City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
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Meeting Date: **3/22/2011** **Report Type:** Staff/Discussion

Title: Workshop: Overview of City Contracting Requirements

Report ID: 2011-00154

Location: Citywide

Recommendation: Receive and file an overview of the City's contracting requirements and policies.

Contact: Joe Robinson, Senior Deputy City Attorney, (916) 808-5346, Office of the City Attorney, Reina Schwartz, Director, Department of General Services.

Presenter: Jerry Hicks, Supervising Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Department: City Attorney / General Services
Division:
Dept ID:

Attachments:

1-Description/Analysis
2-PowerPoint

City Attorney Review
Approved as to Form
Jerry Hicks
3/17/2011 11:00:39 AM

City Treasurer Review
Prior Council Financial Policy Approval or Outside City Treasurer Scope
Russell Fehr
3/15/2011 3:16:29 PM

Approvals/Acknowledgements

Department Director or Designee: Eileen M. Teichert - 3/16/2011 4:21:59 PM

Assistant City Manager: Cassandra Jennings - 3/17/2011 10:37:39 AM

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Description/Analysis

Issue: The City enters into contracts on a daily basis, and any given City Council meeting agenda typically includes a variety of different contracts that require City Council approval. The purpose of this presentation is to provide a general overview of the City's contracting requirements and policies. A copy of the power point presentation is attached.

Policy Considerations: This presentation provides a summary description of the legal framework and City policies that govern the approval of contracts by the City Council and City staff under the City Charter and the City Code, and the City Attorney's role in that process. Adherence to consistent contract approval requirements ensures that the appropriate decision-makers are committing the City to the expenditure of public funds and the assumption of other contractual obligations.

Environmental Considerations: This is an information-only item that does not require environmental review.

Sustainability: This is an information-only item that does not raise any sustainability issues.

Commission/Committee Action: None

Rationale for Recommendation: This presentation is intended to provide the Mayor and City Councilmembers with a high level overview of the requirements and policies that govern the approval of various contracts by the City Council and by City staff.

Financial Considerations: For many types of contract, below specified dollar thresholds the City Code delegates approval authority to designated City staff, and contract approvals above these thresholds require City Council action. Other types of contract require City Council authorization for approval regardless of dollar amount.

Emerging Small Business Development (ESBD): No services or supplies are being purchased in connection with this item.

CITY OF SACRAMENTO
OVERVIEW OF CONTRACTING REQUIREMENTS

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Presented by:

City Attorney's Office

Department of General Services

March 22, 2011

INTRODUCTION

- This is a general overview of the legal requirements and policies that govern City contracting
- The City enters into approximately 2,000 contracts annually, ranging from no-cost change orders to multi-million dollar agreements
- City Council agendas typically include multiple contract approvals; many more are approved by City Manager and other authorized staff exercising delegated authority

WHAT IS A "CONTRACT"?

- Any form of agreement that gives rise to a legal obligation
- In order to bind City, must be in writing (no verbal agreements)
- Can have many different names: Contract, agreement, purchase order, lease, MOU, MOA, LOA, ERN, IPA, etc.

WHAT IS A "CONTRACT"?

- Also includes documents that modify an existing contract (amendment, supplemental agreement, change order…)
- An inter-departmental agreement is not a "contract"

COMMON CITY CONTRACTS

- Procurement of supplies, services and construction work
- Real property: purchase, sale, lease
- Settlement agreements
- Labor agreements (collective bargaining)
- Land use/development agreements
- Interagency agreements

CITY ATTORNEY'S ROLE

- Standard Agreement Forms:
  - City Attorney's Office (CAO) has approved many standard agreement forms that are routinely used to provide consistency and expedite the contracting process
  - Generally included in any competitive solicitation
  - Standard form "legalese" lacks allure but is critical if anything goes wrong
  - The use of standard forms requires City staff to alert CAO to any proposed changes
- Non-Standard Agreements:
  - Generally used for more complex projects
  - CAO typically participates in negotiation and drafting process
  - More lead time required

CITY ATTORNEY'S ROLE

- Approval as to form of contracts routed to CAO:
  - CAO approval generally occurs after the other party signs, but before approval by the Department head/City Manager/City Council
  - CAO approval means CAO has determined that the contract is legally enforceable and accurately reflects the agreement being recommended by City staff
  - Approval as to form does not signify approval of the contract's "business points" nor does it mean that the proposed agreement carries no legal risk to the City
  - CAO approval of a standard form assumes no changes unless indicated by City staff

CONTRACTING REQUIREMENTS – WHY HAVE THEM?

- For procurement of supplies, services and public projects, an open, competitive process prevents fraud and favoritism and obtains the best economic result for the public

- Formal approval requirements ensure that the appropriate level of decision-maker is committing City to the expenditure of public funds and the assumption of other contractual obligations

- Consistent requirements ensure that City's interests are protected in a manner that is consistent and fair to all contracting parties

CONTRACTING REQUIREMENTS – WHERE DO THEY COME FROM?

- City Charter
- City Code
- State and federal requirements
  - General law
  - Contractual conditions
- City procurement policies

CONTRACT REQUIREMENTS: CITY CHARTER

- § 10: The City shall have the right and power to enact and enforce laws and regulations governing "municipal affairs"
- § 20: All powers of the City are vested in the City Council except as otherwise provided in Charter
- § 30(c): City Council shall act by ordinance, resolution or motion
- § 61(h): City Manager has the power and duty to execute contracts on City's behalf, when authorized to do so by Charter, ordinance or resolution
- § 181: City Council authorized to lease or sell real and personal property in accordance with procedures adopted by ordinance

CONTRACT REQUIREMENTS: CITY CHARTER

- § 200: Directs City Manager/designated representatives to contract for supplies, services or public projects as provided by ordinance

- §§ 201-202: Ordinances governing public project contracting and the purchase of supplies shall establish monetary threshholds for public competitive bidding and award to lowest responsible bidder (LRB)

- § 203: City Council may do any of the following: reject all bids, rebid after rejecting bids, or suspend competitive bidding in the City's best interests (2/3 vote)

CONTRACTING REQUIREMENTS: CITY CODE

- Supplies, nonprofessional services, and public projects:
  - City Code Chapters 3.56 and 3.60
  - Supplies: "Supplies, goods, equipment and materials, including materials required for the maintenance or repair of any street, sewer or water work"
  - Nonprofessional Services: "Services of a nonprofessional character of any type, description or variety including, but not limited to, tree trimming services, janitorial services, repair services for office machines and equipment, and automotive vehicles"
  - Public Project:
    - "A project for the erection, improvement, and remodeling of public buildings and works;
    - Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow;
    - Street, sewer or water work except maintenance or repair;
    - Furnishing supplies or materials for any such projects."

Supplies, nonprofessional services, and public projects (cont.)

- Contracts ≥ $100,000:
  - City Council awards
  - Competitive bidding and award to LRB, unless City Council rejects bids, or suspends comp bidding
- Contracts < $100,000: Follow City Manager's administrative policies (Council-approved)
- Contract splitting prohibited
- Cooperative purchasing agreements for supplies/NP services – no additional competitive bidding required

Supplies, nonprofessional services, and public projects (cont.)

- Lowest responsible bidder:
  - Lowest bid determined after applying any bid evaluation preference
  - Factors considered in determining responsibility:
    - Ability, capacity and skill of bidder to perform the contract within the time specified
    - Character, integrity, reputation, judgment, experience and efficiency of the bidder
    - Performance on previous City contracts
    - Yes/No determination
- To be valid a bid must be responsive

CONTRACTING REQUIREMENTS: CITY CODE

- Professional service agreements
  - City Code Chapter 3.64
  - Includes "professional services of any type or variety, including, but not limited to, services rendered by engineers, architects, auditors, consultants, actuaries and attorneys"
  - RFP or RFQ process rather than bids
  - Evaluation based on qualifications + price
    - Exception: Architecture/Engineering services
  - Agreements ≥ $100,000 require City Council approval
  - Agreements < $100,000: Follow City Manager's administrative policies

CONTRACTING REQUIREMENTS: CITY CODE

- Chapters 3.04, 3.68, 3.88: Lease/sale of real property
- Chapter 3.72: Concession contracts
- Chapter 16.48: Subdivision improvements
- Chapter 18.16: Development agreements (approved by ordinance)
- Chapter 18.18: Form agreements related to infrastructure funding in North Natomas

OTHER CONTRACTING REQUIREMENTS

- ESBD (City Code Chapter 3.60, art. VIII)
- Equal benefits ordinance (City Code Chapter 3.54)
- Prevailing wage (City Code § 3.60.180)
- Living wage (City Code Chapter 3.58)
- Minimum qualifications (City Code § 3.60.020)
- Local sales/use tax bid preference (City Code § 3.56.020)
- C & D debris recycling (City Code Chapter 8.124)
- Arizona restrictions (Resolution No. 2010-346)

STATE/FEDERAL REQUIREMENTS

- Various laws/regulations govern City contracting
  - Examples:
    - Subcontractor Listing Law
    - Stop Notice Law
    - OSHA requirements
- Other requirements may apply due to state or federal funding:
  - Generally not negotiable
  - Examples:
    - Davis Bacon
    - M/W/DBE
    - Buy American

CONTRACT SIGNATURE AUTHORITY

- City Charter: All powers are vested in City Council except where power has been delegated, by ordinance or resolution
- Delegation can be for a specific contract, or can authorize City staff position (typically the City Manager or CM and CM designees) to execute a category of contracts
  - Example: CM/CM designees can sign supply, service and construction contracts <$100,000 (City Code §§ 3.56.080, 3.60.080, 3.64.030)
- Absent a delegation of signature authority, City Council approval is required, regardless of contract amount

CONTRACT AMENDMENTS

- For supplies, services and construction, the City Code authorizes the City Manager/designee to approve contract amendments within limits:
  - Contracts < $100 K: No limit if contract amount remains < $100 K
  - Contracts ≥ $100 K but < $250 K: $25,000
  - Contracts ≥ $250 K but < $1 million: 10 %
  - Contracts ≥ $1 million but < $10 million: 8 %
  - Contracts ≥ $10 million: 6 %
  - Any single increase > $100 K requires City Council approval
- City Council may modify limitations by Resolution

THE CONTRACTING PROCESS

- From inception to Council approval, a contract may take several months or even years, depending on many issues including:
  - The size or complexity of the project
  - Negotiations on business points
  - Funding issues
  - Compliance with environmental and other regulatory requirements
  - The number of parties to the agreement

THE CONTRACTING PROCESS

- The City Manager requires all contracts and related contract documents to be approved as to form by the City Attorney's Office
- The City Clerk's Office receives all finalized contracts for filing and posting to the Citywide Content Management (CCM) system
- These requirements apply to contracts both above and below the $100,000 delegated signature authority threshold

ADMINISTRATIVE POLICIES

- Administrative procurement policies are basic principles or rules by which City staff are guided
- Administrative policies must align with legal requirements
- Administrative procurement policies define roles and authorities for purchasing of supplies and services

ADMINISTRATIVE POLICIES

- Administrative procurement policies approved by City Council in February 2010:
  - AP 4001: Supplies
  - AP 4101: Non-professional services
  - AP 4002: Public projects
- Administrative procurement policies approved by City Manager (do not require Council approval) in February 2010:
  - AP 4003: Sustainable purchasing policy
  - AP 4102: Professional services

ADMINISTRATIVE GUIDELINES

- Administrative procurement guidelines are recommended practices that allow some discretion in their interpretation, implementation or use. They provide additional direction to staff on ensuring compliance with the City Code and approved policies.
- Administrative procurement guidelines are in development and expected to roll out in 2011:
  - AG 4001: Supplies
  - AG 4101: Non-professional services
  - AG 4002: Public projects
  - AG 4102: Professional services

PROCESS IMPROVEMENT

- Department audits are conducted periodically to verify policy and procedural compliance, identify deficiencies and corrective actions, and to make "best practices" recommendations
- Audit findings and recommendations are used by departments to correct deficiencies, and revise or re-engineer procedures and controls
- Contracting procedures citywide are modified to address systemic issues and changing legal requirements

PROCESS IMPROVEMENT

- The project management and contracting practices of the Department of General Services (along with the Procurement Division and the City Clerk's Office) were audited in 2006
- Since that time, contracting, project management and records management processes have all been re-engineered to reflect best practices and recommendations of the 2006 audit