Attorney in his September 10, 2007 Memorandum of Law opined that the City's current available data shows "alarming disparities" in City contracting. Additionally, he stated that more information is needed to determine whether the City's contracting practices would be found to include discrimination that makes race/gender-based remedies measures constitutionally necessary under the *Coral Construction* court decision. Based on these observations, the City Attorney recommended that the City "should commission a new disparity study, or at least supplement currently available data, to access current marketplace realities, availability of minority and women-owned enterprises, and utilization rates."

Disparity studies analyze the contracting practices of governments and corporations. Studies contain pertinent statistical, legal, historical, and economic information, as well as interviews with business owners

In response to the City Attorney's Memorandum of Law, the Mayor recommended, based on advice from the consultant Franklin Lee and in collaboration with the Mayor's internal task force, to hold off on undertaking a full fledged disparity study. The reasons given included the possibility of additional rulings on the *Coral Construction* case in the future and time needed to update the City data collection processes which could reduce the costs of a disparity study.

In producing this report, IBA staff contacted numerous municipalities, statewide agencies, and consulting firms specializing in developing disparity studies. Listed in the table below is information on municipalities and agencies that have recently undergone a Disparity Study:

Government Entity	Estimated Cost of Study	Year Completed
Alameda County	\$500,000	2004
Arizona Department of Transportation	\$1.0 Million	Expected Completion Date: May 2008
California Department of Transportation	\$1.1 Million	2007
New York City	\$1.0 Million	2005
Oakland	\$500,000	2005
Phoenix	\$500,000	1999

Based on the experiences of other municipalities and agencies and the required scope of work, a disparity study will likely cost the City \$500,000 - \$1,000,000. In addition, it will take approximately one year to complete from the issuance of the Request for Proposal through the completion of the report.

The IBA has concerns with the Mayor's plan to postpone the start of a Disparity Study. These concerns are based on the information provided by the City Attorney's Office, the required time necessary to complete a Disparity Study, the City's history in regards to the accurate collection of data that transcends multiple administrations, and the lack of confidence by the public stakeholders with the City's current EOC program. The IBA offers the following questions and recommendation regarding the City conducting a Disparity Study:

- When can the City expect information on additional court rulings related to the *Coral Construction* case?
- When will the development and implementation of the City's data collection processes be completed? What are the related expenses?
- When will the Mayor make a final determination on conducting a Disparity Study? How will this be communicated to the City Council?

- **Recommendation:** Due to the length of time required to complete a Disparity Study the IBA recommends that City staff begin working on a Request for Proposals to have available if, and when, the decision is made to move forward with the study.

Staffing Plan for the City's Equal Opportunity Office

The Mayor's August 1, 2007 Equal Opportunity Contracting Program Report to the Rules Committee included information on the plan to centralize EOC compliance responsibilities into one department to assist in maximizing the effectiveness of project monitoring. Previously the program had been decentralized into multiple departments. Additionally, the Mayor's update report states that as a result of Business Process Reengineering (BPR) 2 positions will be moving from the Engineering and Capital Projects Department to the Purchasing and Contracting Department. These positions will be responsible for monitoring compliance for non-prevailing wage contracts. Based on this information, the IBA offers the following questions and recommendations regarding staffing of the Equal Opportunity Office:

- What is the status of the centralization of the EOC program into the Purchasing and Contracting Department?
- What steps are being taken to ensure that the EOC Office is/will be adequately staffed with individuals knowledgeable of EOC procedures to ensure that recommendations from the consultant are implemented, and monitoring and enforcement of the program will continue into the future?
- **Recommendation:** The City Council should request that the Mayor develop and present a staffing plan, including costs and possible funding sources, to address the needs of the EOC program.

Proposal to amend the Municipal Code to reduce the dollar amount of contracts requiring City Council approval

One of the action items approved by the Rules Committee was to propose an amendment to the Municipal Code to reduce the dollar amount of contracts requiring City Council approval. The Mayor's Update Report includes information on the responsibilities of the City's Purchasing agent and the level of authority for purchases. However, the update report does not specify if the Mayor intends to propose a reduction in the dollar amount of contracting requiring City Council approval. Based on this information, the IBA offers the following question:

- Does the Mayor plan on proposing a reduction to the dollar amount of contracting requiring City Council approval? If yes, what is the expected timeframe for the plan to return to the City Council?

CONCLUSION:

The Mayor's October 5, 2007 update report outlines the progress to address the deficiencies with the City's Equal Opportunity Contracting program. In general, the Mayor's report indicates that progress is being made on the action items approved by the Rules Committee. This report has provided additional questions to supplement the information provided in the Mayor's report and the IBA makes the following recommendations:

1. The IBA recommends that the consultant present to the City Council or committee the results of his analysis before implementing reforms. This should be done as soon as the consultant has completed his analysis.
2. Due to the length of time required to complete a Disparity Study, the IBA recommends that City staff begin working on a Request for Proposals to have available if, and when, the decision is made to move forward with the study.
3. The City Council should request that the Mayor develop and present a staffing plan that includes funding sources to address the needs of the EOC program.

These recommendations, in conjunction with the progress that has been made, will ensure that the City addresses the deficiencies with the Equal Opportunity Program.

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