




Office of the City Manager

INFORMATION CALENDAR

December 12, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Robert Hicks, Acting Director, Finance Department

Subject: Contract Compliance Audit – Status Report

SUMMARY

The City Auditor's Office performed a Citywide audit in FY 2004 on various aspects of contract compliance. At the time the audit was conducted, the City's Contract Management System (CMS) was used as a system to track contracts through a decentralized authorization process. The City Manager's Office was responsible for contract issues at the time of this audit. The current Finance – General Services Manager was hired in February 2004, as the audit was concluding. Contract Administration, as of April 2006, is the responsibility of Finance – General Services. In April 2006, the newly established classification of Contract Administrator in Finance – General Services was filled, and all contract management has become the responsibility of this Administrator. The audit included recommendations for the City Manager's Office (where contract management had previously resided), the Finance Department, and Information Technology. The objectives of the audit were to determine:

- Whether departments were in compliance with the City's competitive solicitation policies.
- Frequency of contract services being performed prior to contract execution.
- Whether contracts were executed or amended after the expiration of the contract.

The Audit Report was submitted to Council on May 18, 2004 with 5 of the recommendations implemented. This report is the first update on those recommendations that were not already implemented, and the next status report will come to Council on December 4, 2007.

The complete Citywide Contract Compliance Audit can be found on the City's website at: <http://www.cityofberkeley.info/auditor/currentaudits.htm>.

CURRENT SITUATION AND ITS EFFECTS

Of the 13 recommendations outstanding since the Audit Report was issued, 9 are implemented, one is partially implemented and/or in process, and 3 are not implemented but will be by July 2007. Currently outstanding or partially implemented recommendations are due to changes in the contract management process, or other demands on City resources.

Finding 1: Lack of Evidence of Competitive Solicitation and Bidding Requirements in Contract Package.

Recommendation for City Manager and Finance (1.2): We recommend that staff in the Purchasing Unit in Finance perform periodic sample reviews of the requisitions to see that evidence of competitive solicitation is documented. The results of periodic reviews should be sent to the Department Directors with copies to the City Manager when no evidence is provided.

City Manager's Response: Implemented. Competitive solicitation is currently being documented on each Purchase Requisition before a Purchase Order is issued by Finance – General Services, unless there is an approved waiver requesting a single or sole-source by the end user.

Recommendation for City Manager and Finance (1.3): We recommend that if a project manager cannot provide evidence of competitive solicitation, Purchasing should not approve the purchase without written approval from the City Manager.

City Manager's Response: Implemented. The City's Contract Administrator was hired and started in Finance in April 2006. Contracts are now verified for having either competitive bids or single/sole source approval by the City Manager.

Finding 2: Competitive Solicitation and Sole Source Requirements were Waived Without Sufficient Documentation.

Recommendation to City Manager, Finance and Information Technology (2.3): We also recommend:

- Requiring Department Directors to sign off on the request for waivers.
- Adding a question to the waiver of competitive solicitation form, asking whether the services have been waived in the past, and the reason.
- Creating a sole source waiver, separate from the waiver of competitive solicitation, so that the criteria are listed separately. Also, consider inserting language that requires the General Services Manager to sign the waiver, if the services are under \$25,000. (The City Manager is required to sign if the services are above \$25,000.)
- Considering the addition of a tracking mechanism (field) in CMS, which identifies competitive solicitation and sole source waivers. (Information Technology)

City Manager's Response: Alternatives Implemented. The Contract Administrator is now reviewing various contract documents, including the waiver of competitive solicitation form. Department Directors sign the Contract Review Form before the contract is given to the Contract Administrator, which lists the required contents of the contract package, and all attachments, including any waivers. All Requests for Waiver of Competitive Solicitation are submitted to, and must be approved by, the City Manager. The Contract Administrator will be able to determine if there is a pattern of requesting sole source, and will address the issue with the specific department. The Contract Administrator provides a single point of contact for contracts going through the system, and he is manually monitoring these contracts to ensure appropriate compliance.

Finding 3: Contract Work Started Prior to Contract Execution.

Recommendation for City Manager (3.1): We recommend that the City Manager reiterate in a memo to Department Directors and City staff the importance of not starting work on an expenditure contract prior to the contract being executed. In addition, the City Manager should consider adding specific contract language to the contract boilerplate to discourage this practice among contractors.

City Manager's Response: Alternative Implemented. We believe it is more effective for the Contract Administrator, who works directly and proactively with departments on their contracts, to reiterate that contracts must be complete before work begins. We have considered the Auditor's recommendation for adding language to the contract boilerplate to discourage the practice in question among contractors, and have concluded this language is not necessary at this time.

Recommendation for City Manager (3.2): We recommend that the City Manager also consider establishing a focus group for the purpose of determining ways to expedite contract execution and amendments.

City Manager's Response: Alternative Implemented. The Contract Administrator has improved the turnaround time for processing contracts from 3 weeks to 5.4 business days. We are also about to implement a process to enable the Budget Office to electronically approve Purchase Requisitions, which will also speed the process. Low-dollar, low-risk service procurements are being processed on Purchase Orders (POs) to also expedite services to departments.

Finding 4: Contracts Executed or Amended After Contract Term Expired.

Recommendation for City Manager (4.1): We recommend that the City Manager draft a memo to Department Directors and City staff reminding them that expired contracts should not be executed or amended. The memo should direct staff to go back to City Council to seek authorization retroactively, if the contract for services exceeds \$25,000, or the cost of supplies, materials, and equipment exceeds \$50,000. If the contract is less than the threshold amount, the department should resubmit a new contract to the City Manager's Office with an explanation for the expired contract or amendment.

City Manager's Response: Implemented. The Finance-General Services Manager issued a memo on changes in the "Blue-Backed" contract processing to all City departments on June 30, 2006, in which Department Directors and staff were reminded of the requirements.

Recommendation for City Manager (4.2): We recommend that the contract on-line procedures be updated to include the City Attorney's June 23, 2003, provision documenting the authority of the City Manager to extend the term of a personal service contract by giving written notice.

City Manager's Response: Not Implemented. The City Attorney's provision is one of many changes to be made in the contract on-line procedures. The Contract Administrator will update this procedure to reflect current practice by June 2007.

Finding 5: Project Managers Exceed Approved Spending Limits.

Recommendation for City Manager and Finance (5.1): We recommend that the online contract procedures be updated to explicitly state that a new contract, blanket purchase order, or voucher, should not be used to pay for expenditures associated with an existing contract.

City Manager's Response: Not Implemented. Contracts Online is in the process of being updated, and updates to the online contract procedures are expected to be completed by June 2007.

Recommendation for City Manager and Finance (5.3): We recommend that Purchasing consider developing a tracking mechanism to document and report on the frequency, dollar amounts, and associated vendors tied to the names of project managers who inappropriately use purchase orders and vouchers to pay for services that should be established through a contract. This report should be prepared by Purchasing and distributed to Department Directors with copies to the City Manager periodically throughout the year.

City Manager's Response: Not Implemented. The General Services Manager and Contract Administrator are investigating using "Impromptu" software to extract data from FUNDS to produce reports for distribution. We plan to have these reports in place by July 2007. The outcome will be reported in the next update on December 4, 2007.

Finding 6: Contract Management System (CMS) Data was Inaccurate and Incomplete.

Recommendation for City Manager, Finance, and Information Technology (6.1): We recommend that the City Manager consider taking steps to improve the accuracy of data input into CMS by developing an on-line CMS training class for project managers.

City Manager's Response: Alternative Implemented. Responsibility for contract management was moved to Finance – General Services, under the Contract Administrator. The Administrator is working closely with project managers in all departments on their contracts and procedures. At some point in the future we will consider developing additional online or other training.

Recommendation for City Manager, Finance, and Information Technology (6.2): The City Manager should also consider creating a centralized contract-review function in an existing department to review the CMS records for completeness and accuracy and use those records to periodically monitor contract compliance issues, such as competitive solicitation, which represent potential risk to the City. This task could be assigned to Purchasing; alternatively, since staff in the City Manager's Office review contracts before they are executed, they could perform this review

City Manager's Response: Implemented. We established and recruited for the position of Contract Administrator in the Finance Department. The position was filled in April 2006.

Recommendation for City Manager, Finance, and Information Technology (6.3): The City Manager should also consider requesting Information Technology to make the following changes to the existing system:

- Adding a look up feature for project managers, departments, and vendor names either in the existing CMS system or a future system.
- Adding a required field for contract amounts and not-to-exceed amounts.
- Eliminating the “Effective” date code, since most project managers use it interchangeably with the “Start” date code.

City Manager’s Response: Alternative Partially Implemented.

- A Contract Imaging Project was started in November 2006, which is the first phase of fully automating contract management and oversight citywide. This project will provide a means to get all the disparate documents indexed and cross-referenced, and will provide an important foundation for future automation.
- The CMS system is fragile from a programming standpoint. It was developed in an obscure programming language and major alterations may render it unusable. As is, it is functional to a level that it provides some level of monitoring and communication among stakeholders. A more robust and functional system is on Information Technology’s imaging work plan and represents the second phase of an entire automation process. Upon the conclusion of the pilot imaging projects now underway, IT and the TGG will jointly evaluate the priority of a new system in relation to other imaging project requests. The result of that evaluation will be reported in March, 2007.

Finding 7: Initial Vendor Bid Price did not Adequately Include Consideration of Vendor Maintenance Costs

Recommendation for the City Manager and Finance (7.1): We recommend that when the City issues an RFP for equipment where maintenance can only be provided by the vendor, the City considers requiring the vendor to include maintenance costs as part of their initial bid beyond the first year.

City Manager’s Response: Implemented. The recommendation was partially implemented on April 14, 2004. In addition, instructions to include maintenance costs have recently been added to the boilerplate for the Request for Proposals (RFP) and the Invitation for Bids (IFB) as an instruction.

BACKGROUND

Citywide contract management was overseen by staff in the City Manager’s Office (CMO) for several years. In early 2006, the new position of Contract Administrator was established and filled in Finance – General Services, and contract management shifted to the Finance Department. Since then, the Contract Administrator has worked assiduously with existing materials and Citywide staff to make the contract process as effective and efficient as possible, with up-to-date best practices. This has included input and expertise from the offices of the City Attorney and City Auditor, which are critical to the contracting process.

Along with contract management responsibilities, an original version of “Contracts Online” moved from CMO to Finance, and efforts have been underway to both update the user interface

for access to information and forms, and revise the content and forms themselves, to reflect current information and procedures. This is a complex and detailed project, which will continue through at least calendar year 2007.

The Citywide Contract Compliance Audit was conducted when the management of General Services, which includes procurement, was in transition from a previous manager through the hires of two interim staff, before the current General Services Manager came on board. In addition, as has been said, CMO staff had been responsible for overseeing contract management and maintaining Contracts Online, in addition to their other assignments. City Attorney staff continues to have responsibility for legal input and review in the contract process, and the City Auditor provides review and oversight.

POSSIBLE FUTURE ACTION

Future actions include continued improvements to all City contract processing and related systems, and upgrades to content and forms in Contracts Online.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Without adding any additional staff beyond the present budgets of Finance or other departments, the primary fiscal impacts would be in savings resulting from the most effective and efficient use of current resources. This includes cooperation among all parties to enhance staff capacity, soliciting the best possible prices for goods and services, and expediting and monitoring contracts, while assuring compliance with all City policies and procedures.

CONTACT PERSON

Sharon Thygesen, General Services Manager, Finance, 510.981.7329

Mike Hoke, Contract Administrator, Finance, 510.981.7326