

# CITY OF OAKLAND

## AGENDA REPORT

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OFFICE OF THE CITY CLERK  
OAKLAND  
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**TO:** Office of the City Administrator  
**ATTN:** Dan Lindheim  
**FROM:** Deborah Lusk-Barnes  
**DATE:** December 8, 2009

**RE: Report on Proposed (and Actual) Administrative Initiatives to Increase Local and Small Local Business Participation in City Contracting**

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### SUMMARY

On September 29, 2009, Oakland City Council approved and adopted a report on the findings and race neutral recommendations of the Fairness in Purchasing and Contracting disparity study.

Seven of the recommendations were specifically identified and moved to the Community and Economic Development (CED) Committee for late February for detailed discussions. The seven program requirements recommendations are as follows:

1. Review Size Standards – Calculate based on business tax data.
2. Create a Very Small Business Enterprise Category (VSBE) - Including a discussion of “very small” or “emerging” categories in other localities as well as the feasibility of an additional category for “Small and Locally Produced Goods”(SLPG/LPG) -
3. Goal Setting – To include setting goals on a project basis.
4. Maintaining Subcontractor Participation Levels.
5. Satisfying Non-Compliance Shortfalls – to include the application of penalties.
6. Unbundle Large Procurements into Smaller Contracts Where Feasible – to include a discussion of how to implement at the using agency level.
7. Small Contracts Rotation Program - to include current strategies implemented by the Community and Economic Development Agency.

In addition to the above, the Public Works Committee (PWC) members requested discussion and recommendations regarding “goals” and good faith effort as opposed to the participation requirement that is now in place as the 20% minimum requirement. Other strategies requested by the PWC included a subcontracting policy and program establishing fair distribution of subcontracting opportunities and, the feasibility of a bonding program similar to the program at Alameda County or the possibility of piggybacking onto that program.

The seven primary program recommendations will be discussed at the February CED Committee.

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City Council  
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**Proposed (and Actual) Administrative Initiatives to Increase L/SLBE Contracting**

32 additional race neutral recommendations were put forth in the disparity study. This report includes discussion of the 32 recommendations that have been implemented and are either (a) already in place, (b) have been planned; or (c) require further discussion with specific agencies.

Recommendations and status are outlined as follows:

Table 1

		(A) In Place	(B) Planned	(C) Timeline	(D) Using Agency	(E) Fiscal Impact?
<b>A Program Requirements</b>						
1	Require (prime and sub contractor) Reporting to the City –	X				
2	Conduct Routine Post-Award Contract Compliance Monitoring.	X				
<b>B Procurement Strategies (Pre-Bid)</b>						
3	Networking Opportunities Procurement Strategies		X	August 2010		\$150.00
4	Assess the Use of Sole Source		X			
5	Use Direct Contracting to Award Small Prime Contracts	X				
6	Establish a Direct Purchase Program for Construction Contracts	X				
7	Revise Insurance Requirements -					
8	Phase Retainage Requirements				X	
<b>C Procurement Strategies (Pre-Award)</b>						
9	Review Bids and Proposals for Goal Attainment	X				
10	Revise Interview Panel Process	X				
11	Implement Formal Protest Procedures	X	X	January 2010		
12	Professional Services Contracts - Evaluation Credits	X				
<b>D Procurement Strategies (Post-Award)</b>						
13	Pay Mobilization to Subcontractors	X				
14	Develop an Expedited Payment Program	X				
15	Give Five-day Notice of Invoice Disputes	X				
16	Implement Formal Dispute Resolution Standards	X	X	January 2010		

**Proposed (and Actual) Administrative Initiatives to Increase L/SLBE Contracting**

	(A) In Place	(B) Planned	(C) Timeline	(D) Using Agency	(E) Fiscal Impact?
<b><u>E</u> Additional Administrative Recommendations</b>					
17		X			
18	X	X			
19					
20	X				
21				X	
22		X			
23	X				

<b><u>F</u> Website Enhancements</b>					
24				X	
25		X			
26		X		X	
27		X		X	
28		X		X	

<b><u>G</u> Data Management Recommendations</b>					
29		X		X	
30		X		X	
31		X			\$10,000

**FISCAL IMPACT**

The fiscal impacts for those recommendations that are under the purview of the Department of Contracting and Purchasing (DCP) will include the cost of outreach materials and a subcontractor data system. The cost is approximately \$10,000 for the data management system and approximately 450.00 for out reach materials, noticing and advertisements.

## **BACKGROUND**

On May 22, 2007, staff submitted Volume I of the Fairness in Purchasing and Contracting Disparity Study. The study represented data constructed from Oracle data, city-wide records, surveys and interviews. The study covered a three year period from 2002 to 2005. This data has not passed the 10 year threshold as indicated in previous cases challenging disparity study findings.

The Volume I disparity study data was separated into four major industries for purposes of the analysis: (a) Construction; (b) Architecture & Engineering; (c) Professional Services; and (d) Goods and Other Services. The previous report included an analysis of findings of disparity by contract thresholds (i.e. \$15,000, \$50,000 and \$500,000), trade category, ethnicity and gender. Per findings in this study, disparities were found across ethnicities and for women in various categories especially when combined as Minority/Women Owned Business Enterprises.

Mason Tillman Associates, Ltd submitted a comprehensive set of race neutral recommendations based on the statistical analysis of spending by the City of Oakland. The findings suggest disparities in some areas of contracting.

The September 29, 2009 council agenda report summarized the race and gender recommendations and provided full study documents.

The disparity study in general and the seven specific program recommendations were adopted by Council and will return to the CED Committee for a detailed discussion with regard to implementation and application procedures.

This report covers the remainder of the race neutral recommendations that can be implemented administratively.

## **KEY ISSUES AND IMPACTS**

There were only two remaining recommendations under the section titled "Program Requirements"

### **A. Program Requirements**

#### **1. Require (prime and sub contractor) Reporting to the City –**

*The consultant recommends that the City require prime contractors and subcontractors to submit progress payments to the OCCES on a monthly basis so that their compliance may be more closely monitored.*

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The City is currently collecting this data as progress payments are submitted. Contractors have been reporting to DCP via Schedule G – “Progress Payment Form for Prime Contractors/Consultants”. Subcontractors must sign off on progress payments. Progress payments are submitted as needed.

In addition, shortly after the disparity study was conducted, DCP instituted an “Exit Affidavit Report” in order to capture and verify actual dollars at project closing.

Currently, subcontractors contact DCP/Social Equity to determine if a payment has been made and that information is provided upon request.

**2. Conduct Routine Post-Award Contract Compliance Monitoring.**

*The consultant recommended monthly contract compliance monitoring should be conducted to ensure that the subcontractor participation listed in the bids, proposals, and statements of qualification is achieved throughout the duration of a contract. This type of monitoring would verify the prime contractor’s commitments prior to and after the award of the contract. Consistent contract compliance should minimize the hardships experienced by L/SLBEs due to unauthorized substitutions and late payments.*

The City performs routine compliance monitoring functions weekly and bi-weekly on non-compliant projects. Compliance staff closely monitors subcontractor substitutions and initiates a hearing immediately upon notice of an illegal substitution. Late payments are addressed through the City’s Prompt Payment ordinance.

**B. Procurement Strategies (Pre-Bid)**

**3. Networking Opportunities Procurement Strategies**

*The consultant recommends that the City sponsor marketing forums for L/SLBEs to deliver technical presentations to City agencies, procurement personnel, contractors, and senior managers. The forums should be held at the City departments’ offices and take place on a quarterly basis.*

*City personnel should aggressively identify and notify L/SLBEs of the opportunity to make a presentation. Each City department should be required to advertise in trade publications that target L/SLBEs, thus informing them of the opportunity to make a presentation at the forum. The forums would allow L/SLBEs to become more familiar with procurement personnel, as well as increase the knowledge that City staff has of local businesses that may be used in City contracts.*

The City holds “How to Do Business With the City of Oakland” forums twice a year. These workshops include participation of DCP staff, Auditor’s Office, Risk Management and high volume using agencies such as Public Works and Community and Economic Development

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Agency (CEDA). Businesses have the opportunity to participate in break-out sessions and interact with buyers.

Special outreach forums are held for large projects and using agencies now advertise contracting opportunities in a variety of newspapers that target small businesses and special interest groups.

A forum is planned for late August. Staff will initiate this process by surveying using agencies to identify trade categories that satisfy departmental contracting needs. Certified firms and vendors registered through iSupplier will be randomly selected to participate in the summer forum. Staff will assess the effectiveness of the effort and plan biannual forums for the subsequent fiscal years.

**4. Assess the Use of Sole Source**

*The consultant recommends that DCP staff review sole source requests to determine if L/SLBE goals can be applied. Contracts that are proposed to be awarded as sole source procurements should also be posted on the City's website to allow other providers of the goods or services to make themselves known to the City.*

The City of Oakland does not have a "Sole Source" provision that is specifically spelled out in the Municipal Code. Oakland City Council must approve a request for exceptions to the competitive bidding process. The Municipal Code 2.04.050 Section I defines "exceptions to the competitive bidding" process as follows:

*"Upon a finding in each instance by the City Council that any of the following conditions exist, the provisions of this section shall not apply:*

- *To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;*
- *When calling for bids on a competitive basis is impracticable, unavailing or impossible;*
- *Placement of insurance coverage;*
- *When public work is performed by the City with its own employees;*
- *In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the City."*

DCP/Social Equity conduct compliance assessments that are attached to agenda reports requesting authority to award a contract.

Social Equity completes an availability analysis to determine if there are sufficient certified firms to meet the minimum 20% participation requirement. This information is provided prior to review of the agenda report and sign off by the City Administrator.

DCP will develop a Sole Source request form. This form will initiate a sole source review to include sourcing of available firms and an L/SLBE availability analysis. DCP will provide this information as an attachment to the staff report.

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The attached Sole Source justification (*Attachment I*) will be implemented in January.

5. Use Direct Contracting to Award Small Prime Contracts

*The consultant states that the practice of direct contracting should be common to all City construction and architecture and engineering contracting. As an addition to the categories of work presently identified by the City, construction support services, including trucking, demolition, and surveying, should be awarded as direct contracts and not as items of work in the general construction contract, when feasible. Design services, which are not required to be performed by a licensed engineer, architect, or registered surveyor, should be awarded as direct contracts. These services include planning, environmental assessments, ecological services, cultural resource services, and testing services.*

Direct contracting is employed by DCP/Purchasing Services and in the purchase of traffic lights by CEDA/Project Delivery. Direct contracting is employed when opportunities for small local businesses will be realized and when it will be cost efficient to the City. Purchasing Services will continue to use direct contracting when feasible.

6. Establish a Direct Purchase Program for Construction Contracts

*The consultant states that under a direct purchase program, the general contractor includes the cost of construction materials and supplies as well as the supplier's name, quantities, and quotes in the bid. The City would produce a purchase order to pay the supplier directly, and the supplier would deliver the materials to the job site according to the contractor's schedule. A direct purchase program would reduce the amount of the construction bid subject to a bond. The cash flow required to pay the supplier in advance of receiving reimbursement for the materials from the prime contractor is also eliminated. Additionally, the supplier, knowing that it would receive direct payment from the City, may give the L/SLBE a more competitive price, thereby reducing the overall bid price. It is notable that direct purchasing is currently used by the Purchasing Division on a limited basis.*

Concern was expressed by staff responsible for construction contracts regarding the purchase of materials and supplies that may carry warranties. This recommendation needs further vetting with using agencies.

7. Revise Insurance Requirements -

*The consultant suggests that insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. As a general practice, the City should implement standard insurance provisions applicable to all City agencies. The insurance requirements on small contracts should be eliminated; for all other contracts they should be set in relation to the actual contract liability amount. Prohibitive insurance requirements can be a disincentive to bidders, constitute a barrier to L/SLBEs, and increase the City's costs to procure construction services.*

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*Revised insurance requirements would attract more bidders, thus increasing competition and reducing costs. Any revisions to the insurance provisions should comply with statutory requirements. Bonding should be eliminated for all informal contracts, and the City should establish an Owner-Controlled Insurance Program for all contracts to consolidate risk management costs and reduce the burden of insurance premiums for all vendors. The City would also benefit because the business passes the fee for insurance onto the City in its pricing.*

Further vetting with Risk Management is necessary. Risk Management responds in general by stating that the degree of risk is based on the nature of work and potential risk involved should the contractor perform negligently or incompetently. As such, it is not in the City's best interest to adopt a tiered approach to insurance requirements based on contractor size.

The City can offer assistance in procuring coverage through our insurance broker resources and staff has assisted a number of small contractors in this regard.

**8. Phase Retainage Requirements**

*The consultant states that retainage should be eliminated for small contracts and reduced for all certified prime contractors. Moreover, the subcontractors' retainage should be released on an item-by-item basis as its work is completed and accepted. This practice would reduce the cash flow burden experienced by smaller construction prime contractors and subcontractors. Increased cash flow would allow small businesses to build capacity.*

Phased retainage is a current practice as a result of Prompt Payment

**C. Procurement Strategies (Pre-Award)****9. Review Bids and Proposals for Goal Attainment**

*The consultant states that the City currently requires Schedules E and R which are used to track subcontractors, suppliers, and truckers for all formal contracts except sole source and emergency contracts. This requirement should be applicable to all formal contracts, including emergency and sole source contracts. Schedules E and R requesting the identification of subcontractors should be included in all solicitations and submitted at the time of bid opening. Submission of Schedules E and R should be considered a condition of responsiveness. Subcontractor participation should be reviewed at the time the submission is opened and the level of L/SLBE participation on each contract recommended for award should also be a matter of public record.*

This function is currently performed. Review of compliance consistently occurs with the PWA Sub Committee.



#### 10. Revise Interview Panel Process

*The consultant states that the interview panel for professional services contracts should be accountable for its evaluations. Identities of the panel member should be disclosed and attached to the signed evaluation forms. Businesses should have access to the evaluation forms promptly after the panel makes its recommendation so that the businesses can assess their performance and engage in protest procedures, if necessary. The Intent to Award should be published and submitted to each firm that submitted a proposal, bid, or statement of qualification. The release of the Intent to Award should mark the beginning of the protest period.*

As a matter of public information, identities of panel members and evaluations are revealed upon request. Typically, where negotiations are involved, the City may hold evaluations until the end of the negotiation period and staff prepares a report to council requesting authority to award.

Either posting or issuing an "Intent to Award" is a best practice that is followed by most public entities. It is a courtesy to the public. Intent to Award may be folded into the Procure to Pay (P2P) system but must be followed by all using agencies as well. Using agencies must be prepared to include Intent to Award notifications as a matter of standard operating procedures.

There are two types of intent to award formats. The simple web posting as used by Caltrans and a formal letter or post card as used by the City and County of San Francisco.

Intent to Award may be folded into the P2P process and initiated by the awarding agency either by posting the intent to award on line or through a formal letter or post card. The City Administrator will require all agencies to use notices effective June 2010.

#### 11. Implement Formal Protest Procedures

*The consultant recommends that the City require formal protest procedures established by the Purchasing Division be applied to all formal and informal contracts. All solicitations should include these protest procedures and a date by which a protest must be filed. The appeal process should be handled by the City Administrator or his designee.*

There are currently several protests procedures for (a) illegal substitutions pursuant to the public contracting code, (b) construction listed in the standard specifications, (c) invoice dispute resolution and (d) the purchase of commodities. A formal protest procedure for professional services is needed. Currently, written protests may be sent to the using agency, City Clerk, City Administrator, City Attorney, City Council and/or Mayor.

The City Administrator will implement a formal protest process for professional services using the protest procedures established by Purchasing Services and provided as **Attachment II**.

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**12. Professional Services Contracts - Evaluation Credits**

*In the professional services industry, contracts are not awarded strictly based on the lowest bid. Instead, a firm is selected by accumulating points based upon its qualifications to perform the scope of work in the solicitation. A point system is used to rank the proposals and statements of qualification in the evaluation process. Incentive credits could be given to prime contractors who are L/SLBEs on architecture and engineering and professional services contracts, when these awards are based on qualifications and not on the lowest bid. Fifteen to 20 percent of the evaluation credits could be comprised of such incentive credits when the selection process includes a proposal or statement of qualifications. Including such credits in the evaluation criteria might counterbalance the competitive disadvantage experienced by these groups. These credits would be applied in the evaluation process for formal contracts under \$500,000.*

This action now occurs and vendors may earn up to five preference points.

**D. Procurement Strategies (Post-Award)****13. Pay Mobilization to Subcontractors**

*The consultant states that mobilization payments should be paid to L/SLBE prime contractors and all other contractors meeting the L/SLBE goal. The subcontractors should be paid an amount equal to their participation level on the prime contract prior to commencing their work. Project start-up costs can be significant, and a firm that has limited resources and access to credit may find that the delay in receiving the initial progress payment could inhibit its ability to bid. Payment for mobilization could mitigate the start-up costs and late payment barriers faced by L/SLBEs.*

Mobilization Fees are now paid as a result of the Prompt Payment ordinance. Prime contractors and subcontractors are required to pay their portion of mobilization fees within five business days of being paid such fees.

**14. Develop an Expedited Payment Program**

*The consultant proposed an expedited payment process to remove a major barrier to L/SLBE participation in City contracts. In an expedited payment program, L/SLBEs and other small businesses would be paid on an accelerated schedule.*

The City adopted a Prompt Payment Ordinance #12857, in 2008, found in Municipal Code Section 2.06. The Prompt Payment Ordinance established policies and procedures to assure that local contractors and all subcontractors working on City of Oakland contracts receive prompt payment.

**15. Give Five-day Notice of Invoice Disputes**

*Within five days of receiving a disputed invoice, the consultant recommends the contractor should receive a notice from the City detailing any item in dispute.*

*Undisputed invoice amounts should be paid promptly, and disputed items should be resolved in a timely manner. By using this system, L/SLBEs would be better able to maintain positive cash flow while providing services to the City.*

The above process is included as part of the Prompt Payment conditions.

**16. Implement Formal Dispute Resolution Standards**

*The consultant recommends that the City should create and publicize formal dispute resolution standards which should be included in all contracts to allow businesses to resolve issues relating to the performance of work after the contract has been awarded.*

Currently, the City of Oakland provides the following dispute options: (a) Illegal substitutions pursuant to the Public Contract Code (b) Bid disputes in standard construction specifications (3) Purchasing Services dispute procedures for handling procurement actions; and some years ago, the city had a dispute resolution program whereby three firms were on call to resolve disputes at the vendor's request. There is not a formal process for purchase of professional services. **Attachment III** is offered for your consideration of an "Alternative Dispute Resolution" Process.

**E. Additional Administrative Recommendations**

**17. Develop a City-wide Procurement Manual**

*The consultant recommends a City-wide Procurement Manual. There are currently several manuals in use among the agencies that have procurement authority. Creating one Procurement Manual for all City agencies will help streamline the procurement process and provide staff with clear guidance on its responsibilities and requirements. The recommendations in this report should be included in drafting the Procurement Manual.*

DCP/Purchasing Services currently has a procurement manual and DCP/Contract Administration and Compliance use the Standardized Contracting Training Manual.

Both documents will be combined and updated to reflect the Procure to Pay processes.

**18. Institute Internal L/SLBE Program Training**

*The consultant proposes instituting focused internal L/SLBE Program training to enhance the existing training program.*

Standardized contracting Training is currently conducted twice per year. Training includes a section covering compliance policies and responsibilities. The L/SLBE program handbook can be used as a guide. Staff can break out the training so that it is separate from the standardized contracting and institute a more focused L/SLBE training opportunity.

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The following Local and Small Local Business Enterprise Program (L/SLBE) Training Outline will be used:

- Intended Impacts of the L/SLBE Program and Policies and Definitions
- Program Requirements and Incentives
- Maintaining Participation and Substitution of Listed Subcontractors
- Emergency Contracts
- Compliance Monitoring and Penalties
- Prevailing Wages and Winning Compliance
- Local Employment Program and Policies
- Program Objective and Definitions
- Program Goals and General Provisions
- Winning Compliance, Incentives and Penalties and Outreach
- Reporting and Monitoring

19. Staff Office of Contract Compliance and Employment Services

*Consultant proposes increasing staffing of the new DCP/Social Equity Division previously referred to as the Office of Contract Compliance and Employment Services (OCCES). The OCCES should maintain an adequate level of staff with experienced professionals capable of fulfilling the new responsibilities. Adequate staffing is necessary to promote the enhanced L/SLBE Program. The number of staff currently assigned to handle the L/SLBE Program is not adequate to fulfill the expanded responsibility of the office. The staff should be expanded to include an ombudsperson who would handle disputes and address the concerns of businesses that contract with the City or are interested in doing so. Office personnel should have knowledge about procurement procedures, public contracting law, and affirmative action programs. The personnel should have education or professional experience in public administration and be knowledgeable about current business types and the operation of a small business.*

Due to the current budget deficit, this option is not feasible at this time. Staff continues to evaluate ways to automate and perform tasks with maximum efficiencies tailored to Council's policies and priorities.

20. Publish Utilization Reports

*The consultant recommends publishing L/SLBE utilization reports. These reports should include verified payment and award data organized by industry and department. They should also include change orders and substitution as well as exemplary practices and achievements of each department should be noted in the fourth quarter report. All reports should be posted on the City's website.*

**Proposed (and Actual) Administrative Initiatives to Increase L/SLBE Contracting**

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The L/SLBE status report was recently submitted to both CED and PWA Committees. Information Technology (IT) has placed that report on the Department of Contracting and Purchasing web page. Subsequent reports will include suggested elements noted above. Staff can commit to submitting status reports bi-annually.

**21. Evaluate Staff Compliance with the L/SLBE Program –**

*The consultant recommends that staff compliance should be evaluated through both department-level reports of L/SLBE utilization and staff performance reviews. Program monitoring reports should describe the level of L/SLBE contracting by department. The performance evaluation of all managers should include criteria on the department's L/SLBE utilization and compliance with the L/SLBE program requirements. Staff members who comply with program requirements to utilize L/SLBEs on informal contracts should be recognized. Such acknowledgment could be in the form of a letter from supervisory staff and recognition in the quarterly utilization report. Formal recognition would provide staff with an additional incentive to meet program requirements and reward those who consistently demonstrate a commitment to diversity. Program compliance should be included as part of manager's performance evaluation as well.*

We are prepared to recognize city associates who have demonstrated outstanding compliance with council policies. We will submit recognitions to the City's newsletter. We have had preliminary discussion with Human Resources regarding the use of L/SLBE compliance as a performance measure.

**22. Conduct Outreach and Implement Marketing Strategies**

*The contract compliance office should launch an outreach campaign to promote the approved changes to the L/SLBE Program. Effective outreach will attract more bidders and proposers and inform them of new requirements. Outreach and Marketing Strategies: (a) Focus on non-mainstream media and digital outlets such as ethnic and trade publications, electronic newsletters, and Internet presence; (b) Gain local recognition for the City's revamped business programs; (c) Provide information to LBEs, SLBEs, and M/WBEs; (d) Expand contractors' networking events; (e) Plan and coordinate open house events; (f) Send out invitations via mail, fax, and e-mail; (g) Include buyers in outreach events; (h) Make informal contract opportunities available; (i) Distribute contract forecasts and certification forms; (j) Provide LBEs, SLBEs, networking opportunities; (k) Increase LBE and SLBE certification; (l) Develop multi-lingual, collateral print material for outreach campaign; (m) Revise brochure to reflect program changes; (n) Develop articles and media packets; (o) Publish the brochure electronically; (p) Develop materials to educate the business owners, attract bidders, and attract L/SLBEs to certify.*

The above recommendations will be implemented the first of the year after the details of the seven primary recommendations adopted by City Council are vetted through the Community and Economic Development Committee and the Public Works Committee.

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**23. Increase Use of Equal Access Program**

*The passage of the Equal Access to Services Ordinance in 2001 signified the City's commitment to afford its residents greater access to its services by providing translation services and bilingual materials to non-English speakers. Departments with procurement authority should coordinate with the Equal Access Department to ensure greater access to City contracts to business owners with English as their second language. The City should also allow businesses to request translation services for pre-bid and pre-proposal conferences.*

DCP benefits greatly from the support provided by Equal Access, specifically for interviews of workers with English as a second language, for translation of publications and for business outreach efforts. For example, translation services were made available during the council directed public hearing on the disparity study findings. Staff will work to offer translation services for pre-bid and pre-proposal conferences upon request.

**F. Website Enhancements****24. Post Project Forecasts on the Internet**

*Currently a listing of Request for Proposals and bids is available on the Public Works Agency's website, but it is accessible as a lengthy portable document format (PDF) file. The current format is difficult to use because the vendor must scroll through the entire listing to gain information on a particular solicitation. The consultant recommends that the vendor would be better served by being able to search the list of contracting opportunities by keyword, industry, or NAIC code.*

*Project forecasts of all City agencies that fund contracts should post their opportunities on the Internet, so that businesses interested in working with the City can be informed about contracting opportunities. Furthermore, bidding and contracting opportunities should be listed on the Purchasing Division's website. The City should also consider listing pending solicitations on the Internet prior to the issue of the actual solicitation. Pending solicitations should be listed at least 30 days prior to the actual release date. The listings would consist of the draft project or product specifications, anticipated release date, and subcontracting goals for the project. The listings should be posted on the same day each week.*

*Using the California Department of General Services' California State Contracts Register website as a model, the City should compile all contracting information onto a single web page, instead of separately by department. The City should also allow businesses to register contracting opportunities based on a set of criteria established by the business. This would save businesses time by providing an alternative to browsing through the entire list of contract opportunities.*

Using agencies keep current data on their respective web sites. P2P has the capacity to centralize contracting information onto a single web page.

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**25. Post Prime Contract and Subcontract Awards on the Internet**

*Prime contract and subcontract awards should be posted on the City's website. The awards should be posted within 24 hours of the Intent to Award decision having been made and no later than the start of the bid protest period. Posting contract awards would inform the business community of the results of the City's solicitations and notify the bidders of each contract during the protest period. After the start of work on a project, the City should post prime contractor and subcontractor payments on the website.*

Construction and professional services contract awards are now published on the DCP/Contract Administration web site. Purchasing Services can supplement that list by posting awards generated by that division.

**26. Design Easily Navigable Website Hyperlinks and Features**

*The City of Oakland website has a task bar, "Business in Oakland: Opportunities, Incentives, Permits." A contractor may access five topics through the task bar: "Doing Business in Oakland," "Contracting with Oakland – Request for Proposals," "Business Support Services," "Employment Services," and "Grant Opportunities." Although some of the topics are listed separately, they are hyperlinked to the same page. Additionally, clicking on the "Purchasing Programs" link leads to the Purchasing web page, which does not allow for easy navigation, because there is no task bar to view the browser history. It is recommended that the City reorganize its website so that vendors can access relevant information more efficiently, which would reduce the time staff spends answering questions about the procurement process.*

**27. Make Procurement and Bidding Information Available**

*Currently, there is no posting of procurement guidelines stipulating the City's practices on the Internet. The City should compile a concise "Frequently Asked Questions" page and provide the procurement procedure manual for public viewing. Such enhancements will ensure that vendors are more informed when entering the bidding process.*

**28. Consolidate All Bid Information onto a Single Web Page**

*By clicking on the "Business in Oakland, Opportunities, Incentives, and Permits" link on the City's home page and searching through the Purchasing site, a vendor can access a small tutorial section on how to use forms, as well as general information on bonds, bid opening and closing procedures, and the City's special bid discount information. Such valuable information on bid procedures should be more easily accessible on a single web page, without having to conduct a search through various index features.*

Recommendations 26, 27 and 28 require working closely with Information Technology. Discussions to revise the existing web site started last month and once P2P is fully mounted, we will be able to satisfy the three recommendations noted above.

G. Data Management Recommendations

29. L/SLBE Prime Contractor Data (Oracle)

*The centralized financial system used by the Finance and Management Agency (FMA) keeps track of all payments made to prime contractors. The system has the capability to link payments to their respective purchase orders and contracts. However, the field that is being used to store contract numbers is often left blank. In addition, the contract numbers being used by the FMA may be a different number than the one used by the OCCES. Purchase order numbers are not uniformly recorded in the contract record. As a result, the system does not allow the prime contract payments to be matched electronically to prime contract awards, and subsequently, to subcontracting data. Thus, the present system does not allow the generation of a computerized report that would calculate L/SLBE participation for all dollars expended by the City. The consultant recommends that the present system should be modified to make the contract number a required field for all expenditures other than direct payments.*

*In addition, it is recommended that all records include industry classification of transactions. Presently, object codes are used to classify prime expenditures. Object codes define the purpose of each transaction but not the type of work performed by each contractor. It is recommended that the financial system utilize commodity codes, such as National Institute of Governmental Purchasing (NIGP) or North American Industry Classification System (NAIC) codes, to describe the specific nature of work performed in each contract. All City expenditures should be assigned an appropriate NIGP or NAIC code based on the goods or services provided by the contract. In addition, all expenditures to government agencies and not-for-profit organizations should be coded appropriately.*

Information Technology and Accounts Payable have been working with DCP to address the matter of contract numbers and more uniform industry coding specifically as it ties to iSupplier registration. P2P includes a numbering system that will serve to unify purchasing and contracting actions.

30. Subcontractor Data Management

*The subcontractor data collected by the OCCES should be stored in a relational database. The specification for such a database will be provided later in this report. Subcontractor data is presently collected at the time of award and does not reflect any substitutions or changes to award amounts. Prime contractors should be required to complete monthly compliance reports that would record payment information for all subcontractors. In addition to an option to submit a paper version of this report, a web based digital form should be used to capture the payment data from the contractors. The data should then be uploaded to a relational database.*



**Proposed (and Actual) Administrative Initiatives to Increase L/SLBE Contracting**

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**31. Recommendations for a Subcontractor Data Tracking System**

*A relational database should be implemented to store the subcontractor, supplier, and trucker payment data. A relational database would allow for linking the subcontractor data to the specific prime contract as well as to the subcontractor's certification status and contact information. The database could have customizable reports that summarize the payments to subcontractors. The prime contract records in the centralized financial system should also reference a contract number.*

Regarding recommendations 30 and 31 above, DCP strongly recommends a relational database for subcontracting data management and subcontractor data tracking. Currently the cost of such a system is prohibitive. We have looked into the possibility of piggybacking onto existing contracts with Elations Systems currently used by Alameda County and City and County of San Francisco. Funds are not available to move forward at this time.

**H. Functionality Requirements (See Procure 2 Pay - P2P Attachment IV)****32. An efficient data tracking system should contain the following components:**

- **Vendor Information Component (iSupplier)**  
*This component should include contact information, NIGP classification, certification status, and ethnicity and gender. Certified vendor records should include the contractor's identification number, to enable cross-referencing with the certification database. Records for registered vendors should include the vendor identification number to enable cross referencing with the City's financial system.*
- **Contract Management Component P2P)**  
*The contract management component should include contract information, such as bids, prime awards, subcontractors, and participation goals. The contract identification number used in this component should be same one as the one used in the financial system, to enable access to prime contractor payment information.*
- **Subcontractor Payment Component (P2P)**  
*This component should accommodate all data from the monthly compliance reports. Each subcontractor record should be linked to the corresponding contract management record by contract number and to the vendor information record by a vendor identification number.*
- **Technical Specifications (P2P)**  
*The following technical specifications should be incorporated into the data tracking system to include: Web-based interface to allow submission of data by prime contractors and subcontractors directly over the Internet; Web-based relational database to produce easily customizable reports with the capability to export and import data to and from existing systems; and Web-based system compatible with existing FMA server, database, and reporting architecture.*

**SUSTAINABLE OPPORTUNITIES**

**Economic:** Policies, programs and procedures tailored to the findings will result in increased opportunities for statistically significant underrepresented groups.

**Environmental:** Staff makes every effort to encourage the use of sustainable and recycled-content materials and technologies whenever possible.

**Social Equity:** Fair and equitable contracting opportunities will serve to level the competitive field. Underrepresented groups will have more access to the City's public procurement process.

**RECOMMENDATION(S) AND RATIONALE**

Accept this report and have staff continue to implement protest and dispute resolution procedures, implement an Intent to Award process and a method of reviewing sole source requests.

**ACTION REQUESTED OF THE CITY COUNCIL**

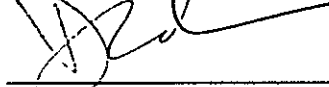
Adopt the actions relative to the remaining disparity study race neutral strategies and have DCP and other using agencies directly impacted by implementation of specific race neutral recommendations return to council in six months to report on status of implementation.

Respectfully submitted,

  
Deborah Lusk-Barnes,

Department of Contracting and Purchasing

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:



Office of the City Administrator

**ATTACHMENT I**

draft

**Department of Contracting and Purchasing - Sole Source Justification**  
(For Noncompetitive Purchases)

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To: Department of Contracting and Purchasing

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Your review is requested to initiate a sole source procurement request to City Administrator and City Council:

Requestor Name and Title: \_\_\_\_\_

*Note: Requestor must be an expert in the respective field who is able to defend this justification.*

Requestor Dept: \_\_\_\_\_

PO or Req No.: \_\_\_\_\_

Recommended Sole Source procurement action with:

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone: (      ) \_\_\_\_\_

Is the recommended company the manufacturer?  Yes  No

Does the manufacturer sell the item(s) through distributors?  Yes  No

Description of Product or Service: \_\_\_\_\_

*Describe the full scope of work contemplated including installation if required; items should include brand, model and part number if applicable*

Schedule: \_\_\_\_\_

*Identify the date you need items delivered OR number of week/months work is to be performed or items delivered*

Estimated Cost: \$ \_\_\_\_\_

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**SOLE SOURCE RATIONALE**

Explain why the recommended company is the only company who can perform the requirement. Address the following: Are there any other companies who can do this job? What condition (e.g. technological superiority, or performance risks, etc.) exists so that the recommended company has a significant advantage over any other company who can do this job?

It is important to sufficiently address the major reason for conducting a noncompetitive procurement, avoiding peripheral issues which detract from the main reason and reduce the credibility of the justification. The rationale must be clear and convincing, avoiding generalities and unsupported conclusions. Use one or more of the following as applicable.

Use additional sheets if necessary.

A specific contractor is the only source of the required item because (check all that apply):

- The required items are **proprietary to the Contractor**
- A specific item is needed:
  - to be compatible or interchangeable with existing hardware,
  - as spare or replacement hardware,
  - for the repair or modification of existing hardware, or
  - for technical evaluation or test.
- It is not possible to obtain competition** (i.e., only one source is capable of supplying the items or meeting the requirements). *In a brief explanation, provide supporting evidence for the conclusion; other sources considered should be identified and why they are not able to meet the requirements.*
- There is a **substantial technical risk** in contracting with any other contractor, thereby making that an unacceptable course of action (e.g., where only one contractor has been successful to date in implementing a difficult manufacturing process). *In a brief explanation, provide supporting evidence of other contractor's with relevant capabilities and emphasize their inability to overcome the substantial technical risk.*
- For support services effort, there is no reasonable expectation that a meaningful cost or other improvement could be made in the incumbent contractor's performance (e.g., the chances of another firm winning a competition are clearly remote. *Please provide a brief explanation.*

**ACKNOWLEDGEMENT**

This Section Must be completed

- I am aware of the City's requirements for competitive bidding and the criteria for justification for Sole Source Purchasing. I have gathered the required technical information and have made a concerted effort to review comparable/equal equipment (e.g., market research) or service. I have attached the pertinent documentation showing what market research was conducted to preclude other items from consideration.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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December 8, 2009

# ATTACHMENT II

Title: PROTEST		Policy No.:	PP 033
		Submitted By:	Jimmie Jackson
		Approved By:	
Effective Date:	March 15, 2001	Supersedes No.:	
		Page No.:	3 of 7

## I. PURPOSE

This policy is to establish uniform procedures for handling of protest regarding procurement actions.

## II. SCOPE

These procedures apply to all personnel governed by the City's Purchasing Policies and Procedures.

## III. GENERAL

- A. Prior to submission of protests, all parties shall use their best efforts to resolve concerns raised by an interested party at the department level through open frank discussion.
- B. The City will provide an inexpensive, informal procedurally simple and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.
- C. The following procedures are established to resolve agency protests effectively, to build confidence in the City's purchasing process, and to reduce protests outside of the City:
  1. Protest shall be concise and logically presented to facilitate review by the City. Failure to substantially comply with any of the requirements of subparagraph C.2., of this section may be grounds for dismissal of the protest.
  2. Protest shall include the following information:
    - i. Name, address, fax and telephone numbers of the protester
    - ii. Solicitation or contract number.
    - iii. Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
    - iv. Copies of relevant documents.
    - v. Request for a ruling by the City.
    - vi. Statement as to the form of relief requested.
    - vii. All information establishing that the protester is an interested party for the purpose of filing a protest.
    - viii. All information establishing the timeliness of the protest.
  3. All protests filed with the City will be addressed to the Purchasing Supervisor or other official designated to receive protests.

Appeals to the Purchasing Supervisor decision will be forwarded to the Agency Director. The Purchasing Supervisor will designate the official(s) who are to conduct this independent review, but the official(s) need not be within the Purchasing Supervisor's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement.
  4. Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protest shall be filed no later than 10 days after the basis of protest is known, whichever is earlier.

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Dec. 8, 2009

## ATTACHMENT II page 2

Title: PROTEST			Policy No.:	PP 033
			Submitted By:	Jimmie Jackson
			Approved By:	
Effective Date:	March 15, 2001	Supersedes No.:	Page No.:	4 of 7

The City, for good cause shown, or where it determines that a protest raises issues significant to the City's purchasing process, may consider the merits of any protest which is not timely filed.  
Action upon receipt of protest.

D.

1. The City will acknowledge receipt of protest in writing within 3 days to the interested party.
2. Upon receipt of a protest before awarding, a contract may not be awarded, pending City resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City. Such justification or determination shall be approved at a level above the Purchasing Supervisor, or by another official pursuant to City procedures.
3. If award is withheld pending agency resolution of the protest, the Purchasing Supervisor will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to subparagraph D.2., of this section.
4. Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request, whichever is later, the Purchasing Supervisor shall immediately suspend performance, pending resolution of the protest within the City, including any review by an independent higher level official, unless continued performance is justified, in writing, or urgent and compelling reasons or is determined in writing, to be in the best interest of the City. Such justification or determination shall be approved at a level above the Purchasing Supervisor, or by another official pursuant to City procedures.

E. The City shall make their best efforts to resolve protest within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

F. The City's protest decisions shall be well reasoned, and explain the City's position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

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# ATTACHMENT III



## PROPOSED DISPUTE RESOLUTION FOR PROFESSIONAL SERVICES

*The following Dispute Resolution Procedure provides a process to resolve any disputes or concerns relating to intent to award or to the administration of an awarded of a professional services contract between the City of Oakland and professional services contractors.*

*Prior to submission of protests, Contractors and City staff should first attempt to come to resolution informally through discussion and negotiation with the designated contact person in the department. The City will provide an inexpensive, informal procedurally simple and expeditious resolution to protests.*

*Where appropriate, the use of alternative dispute resolution techniques, third party neutrals and another agency's personnel are acceptable protest resolution methods.*

*If informal discussion has failed to resolve the problem, contractors and departments should employ the following steps:*

- Step 1 The contractor will submit a written statement of the concern or dispute addressed to the Contract/Project Manager who oversees the agreement in question and a copy to the Department of Contracting and Purchasing/contract Administration. Protest shall include the following required information:
  1. Name, address, fax and telephone of the protester;
  2. Solicitation or contract name and number;
  3. Detailed statement of the legal and factual grounds for the protest to include a description of resulting prejudice to the protester;
  4. Copies of relevant documents;
  5. Request for a ruling by the City;
  6. Statement as to the form of relief requested;
  7. All information establishing that the protester is an interested party for the purpose of filing a protest;
  8. All information establishing the timelines of the protest.

Failure to substantially comply with any of the required information noted above as numbers 1-8 may be grounds for dismissal of the protest.

The Contract/Project Manager will acknowledge, to the interested party, receipt of protest in writing within 3 days of receipt of the protest.

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**Attachment III – page -2**

The Contract/Project Manager will investigate the concern with the appropriate department staff that are involved with the action, and will either convene a meeting with the contractor or provide a written response to the contractor within 5 working days of receipt of the protest.

- Step 2 Should the dispute or concerns remain unresolved after the completion of Step 1, the contractor may request review by the Division or Department Head who supervises the Contract/Project Manager. This request shall be in writing and should describe why the concern is still unresolved and propose a solution that is satisfactory to the contractor. The Division or Department Head will consult with other Department and City staff as appropriate, and will provide a written determination of the resolution to the dispute or concern within 5 working days of receipt of the Step-2 protest. Staff designated to conduct an independent review should not have had previous personal involvement in the contract decision.
- Step 3 Should Steps 1 and 2 above not result in a determination of mutual agreement, the contractor may forward the dispute to the Agency Head/Executive Director of the Department or their designee. This dispute shall be in writing and describe both the nature of the dispute or concern and why the steps taken to date are not satisfactory to the contractor. The Department will respond in writing within 5 working days.

**Additional Actions by City:**

1. Upon receipt of a protest before awarding, a contract may not be awarded pending City resolution of the protest, unless contract award is justified, in writing for urgent and compelling reasons or is determined in writing to be in the best interest of the City. Such justification or determination shall be approved by the City Administrator or designee.
2. If award is withheld pending agency resolution of the protest, the Project Manager will inform the contractors whose offers might become eligible for award of the contract.
3. The City shall make a best effort to resolve protest within 35 days after the protest is filed

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## ATTACHMENT IV



### CITY OF OAKLAND'S PROCURE TO PAY (P2P)

The Procure-To-Pay system was developed by the Department of Contracting and Purchasing in partnership with the Department of Information Technology. It consists of several applications that enable a full procurement process lifecycle. Each application implements a set of integrated functions with the lifecycle to achieve:

- Automation of the purchasing workflow to reduce processing time, maximize staff productivity and improve supplier management
- Centralization procurement contracts and Accounts Payable documents for greater visibility, financial control and quicker approval processes
- Automation of purchasing practices to streamline purchase-order processing and strengthen policy compliance.
- Supplier online collaboration to allow suppliers the ability to directly access information and enter business transactions across the procure-to-pay life cycle, using a secure, Internet-based portal.
- Electronic submittal of invoices by suppliers to allow for a paperless invoice review, approval, and payment process.
- Online self-service requisitioning by authorized employees to enforce purchase review, approval, and spending limits
- Implementation of electronic "Stores" for pre-approved blanket purchase agreements or contract purchase orders to allow authorized city employees to shop for needed items using an electronic catalog that resembles popular consumer Web sites such as [Amazon.com](http://Amazon.com). Delegating the large number of smaller transactions to the departments allows the Department of Contracting and Purchasing to focus on big-ticket items such as construction, professional services and consulting services
- Supplier registration to allow prospective suppliers to register online via the department's Web site (registration is required before a supplier can do business with the city). When prospective suppliers submit their registration application, they receive an e-mail notification of registration, with a user ID, a password and a link to the city's Supplier Portal. As a registered Supplier Portal user, suppliers can create and maintain a company profile, access their purchase orders, and submit electronic invoices
- Publication of current bid and proposal opportunities as well as bid results on the City Web site, with capability to allow registered suppliers as potential bidders to be notified of the opportunities by e-mail and directed to the site.

The City conducted focus groups with both suppliers and internal departments to test the new Procure-To-Pay system. Many suppliers are registering their firms with the City through the Supplier Portal in anticipation of taking advantage of the additional procure-to-pay functions. The City plans to rollout the system to all city organizations over the next two months and provide suppliers with online instruction and assistance through the City Business Center located at 250 Frank Ogawa Plaza.

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