

CITY OF OAKLAND
COUNCIL AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2005 FEB 10 PM 2:31

TO: Oakland City Council Colleagues
FROM: Council President Ignacio De La Fuente
DATE: February 22, 2005 (Finance and Management Committee)
RE: **A RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO CONDUCT A RACE AND GENDER DISPARITY EVALUATION AND STUDY OF BOTH (1) THE CITY'S BIDDING AND AWARDS OF CITY CONTRACTS (COMMONLY REFERRED TO AS A "CROSON STUDY") AND (2) THE CITY'S WORKFORCE DIVERSITY IN COMPARISON TO THE RELEVANT LABOR POOL BY SELECTING THROUGH REQUESTS FOR QUALIFICATION OR REQUESTS FOR PROPOSAL A QUALIFIED INDEPENDENT CONSULTANT(S) OF NATIONAL REPUTATION TO CONDUCT THE REQUIRED EVALUATION AND STUDY.**

SUMMARY OF RESOLUTION

The Oakland City Charter states the City will conduct two racial and gender disparity studies:

(1) Article VIII, Section 808(b), of the City Charter entitled "Bids and Awards" provides that the City shall "conduct a race and gender disparity evaluation" (commonly referred to as a "Croson study") to determine whether the City has played "an active or passive" role in "actual, identifiable discrimination within its relevant market place" in regards to contracting; and

(2) Article IX, Section 900(b) of the City Charter provides that the City shall "study its workforce in comparison to the relevant labor pool to determine if there are manifest racial or gender imbalances in traditionally segregated job classifications."

This Resolution directs the City Administrator to conduct an RFP or RFQ process to identify a qualified and independent consultant or consultants of national reputation to conduct either a single study covering both issues or two separate studies considered by the City Council at the same time. Before hiring the consultant(s), the City Administrator would return to Council after completing the RFP or RFQ process so that Council can (1) authorize the hiring of City Administrator's recommended consultant(s) and (2) authorize funds necessary to complete the study or studies. Once the study or studies are completed, the City Administrator will schedule them to be considered and approved by the Council. City Council can then determine whether race- or gender- neutral policies (as permitted by state and federal law) are needed to correct any potential discrimination.

Although the two issues (contracting and employment) require different scopes of work, they will both explore potential disparities regarding race and gender. Because they will

both explore race and gender, the City Administrator shall report back to Council on both items always at the same time.

The Resolution also makes it clear that the City of Oakland will provide sufficient information to the selected consultant(s) to complete the evaluation and study expeditiously.

FISCAL IMPACT

The cost of the 2-part study (contracting and employment) depends on many factors including the quality of the city's records on contracting and employment and the precise scope of work. Alameda County recently paid \$500,000 for a traditional disparity study for contracting. An estimate for the additional cost of the employment portion was not available at the time this report was drafted, but it is likely to cost significantly less than the contracting portion because the scope of work is less extensive.

After conducting the RFP and/or RFQ process, the City Administrator shall know the precise cost of the study or studies. Therefore, at that time, the City Administrator will provide the Council with options for paying for the study or studies (which, as stated above, are required by the City Charter).

ENVIRONMENTAL IMPACT

There is no environmental impact.

BACKGROUND

Required by the City Charter:

As stated above, Oakland's City Charter requires a study of potential race and gender disparities regarding both its contracting and employment.

Contracting:

Article VIII, Section 808(b), of the City Charter entitled "Bids and Awards" provides that the City shall "conduct a race and gender disparity evaluation" (commonly referred to as a "Croson study") to determine whether the City has played "an active or passive" role in "actual, identifiable discrimination within its relevant market place" against minority- or women-owned businesses in its contracting practices.

Scope of Work for Contracting portion: The primary goal of the scope of work is to satisfy the requirement of the City Charter. The disparity study should reveal whether existing practices, procedures, or programs hinder or otherwise negatively impact contracting opportunities for minority- or women-owned businesses.

The consultant must compile contracting and procurement data that includes minority and women owned business participation. Data must be collected from internal (City of

Oakland) and external sources, and efforts will include reviews of statistically significant samples of City contract and procurement records. The consultant will hold public hearings; conduct interviews; and develop, distribute, collect and evaluate surveys (in multiple languages) for the purpose of gleaning anecdotal information to:

- Establish an overview of Oakland's contracting marketplace during the study period (the Charter implies a 2-year study period), and
- Establish an overview of local m/wbe availability, size, and type of businesses and interest in City contracts during the study period, and
- Determine the percentage of City contracts, by number and dollar amount, that have been awarded to minority/women-owned businesses during the study period, and
- Examine the City's contracting activity in the areas of procurement, construction, and professional services.

The City discontinued m/wbe certifications in 1997 due to suspension of race- and gender-based programs in that year (when Prop 209 passed) and does not have this data for recent years. Therefore, the consultant or the City would be required to go back and certify m/wbe contractors counted for utilization purposes for the period studied.

Employment:

Article IX, Section 900(a) of the City Charter entitled "Personnel Policy" requires that the City must adopt a personnel system "free from discrimination." Article IX, Section 900(b) of the City Charter provides that the City shall "study its workforce in comparison to the relevant labor pool to determine if there are manifest racial or gender imbalances in traditionally segregated job classifications."

Scope of Work for Employment portion: The primary goal of the scope of work is to satisfy the requirement of the City Charter. The consultant should determine whether there are any racial or gender disparities in traditionally segregated job classifications as compared to the labor pool at-large. In addition, the consultant should compare the race and gender composition of all city employees (full-time and part-time) to the race and gender composition of at least the following jurisdictions: the City of Oakland, the County of Alameda, and the San-Francisco Oakland Metropolitan Statistical Area.

The City Administrator's and City Attorney's Office are not aware of any previous reports on this subject in Oakland; therefore, the City Administrator should investigate the scopes of work for similar employment disparity studies conducted in other similar cities to further refine the scope for Oakland's study.

Proposition 209 (now Article I, Section 31 of the California Constitution):

At the time the City adopted these Charter requirements, a disparity study could provide a basis for race- or gender-based programs if it showed evidence of significant statistical disparities. In 1996, however, California voters passed Proposition 209 which became

effective in September 1997 following a court challenge. Proposition 209 (now Article I, Section 31 of the California Constitution) states, "*The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.*" For the purposes of this section, "state" includes any city within the state.

Disparity studies alone are not prohibited by Proposition 209 because these studies simply analyze data and information.

The Proposition does, however, prohibit California public entities from continuing or implementing any race- or gender-based preferential programs. As a result, the City of Oakland can maintain and implement only those programs that are race- or gender-neutral programs. For example, the City's programs for Oakland-based businesses involve neutral criteria (such as offering technical assistance to all small businesses) but ultimately support creation and maintenance of local minority- and women-owned businesses. Such neutral programs are not in conflict with Proposition 209.

ACTION REQUESTED OF THE CITY COUNCIL

As stated in the Resolution itself, we are asking the City Council to approve this Resolution to accomplish the following goals:

- direct the City Administrator to conduct a race and gender disparity evaluation and study of both (1) the city's bidding and awards of City contracts (commonly referred to as a "Croson Study") and (2) the City's workforce diversity in comparison to the relevant labor pool by selecting through requests for qualification or requests for proposal a qualified, independent consultant(s) of national reputation to conduct the required evaluation and study; and
- direct the City Administrator, after conducting the RFP or RFQ process, to return to Council to seek approval of the consultant(s) and the funds required to complete the evaluation and study; and
- declare it is the policy of the City Council that the City of Oakland will provide sufficient information to the selected consultant(s) to complete the evaluation and study expeditiously.


Initial Draft Prepared by: Alex Pedersen, Policy Analyst, Office of City Council President Ignacio De La Fuente



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 FEB 10 PM 2:30 OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT IGNACIO DE LA FUENTE

A RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO CONDUCT A RACE AND GENDER DISPARITY EVALUATION AND STUDY OF BOTH (1) THE CITY'S BIDDING AND AWARDS OF CITY CONTRACTS (COMMONLY REFERRED TO AS A "CROSON STUDY") AND (2) THE CITY'S WORKFORCE DIVERSITY IN COMPARISON TO THE RELEVANT LABOR POOL BY SELECTING THROUGH REQUESTS FOR QUALIFICATION OR REQUESTS FOR PROPOSAL A QUALIFIED INDEPENDENT CONSULTANT(S) OF NATIONAL REPUTATION TO CONDUCT THE REQUIRED EVALUATION AND STUDY

WHEREAS, the City of Oakland is committed to serving its diverse population by adhering to a strict policy of non-discrimination and equal opportunity for all persons regardless of race, ethnicity, gender, religion, family status, sexual orientation, or disability; and

WHEREAS, the City of Oakland must strive to ensure that all citizens have an equal opportunity to obtain government contracts and employment; and

WHEREAS, Article VIII, Section 808(b), of the City Charter entitled "Bids and Awards" provides that the City shall "conduct a race and gender disparity evaluation" (commonly referred to as a "Croson study") to determine if the City has played "an active or passive" role in "actual, identifiable discrimination within its relevant market place;" and

WHEREAS, Article IX, Section 900(a) of the City Charter entitled "Personnel Policy" requires that the City must adopt a personnel system "free from discrimination;" and

WHEREAS, Article IX, Section 900(b) of the City Charter provides that the City shall "study its workforce in comparison to the relevant labor pool to determine if there are manifest racial or gender imbalances in traditionally segregated job classifications;" and

WHEREAS, disparity studies of the City's contracting and hiring practices and policies can provide the Mayor, City Council, and City Administrator with important information to formulate and enforce race- and gender-neutral policies to provide equal opportunity to all citizens and firms doing business in Oakland, especially if they are Minority Business Enterprises or Women Business Enterprises; and

WHEREAS, in order to ensure the most effective investment of city funds to complete the evaluation and study, the City must hire independent consultant(s) with extensive national experience and a proven track record for producing high-quality evaluations and studies; now, therefore, be it

RESOLVED, that the City Council hereby directs the City Administrator to conduct a race and gender disparity evaluation and study of both (1) the city's bidding and awards of City contracts (commonly referred to as a "Croson Study") and (2) the City's workforce diversity in comparison to the relevant labor pool by selecting through requests for qualification or requests for proposal a qualified, independent consultant(s) of national reputation to conduct the required evaluation and study; and be it

FURTHER RESOLVED, that the City Administrator, after conducting the RFP or RFQ process, will return to Council to seek approval of the consultant(s) and the funds required to complete the evaluation and study; and be it

FURTHER RESOLVED, that it is the policy of the City Council that the City of Oakland will provide sufficient information to the selected consultant(s) to complete the evaluation and study expeditiously.

IN COUNCIL, OAKLAND, CALIFORNIA, _____.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California