

Agenda Report

DATE: JANUARY 22, 1998
TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: Affirmative Action In Contracting Annual Report for FY 1997

RECOMMENDATION:

1. Direct the City Attorney's Office to revise Affirmative Action Ordinance in Contracting to conform to State Law (Proposition 209);

CALIFORNIA PROPOSITION 209:

On November 5, 1996, Californians voted to approve Proposition 209. California voters approved the measure by a margin of 54% to 46%, with a majority of Males and Whites voting in favor, and a majority of Women, African Americans, Latinos and Asians voting in opposition. The racial and gender breakdown of the vote was as following:

<u>Voters</u>	<u>Yes (%)</u>	<u>No (%)</u>
Male	61%	39%
Female	48%	52%
White	63%	37%
Black	26%	74%
Latino	24%	76%
Asians	39%	61%

The election results of this ballot measure was appealed.

On December 23, 1996, the Northern District Court issued a preliminary injunction preventing implementation of Proposition 209. *Decision Appealed.*

On April 8, 1997, the Court of Appeals for the Ninth Circuit, reversed and vacated the preliminary injunction. *Decision Appealed.*

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On Monday, November 3, 1997, the U.S. Supreme Court announced that it will let stand the Ninth Circuit Court ruling upholding Proposition 209. The initiative is an amendment to the State Constitution which requires:

SEC.31

- (a) Neither the State of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity, or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's system of public employment, public education, or public contracting.
- (b) This section shall apply only to state action taken after the effective date of this section.
- (c) Allowable remedies for violation of this section shall include normal and customary attorneys' fees.
- (d) Nothing in this section shall be interpreted as prohibiting classifications based on sex that are reasonably necessary to the normal operation of the State's system of public employment or public education.
- (e) Nothing of this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.
- (f) Nothing in this section shall be interpreted as prohibiting state action that is necessary to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.
- (g) Nothing in this section shall be construed as prohibiting a public agency from obeying a court order requiring the consideration of racial, ethnic, national origin, gender, or religious characteristics to remedy the effects of its own past discriminatory practices.
- (h) If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, this section shall be implemented to the

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maximum extent permitted by federal law and the United States Constitution. Any provision held invalid shall be severable from the remaining portions of this section.

City staff is currently reviewing Contracting Program for conformance to Proposition 209.

BACKGROUND:

On June 26, 1990, the City Council adopted a revised Affirmative Action in Contracting Ordinance. A major component of the ordinance is the requirement that the City Manager establishes an annual goal in the sharing of contracting opportunities with the City. Annual reports regarding progress toward the goal are required to be presented to the City Council. The annual goal is 27% spending with W/MBE's.

The data used in reporting progress is provided by the Finance Department - Purchasing Division. Data for this report was generated on October 6, 1997. The data base identifies purchases as either Discretionary or Non-Discretionary.

Non-Discretionary purchases include contracts with other governmental entities, special districts and nonprofit organizations. Discretionary procurement activity encompasses all other purchases except those not included in the database.

The Department of Finance-Purchasing Division plays a vital role in the administration of the City's Affirmative Action in Contracting Ordinance. The Division is the front-line enforcement for many of the provisions of the Ordinance. These responsibilities include, verifying that all purchase requisitions are accompanied by the requisite number of informal quotations or are accompanied by an exemption approved by the Department of Affirmative Action, and ensuring that all vendors complete the required affidavit of Equal Employment Opportunity and Non-Segregation.

The Division is also responsible for the City's Bid Opportunities Internet Website. In addition to listing upcoming bid opportunities with the City, the site has been expanded to include projects at the Burbank-Glendale-Pasadena Airport. More than 4,300 people have visited the site and vendors as far away as Toronto, Canada have competed for City jobs as a result. The Website continues to be an excellent outreach tool.

NOTE: City staff is currently reviewing our Disadvantaged Business Enterprise program to make sure it can continue in its current form for federal contracts. Additionally, a new contracting program is being developed to implement when using state dollars that conforms to Proposition 209.

CONTRACTING COMPLIANCE MONITORING AND REPORTING:

The Department of Affirmative Action & Diversity is responsible for the reporting and monitoring of contractors and subcontractors and their compliance with the Affirmative Action requirements and Equal Employment Opportunity practices and provisions of the Affirmative Action In Contracting Ordinance.

Prime contractors who perform City contracts exceeding \$25,000 and have three or more workers, are monitored for equal employment opportunity and good faith efforts in subcontracting with all people including minority, women and disadvantaged businesses.

To determine if a contractor has made conscious and active efforts to employ and utilize all groups including protected-class group members, contractors are required to submit monthly workforce utilization reports to the Department of Affirmative Action & Diversity for analysis. Prime contractors awarded contracts containing DBE goals are required to report the percentage of subcontracting dollars awarded to DBE firms.

At the discretion of the Director of Affirmative Action & Diversity, the department may from time-to-time conduct compliance reviews and desk audits of contractors and subcontractors to ascertain the extent to which Equal Employment Practices are implemented and to more closely review a contractor's compliance with its affirmative action obligations.

The Department of Affirmative Action & Diversity also reviews, approves and assists contractors in the submittal of acceptable Affirmative Action Documents.

SUMMARY: The Highlights of our Procurement Accomplishments during FY 97, are as follows:

The most significant indicator of an effective Affirmative Action In Contracting Program is the successful distribution of opportunities and the dollar value of contracts. This report covers the sixth full year of progress under the revised ordinance. The W/MBE goal for FY 1997, was 27%. A total amount achieved by staff and City Council was 27%.

Total discretionary procurement dollars available in FY 1997 were \$55,758,535. This represents a decrease of \$2,733,176 of the dollars available in FY 1996, which were \$58,491,711.

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- Discretionary procurement dollars awarded to protected class businesses, i.e., owned by women and minorities, which includes African-American, Asian, Armenian-American, Hispanic, Native-American and Disabled Businesses totaled \$14,857,106 or 27% of total discretionary dollars, in FY 1997. This compares to \$18,050,441 or 31% in FY 1996.

CONTRACTING DISPARITY STUDY:

In March of 1998, City Council will receive an agenda report on the status of the Disparity Study.

LOCAL BUSINESS PROCUREMENT:

In FY 1997, local businesses were awarded a total of \$8,786,511 or 14% of combined discretionary and non-discretionary purchases. In FY 1996, \$8,763,874 of total procurement dollars went to Pasadena businesses. In FY 1995, \$12,483,433 went to local businesses.

We continue to stress the need to spend Pasadena tax dollars with Pasadena businesses. In FY 1997, Local W/MBE procurement dollars awarded were valued at \$4,067,672 or 7% of total discretionary dollars.

This represents an increase in dollars spent with local W/MBEs over FY 1996, which were \$3,569,748 or 8.8%. A five-year local and local W/MBE performance comparison can be found in Exhibit 1, Table 1.

DEPARTMENTAL PERFORMANCE:

Percentage of Discretionary dollars spent with W/MBE.

- Ten (10) departments achieved 27% to 67% spending, eight departments achieved between 15% to 26% and one department achieved 8% spending with W/MBE. See Exhibit " 2 " for a complete listing of all City departments actual spending with W/MBE.

PROTECTED CLASS BUSINESS UTILIZATION:

As shown in Exhibits " 2 " & " 3 ", in FY 1997, protected class businesses received a total of \$14,857,106 or 27% of all discretionary dollars awarded. A three-year Protected Class

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or W/MBE Performance comparison can be found in Exhibit " 4 ". A five-year comparison of W/MBE Performance to total discretionary dollars per fiscal year can be found in Exhibit "1", Tables 1 and 1A. Dollars awarded within individual protected class categories and the percentages within the categories are shown as follows.

- **AFRICAN-AMERICAN BUSINESSES:**
Total dollars.....\$1,269,689
% of total protected class dollars..... 9%
% of all discretionary procurement..... 2%

- **ARMENIAN-AMERICAN BUSINESSES:**
Total dollars.....\$3,466,793
% of total protected class dollars..... 23%
% of total discretionary procurement..... 6%

- **ASIAN BUSINESSES:**
Total dollars.....\$1,387,899
% of total protected class dollars..... 9%
% of total discretionary procurement..... 2%

- **DISABLED VENDOR-OWNED BUSINESSES:**
Total dollars.....\$87,732
% of total protected class dollars..... .1%
% of total discretionary procurement..... .0%

- **HISPANIC BUSINESSES:**
Total dollars.....\$2,829,912
% of total protected class dollars..... 19%
% of all discretionary procurement..... 5%

- **AMERICAN INDIAN BUSINESSES:**
Total dollars.....\$183,071
% of total protected class dollars..... .1%
% of all discretionary procurement..... .0%

- **NON-MINORITY WOMEN-OWNED BUSINESSES:**
Total dollars.....\$5,639,210
% of total protected class dollars..... 38%
% of all discretionary procurement..... 10%

NOTE: The ethnic distribution shown above includes ethnic men and women.

EXEMPTIONS GRANTED FROM JULY 1, 1996 THROUGH JUNE 30, 1997:

The City's Affirmative Action In Contracting Ordinance allows for occasions when the City will be unable to carry out all provisions of the Ordinance. In such cases, the Ordinance authorizes Exemptions. During FY 1997, the total number of procurement Exemptions granted was 503. This represents a **decrease of 157 exemptions** less than FY 1996 at 660. Exemptions for procurement under \$25,000 are approved by the Director of Affirmative Action and Exemptions in excess of \$25,000 are reviewed and approved by the City Council. The number of Exemptions granted by individual department can be found in Exhibit " 5 ".

OUTREACH:

Business Outreach is an integral part of our Procurement program as it increases the accessibility of contracting opportunities for small, minority and women-owned businesses interested in doing business with the City.

To promote and increase W/MBE participation, Affirmative Action Staff conducts outreach to minority, women-owned businesses and professional associations to inform them of City contracting opportunities.

Staff conducts one-on-one meetings with businesses to explain City contracting and purchasing policies and procedures and links them with appropriate City procurement staff and project managers.

Staff also works with City Departments, assisting them in identifying minority and women-owned businesses for contract bidder lists and notification of Notice Inviting Bids and Request for Proposals. Staff encourages prospective bidders to outreach to local-based contractors for subcontracting bid solicitation. In addition, staff members attend pre-bid conferences and supply prime contractors with compiled lists of Small Business Enterprise and DBE contractors and subcontractors who may be available to perform subcontracting work required on a contract.

Department staff will continue to intensify outreach activities to local, small, and DBE to expand their participation in City contracting.

CHALLENGE AREAS:

On November 5, 1996 California voters passed the *California Civil Rights Initiative-Proposition 209*. *Proposition 209* states that "Neither the State of California or any of its political subdivisions or agents shall use race, sex, color ethnicity, or national origin as a criteria for either discrimination against, or for granting preferential treatment to any individual or group in the operation of the State's system for Public Employment, Public Education, or Public Contract.

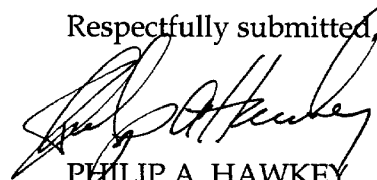
The passage of *Proposition 209* significantly impacts the City's Affirmative Action in Contracting Ordinance and the Disadvantaged Business Enterprise (DBE) program. Ordinance is being reviewed for conformity with Proposition 209.

Under the current DBE program, Minority and Women vendors who complete and sign our DBE Affidavit are presumed to be "Disadvantaged". This will change by requiring formal certification by another agency.

FISCAL IMPACT:

There is no fiscal impact.

Respectfully submitted,



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City Manager

Prepared by:



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