



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Scott P. Johnson

**SUBJECT: IMPLEMENTATION OF
PROCUREMENT REFORMS**

DATE: November 1, 2006

Approved

Kay Wines

Date

11/6/06

RECOMMENDATION

1. Accept the report on the implementation of approved Procurement Reforms.
2. Adoption of a resolution approving Council Policy titled "Procurement and Contract Process Integrity and Conflicts of Interest"

OUTCOME

Through adoption of this set of procurement reforms, the legal framework for the procurement of supplies, materials, equipment, and services will provide for increased transparency, consistency, fairness, and openness and streamline procurement processes.

EXECUTIVE SUMMARY

This memorandum responds to the Council's approval of comprehensive Procurement Reforms on December 6, 2005 and the direction to the City Manager and City Attorney to implement such reforms. The approved procurement reforms include an increase in the Council Appointees contract approval authority from \$100,000 to \$1 million, revamping of the Municipal Code governing the procurement of supplies, materials, equipment, and services to ensure consistency, transparency, and openness, and the centralization of professional services.

BACKGROUND

On June 22, 2005, the Santa Clara County Civil Grand Jury issued a report titled "City of San José Procurement Policies, Procedures, and Practices." In this report, the Civil Grand Jury outlined four recommendations. Staff agreed with the four recommendations and incorporated the recommendations as well as applicable City Auditor recommendations, the October 2004

Management Reforms, and Best Practices in Public Procurement in the Procurement Reforms presented to Council on December 6, 2005.

On December 6, 2005, Council directed the City Manager and City Attorney to implement comprehensive procurement reforms which included revising applicable Municipal Code sections, formulating a Council Policy titled "Procurement and Contract Process Integrity and Conflicts of Interest", and reaching out to various stakeholders about the approved reforms. The procurement reforms were approved to enhance transparency, ensure consistency, streamline the procurement process, increase competition, and provide for a fair and open procurement environment.

On December 13, Council directed the City Manager and City Attorney as part of the Mayor's Biennial Ethics Review to include all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 in the aforementioned Council Policy and to apply the policy to all competitive processes.

ANALYSIS

This section provides a discussion on the Council approved Procurement Reforms and recommends the adoption of a new Council Policy, titled "Procurement and Contract Process Integrity and Conflicts of Interest."

Procurement Reforms

The discussion below summarizes outreach to stakeholders, changes in the application of the Local and Small Business Preference for procurements on behalf of the San José – Santa Clara Water Pollution Control Plant, and a status report on the implementation of Council approved Procurement Reforms.

Outreach to Stakeholders

Between February and August 2006, staff met with the Small Business Development Commission, the Treatment Plant Advisory Commission, and the Contracting-In Committee.

As directed by Council, Finance staff met with the Small Business Development Commission. In the March 2006 meeting, the commission welcomed the reform package and asked to review the package in detail until the April meeting. In April 2006, the commission recommended approval of the reform package. The Commission was very encouraged by the fact that Finance was recommending streamlining the interaction with the vendor community through an e-procurement tool and by the proposal to shorten the procurement cycle while increasing the transparency of the procurement process.

November 1, 2006

Subject: Implementation of Procurement Reforms

Page 3

In February 2006, Finance presented the reform package to the Technical Advisory Committee (TAC), the staff committee for the Treatment Plant Advisory Committee. At the February meeting, TAC expressed concern about receiving information on award of contracts for professional services with a contract value between \$100,000 and \$1 million. Based on the input received, Finance and ESD proposed at the March TAC meeting that TPAC receive a monthly report of ongoing and awarded procurements for supplies, materials, equipment and services. In June, Finance proposed to the TAC that it recommend including the use of the local and small business preference to contracts awarded on behalf of the San José – Santa Clara Water Pollution Control Plant. The current Municipal Code specifically excludes the application of the preferences (Section 4.06.050.B). Based on TAC's recommendation, in June 2006 Finance reported on the discussion of comprehensive procurement reforms and the recommendation to apply the City's Local and Small Business Preference to procurements for the Water Pollution Control Plant. Following TPAC's acceptance of the report in August 2006, Finance returned to TPAC for approval of the City of San Jose Procurement Reforms including the application of the City's Local and Small Business Preference to procurements for the Water Pollution Control Plant. The item was approved unanimously by the Committee. Upon Council approval of the ordinance implementing the procurement reforms, Finance and ESD will establish internal procedures for the monthly reporting of procurement activity for the Water Pollution Control Plant.

In May 2006, Finance presented the procurement reform package to the City's Contracting-In Committee, which consists of City staff and representatives from the bargaining units. Initially, the Committee voiced concerns about the increase in City Manager approval authority from \$100,000 to \$1,000,000. As described in the October 20 information memorandum from the City Manager to the Council, the Contracting-In process was developed in 2004 by an interdepartmental task force in consultation with labor representatives. The program's goals are to maintain service delivery performance, maximize budget resources, provide uniformity and consistency in decision making, and facilitate opportunities to retain City employees impacted by position reductions due to budgetary or realignment issues. The contracting-in process requires that departmental staff analyze services that have been, or are proposed to be, contracted out. Currently, any proposed contract service for \$100,000 or above is subject to Contracting-In review.

To address the Committee's concerns, the contracting-in process will continue as established with the Performance Development Manager, Human Resources Department, signing off on the contracting-in process after consultation with affected bargaining units prior to contract award by the Director of Finance. If any bargaining unit believes that a particular service with a contract value between \$100,000 and \$1 million should be contracted in versus provided through a contractor and City staff differs in that opinion, the bargaining unit representatives may request Council approval of that contract by submitting such a request to the Director of Finance. The request shall state the reasons for the request and any substantiating facts for contracting-in of that service. Upon receipt of the request from representatives of bargaining units, the Director of Finance will award the award of contract at the next possible Council meeting.

Application of the Local and Small Business Preference

As discussed above, at the August 10, 2006 meeting, the Treatment Plant Advisory Committee agreed to the application of the City's local and small business preference to procurements on behalf of the San José – Santa Clara Water Pollution Control Plant.

Additionally, as directed by Council through acceptance of the procurement reforms, staff will report annually, in summary form, on contract awards to local and small businesses.

Status Report on Implementation of Procurement Reforms

The section below summarizes the status of the various efforts to implement the Council approved Procurement Reforms such as the changes to the applicable Municipal Code Sections, the forthcoming web-based Request for Proposal manual, centralization of contracting for professional services, the publication of the City policy titled "Source Selection Plan", and the status of the RFP for an e-procurement system.

1. Changes to the Municipal Code governing Procurement of Supplies, Material, Equipment and Services: As directed in December 2005, in close cooperation with the City Attorney's Office, staff is proposing a revision of the Municipal Code sections governing the procurement of Supplies, Material, Equipment, and Services. The accompanying memorandum from the City Attorney describes the changes to the various Municipal Code sections. With the adoption of these changes, the Municipal Code governing procurement will be streamlined, be more transparent, and allow for a protest process for unsuccessful bidders and interested parties.
2. Request for Proposal Manual: After receiving input and addressing concerns with various stakeholders about Council approved Procurement Reforms, staff embarked on the implementation of these reforms. In May 2006, the City Manager's Office dedicated a staff person part-time to work with Finance in the development of a web-based Request for Proposal manual. As of the date of this Report, the online manual was 75% finished. The manual will address over 20 audit recommendations and incorporate the October 2004 Management Reforms. Specifically, the manual provides enhanced review through the City Manager's, City Attorney's, and City Auditor's Office for complex RFPs. Based on established criteria, the City Manager's Office determines whether an RFP is complex enough to require the additional review by the City Auditor's Office. To ensure proper usage of the manual citywide, each department will designate a "Certified Contract Specialist," trained by Finance, who will provide guidance in the development and evaluation of RFPs. In the course of its development the manual has been reviewed by

representatives from several departments, the City Attorney's Office, and the City Auditor's Office.

3. Centralization of contracting of Professional Services: Through the 2006-2007 budget process, Council approved the addition of two staff members in Finance/Purchasing to oversee the contracting process for professional services. The addition of two staff members will allow Finance to provide guidance and assistance to all City departments in the procurement of professional services. Additionally, all protests for award of contract will be heard by the Director of Finance, delegated to the City's Chief Purchasing Officer, to ensure transparency and openness. Through subsequent budget proposals, Finance intends to strengthen the centralization of professional services as intended by the Santa Clara County Civil Grand Jury recommendation.
4. City Policy titled "Source Selection Plan": As directed by Council in December 2005, in February 2006, the Administration published a City Policy titled "Source Selection Plan," which provides for a comprehensive planning tool for procurements above \$1 million.
5. Implementation of an E-Procurement System: Through the 2006-2007 budget process, Council approved the funds for a hosted e-procurement system. The e-procurement system will enhance the interaction between the City and the City's vendor community by allowing vendors to register online for contracting opportunities, receiving email notification of contracting opportunities based on the vendor's profile, and online bidding. Staff developed the Request for Proposal (RFP) for the hosted application and submitted approval for issuance of the RFP to the Information Technology Planning Board (ITPB). ITPB will hear the item during the November meeting. As part of the hosted solution, Finance intends to publish all contract awards on the Internet to enhance openness in government contracting.
6. Contract Award Process for Contracts with a Value up to \$1 million: To ensure compliance with all applicable rules and regulations including CEQA, Living and Prevailing Wage, and Contracting-In, Finance has been developing a Contract Award Check List. Only after the responsible staff member for the contract certifies that all municipal code requirements and Council Policies were followed as outlined on the checklist, will the contract be sent to the City Attorney's Office for approval as to form and to the Director of Finance, or as delegated to the City's Chief Purchasing Officer, for execution on behalf of the City.

Council Policy titled “Procurement and Contract Process Integrity and Conflicts of Interest”

As directed by Council, staff developed the Council policy titled “Procurement and Contract Process Integrity and Conflict of Interest” (see Attachment 1). The policy outlines the communication protocol between potential respondents and/or respondents to a City solicitation and the City throughout the solicitation process from issuance of solicitation until award of contract, the respondents’ code of conduct, the confidentiality requirement throughout the evaluation process, and a conflict of interest process for staff members or outside parties (compensated and uncompensated) for the development of specifications and the evaluation of responses. To implement the Council Policy, staff will develop and publish a City Policy which contains specific Conflict of Interest questionnaires utilized to assess a potential conflict of interest and describe applicable processes. The City policy will be reviewed by the City Auditor’s and City Attorney’s Office prior to publication. The policy also outlines the process for identification and allegations of Conflict of Interest and Misconduct. Any information indicating a possible Conflict of Interest shall be reported to the Procurement Contact, who will confer with the City Attorney’s Office. Any allegations of misconduct received under any circumstances can be reported to any office, including the offices of elected officials.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ✓ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1 and 2. The memorandum was posted on the City’s website prior to consideration by Council. Additionally, the memorandum was emailed to the Chair of the Small Business Development Commission and members of the Contracting-In committee.

As discussed previously, to ensure appropriate outreach to various stakeholders, the Council approved Procurement Reforms were presented to the Treatment Plant Advisory Committee, the Small Business Development Commission, and the Contracting-In Committee.

COORDINATION

This project recommendation has been coordinated with the City Attorney's Office, the City Auditor's Office, and the City Manager's Office.

FISCAL POLICY ALIGNMENT

This Council item is consistent with Council approved General Budget Principle, "We must continue to streamline, innovate, and simplify operations so that we can deliver services at a higher quality level, with better flexibility, at a lower cost."

COST IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.



SCOTT P. JOHNSON
Director, Finance

For questions please contact Walter C. Rossmann, Chief Purchasing Officer at (408) 535-7051.

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 1 of 4	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY COUNCIL ACTION ON

Background

On December 13, Council directed the City Manager and City Attorney as part of the Mayor's Biennial Ethics Review to develop this Council Policy which includes all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 and apply this policy to all competitive processes.

Purpose

The purpose of this policy is:

1. to ensure integrity in the procurement and contract processes;
2. to educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interests; and
3. to establish guidelines for procedural screening of Conflicts of Interests.

Policy

It is the policy of the City of San Jose to provide a fair opportunity to participants in competitive processes for the award of City contracts by promulgating integrity and removal of Conflicts of Interests through the inclusion of the following components in all competitive solicitations. Procurement and contract activities are defined as but not limited to specification development, preparation and issuance of solicitations, evaluation of solicitations and submissions, and other evaluations which lead to an award of a City contract.

I. Communication Protocol:

This section describes the characteristics of appropriate communication between respondents and the City during various phases of a solicitation.

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 2 of 4	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY COUNCIL ACTION ON

A. After Issuance of Solicitations and prior to Submission deadline for Solicitations:

After issuance of solicitations, all contact between prospective respondents and the City must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

All requests for clarification, objections to the structure, content, or distribution of a solicitation, or other inquiries must be made in writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the solicitation.

B. After Submission Deadline of Solicitations and prior to Issuance of a Notice of Intended Award:

After the submission deadline of solicitations, all contact regarding the procurement between respondents and the City and participants in the evaluation process, who are not City employees, must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

D. After Issuance of a Notice of Intended Award:

The City will issue a Notice of Intended Award to all respondents including the basis for selection and instructions for filing a protest. All respondents shall follow the procedures for protest as indicated in the solicitation document. During the protest period, City staff, elected officials, and consultants will refer all inquiries to the Protest Hearing Officer identified in the solicitation document.

II. Respondent’s Code of Conduct

By submitting a response to a City solicitation, respondents agree to adhere to this Policy and are individually and solely responsible for ensuring compliance with this policy on behalf of the respondent’s employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response.

In addition to adhering to the various sections of the policy, respondents may not

- collude, directly or indirectly, among themselves in regard to the amount, terms or conditions of a solicitation;
- influence any City staff member or evaluation team member throughout the solicitation process, including the development of specifications; and

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 3 of 4	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY COUNCIL ACTION ON

- submit incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

Any evidence that indicates that a Respondent has failed to adhere with any section of this policy may result in the respondent's disqualification from the procurement as well as possible debarment.

III. Confidentiality during Evaluation Process

City staff, consultants, and outside evaluators, who are participants in the evaluation process are required to sign a Confidentiality Agreement, which binds the participants not to share any information about responses received and the evaluation process until the City issues a Notice of Intended Award.

IV. Conflict of Interest

Per the General Rule with Respect to Conflicts of Interest, as outlined in the City Policy 2.01, "Code of Ethics", City elected officials, appointed officials, their staffs, and City employees are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

In general, Council Appointees shall take measures to ensure that the City avoid any conflict of interests in procurement processes of City contracts. Specifically, these measures include that

1. professional procurement and contracting staff, including buyers, managers, department heads, members of the City Attorneys office and others who regularly participate in the making of contracts on behalf of the City to disclose relevant financial interest as required by State Law and by City Policy and to annually review those statements in conjunction with this Policy and other ethical standards.
2. persons who may not be regularly involved in City procurements to review this Policy and other ethical standards and to elicit such information from them to enable the City to determine if the person's participation would create a conflict of interest. Such persons shall include, but are not limited to:
 - a. authors of specifications
 - b. paid and unpaid evaluators
 - c. paid and unpaid consultants who assist in the procurement process
3. the person managing the procurement shall discuss any potential conflict of interest identified with the City Attorney's Office and document the resulting determination, and take appropriate action including, but not limited to, removal of an employee,

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 4 of 4	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY COUNCIL ACTION ON

consultant, or outside uncompensated party from the procurement activity or cancellation of a solicitation.

4. the City Manager, in consultation with the City Auditor and City Attorney, publish an administrative policy outlining the procedural elements of this Council policy.

This Policy is intended to set a balance between careful adherence to good procurement and contracting principles together with thorough examination of potential conflicts of interest against an undue burden on the participants in procurement and contracting processes. By establishing the following exceptions to the procedures to be administered by the City Manager, it is not intended to suggest that there is a lesser requirement with regard to ethical standards, but rather a need to have a less burdensome process with regard to certain procurements and contracting activities. The following competitive processes are not subject to procedural requirements as administered by the City Manager:

1. Any contracting activity with an estimated value less than \$100,000.
2. Disposition of goods as described in the Municipal Code Section 4.16.
3. Award of grants by the City with a value below \$10,000.

V. Allegations of Conflict of Interest

Prior to the solicitation release up to award of contract, any allegations of Conflict of Interest by a City employee, consultant, or other participant in the pre-solicitation and solicitation process shall be reported to the Procurement Contact. The Procurement Contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.

VI. Allegations of Misconduct

At any time during a solicitation process, any misconduct by a City employee, consultant, or other participant in the pre-solicitation and solicitation process, shall be reported to the City's Chief Purchasing Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultation with the City Attorney's Office and others as appropriate. Nothing in this Policy is intended to prohibit anyone from communicating with the City Manager's Office, the City Attorney's Office, the City Auditor's Office, or the Mayor or any City Council Member about any alleged misconduct.