

Agenda Report

Date: MARCH 9, 1998
To: CITY COUNCIL
From: CITY MANAGER
Subject: CONTRACTING DISPARITY STUDY-AUTHORIZATION TO INCREASE CONTRACT NUMBER #15863 WITH MASON-TILLMAN & ASSOCIATES

RECOMMENDATION:

It is recommended that:

- 1). City Council increase the not to exceed amount of \$65,000 for Contract number #15863 to a new not to exceed amount of \$95,000, with Mason-Tillman & Associates to cover the cost of services performed as part of the Contracting Disparity Study.
- 2). City Council approves a Journal Voucher from the City Manager's Discretionary Reserve transferring funds in the amount of \$30,000 to the Affirmative Action & Diversity account #101-521000.

EXECUTIVE SUMMARY:

In December 1995, the City of Pasadena commissioned a study to determine whether any disparity existed between the amount of City contract dollars awarded to Women and Minority-owned firms and the availability of such firms in the City's general contracting area.

The City of Pasadena's Department of Affirmative Action and Diversity issued a **Request For Proposal** for a disparity study. A study of Contracting and Contracting Practices in the Relevant Contracting Market of the City of Pasadena to determine if there was discrimination in said market was commissioned with the requirements to:

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1. Conduct statistical analysis of the City's purchase order and contracts;
2. Determine whether the City's practices have disparate impact on Minority and/or Women-owned businesses;
3. Determine whether the City is properly reporting its progress with respect to the utilization of Minority and/or Women-owned businesses; and
4. Determine if the City is a passive participant in a discriminatory market.

In December 1995, Mason-Tillman & Associates was selected to perform the Disparity Study. A Pasadena-based sub-consultant, Golden State Management Services (GSMS), was selected to assist. The Director of Affirmative Action & Diversity assumed the position of Project Manager and coordinated the collection of contract records from City Departments and was the main interface with Mason-Tillman & Associates.

The Director was joined by the Purchasing Administrator from the Department of Finance, the Contract Compliance Administrator from Public Works & Transportation, and an Assistant City Attorney from the City Attorney's Office, as the Internal Disparity Study Team. The Affirmative Action Commission was responsible for providing oversight for the City Council.

Data was collected on construction, professional services, equipment/materials/supplies, and other service contract and purchase orders. Contract data was collected from the City's Departments of Finance (the Purchasing Division supplied most of the data), Housing & Development, Public Works & Transportation, and the Department of Water & Power. GSMS interviewed officials from these departments to determine how vendors are selected and how City bid procedures are followed.

In March 1997, Mason-Tillman & Associates delivered a preliminary draft study to the City. The draft findings indicated a disparity between the amount of procurement dollars awarded to Women and Minority-owned firms as compared to the percentage representation of such firms on the City's vendor list. However, review of the draft report revealed numerous inaccuracies with the data used to support the findings and called into question the methodology for determining the availability of Women and Minority-owned firms.

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The main source of information used in the study was the Purchasing Information System. This "stand-alone" system does not interface into the City's accounting or purchase order issuance systems. Consequently, all purchase order and contract information was manually entered into the system.

During the years covered by the study, there was no consistent methodology for entering contract and purchase order data into the Purchasing Information System. As a result there are missing pieces of information and many vendors and transactions are incorrectly classified in terms of ethnicity and type of procurement, i.e., construction, professional services, other services, equipment/materials/supplies. Additionally, a number of non-procurement related contracts are resident in the system and appear to be included in the study data. Examples of these inaccuracies include; a day care center listed as a material supplier; a Hispanic male listed as a White female; and a parking service company listed as a construction firm.

On July 21, 1997, the City received the second draft of the Disparity Study from the consultant. The results of the study were almost identical to the first draft, with the exception of about ten records. It was determined at a meeting held on October 17, 1997, with the consultant, the internal disparity study team, the Assistant City Attorney, and the Assistant City Manager that Purchasing could not provide the consultant with a comprehensive and accurate database. A review of the draft report however, revealed numerous inaccuracies with the data used to support the findings.

Also, of concern is the fact that vendors added to the City's vendor list after the study period were not factored out of the availability analysis. The analysis only considered firms listed with the City and did not compare availability data from outside agencies such as Cal Trans. The City Attorney's Office has questioned the validity of a study which does not include an external benchmark. Moreover, during the years covered by the study, the City added the contents of the Los Angeles Department of Water & Power's listing of Minority and Women-owned businesses to its vendor list. The inclusion of this listing may distort availability.

Correcting these various items would require review of tens of thousands of records by city staff familiar with the information. As there is no staff solely devoted to the study, it is estimated that such review would require nine (9) to twelve (12) months to complete. At the end of that period, additional consulting fees would be required in order to recalculate the data.

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In November 1996, California voters approved Proposition 209, the California Civil Rights Initiative, which effectively eliminated the types of race-based preference programs the disparity study was intended to support. Given the legal limitations established by Proposition 209, and considering the significant amount of work necessary to correct the data and complete the disparity study, staff recommends closing out the activities at this point.

Even with the recommendation to discontinue the disparity study, the preliminary study provided many useful recommendations, which largely as a result of the new PeopleSoft Financial System, have been implemented. Improvements include the use of "required fields" to ensure collection of vital pieces of information as well as use of governmental standard commodity codes to classify all purchases and vendors.

BACKGROUND:

In 1983, the City of Richmond, Virginia adopted its Minority Business Utilization Plan. Pursuant to the Plan, prime contractors awarded city construction contracts were required to subcontract at least 30% of the dollar amount of each contract to one or more "Minority Business Enterprises" (MBE's). In support of the Plan was a finding that although the city's population was 50% African-American, only 0.67% of its prime construction contracts had been awarded to minority businesses in preceding years.

The J.A. Croson Company, which lost a contract award for failure to meet the 30% set-aside, brought suit against the city. In January 1989, the United States Supreme Court, finding in favor of J.A. Croson, held that "generalized assertions" of past racial discrimination could not justify "rigid" racial quotas for the awarding of public contracts. In addition, the Court found that race-conscious contracting programs must demonstrate the existence of systematic discrimination through statistical and anecdotal evidence in order to be valid.

Subsequently, cities throughout the United States modified their Affirmative Action In Contracting Programs to be consistent with the Supreme Court's ruling. On March 21, 1989, the Board of Directors (City Council) of the City of Pasadena, adopted a motion that among other things "Authorize(d) the City Manager to modify, with the advice of the City Attorney, the Affirmative Action Administrator and the Affirmative Action Commission, current administrative practices under the City's Disadvantaged Business Program to the minimum extent necessarily to avoid conflict with the Croson decision."

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It also, "Authorize(d) the City Manager and City Attorney to work with the Affirmative Action Administrator and the Affirmative Action Commission to establish and implement a plan to generate the evidence necessary to support preference programs in accordance with the dictates of the Croson case."

Impact of Proposition 209

In November 1996, California voters approved Proposition 209, the California Civil Rights Initiative, which prohibits the State of California and any of its political subdivisions from using 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.

Representatives from the City Attorney's Office have stated that when the Study is completed, Proposition 209 would prohibit the City from establishing race-based preference programs in City contracting.

Study Recommendations and the PeopleSoft Financial System

Given the legal limitations established by Proposition 209 and considering the significant amount of work necessary to complete the disparity study, staff recommends closing out the activities at this point and requests City Council authorization to pay the consultant for work performed thus far, but which has exceeded the total value of the Contract.

As mentioned previously, much of the challenge in preparing the study was the lack of accurate data and difficulty in sorting and manipulating information. By contrast, the PeopleSoft Financial System will improve accuracy while eliminating duplication of effort and provide for much enhanced reporting.

Specifically, all data entry screens in PeopleSoft make use of "required fields" to ensure that all necessary pieces of information are collected on vendors and procurement transactions. Because the PeopleSoft system includes both a Purchasing and Accounts Payable module, it will be possible to determine the approved amount of purchase orders and contracts and compare that to actual expenditures. As this feature was not available prior to the implementation of PeopleSoft, the Disparity Study had to rely solely on approved/authorized amounts and could not analyze actual expenditures.

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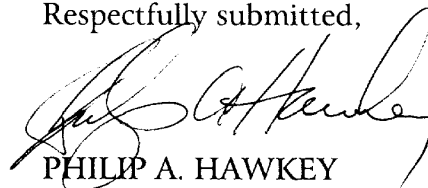
The ability to categorize vendors as well as goods and services purchased by the City is also a key feature of the PeopleSoft System. Every City purchase is now classified into one of several hundred commodity codes established by the National Institute of Governmental Procurement (NIGP).

Reports can be run to determine specifically how much the City is spending on any particular class of goods or services. Additionally, modifications are currently being made to the system to attach these same (NIGP) commodity codes to City vendor records to identify the goods or services they provide.

FISCAL IMPACT:


Sufficient funds to cover the additional consulting fees incurred thus far, are available through an approved journal voucher by City Council from the City Manager's Discretionary Reserve transferring funds to the Affirmative Action & Diversity account #101-521000.

Respectfully submitted,



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City Manager

Prepared by:



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LAC:fvp