

Sunshine Reform Task Force
Phase I Report and Recommendations, Public Meeting Provisions

Non-Governmental Body Feedback, 10/18/07

Provisions	Barriers to Implementation
Section 1. Definitions	
1.13 Non-Governmental Body	Thank you both for the progress on SRFT as it relates to The Tech. The Tech does not believe there are any barriers for us to implement / comply with the Phase I Report and Recommendations as presented at today's meeting. You have our full support. (Terry Boyle, The Tech)
"Non-governmental body" means:	
A. The contractor operates or fully maintains any community center or a City facility with a value of over \$5,000,000; or	Valuation can be a question. PAL stadium – does task force view parkland subject to restriction that prevents development, as not being worth \$5,000,000? (Barbara Jordan, Attorney's Office, on behalf of OCA & PRNS)
B. The contractor receives, per City fiscal year from the City or San Jose Redevelopment Agency, at least the amount of the City Manager's contract authority set forth in San José Municipal Code Section 4.04.020(A)(3)(c); and:	The latest version of this code section is not on the City's web site yet I don't think – perhaps it would be best to include an outline of those actual contract dollar amounts that City Manager is authorized to sign (there are at least 3 different contract authority levels for the City Manager – depending upon the subject matter (\$1,000,000 for purchase goods and general services, professional services and other contracts) (Barbara Jordan, Attorney's Office, on behalf of OCA & PRNS)
1. Provides direct services defined as: <ul style="list-style-type: none"> a. Police services; b. Fire services; c. Sewage treatment and water utility services; d. Garbage collection services; e. Street maintenance services; or f. Library services. 	
<u>Please note:</u> The Task Force recommends implementing the definition in (A) and (B)(1) for one year, and at the end of the pilot, evaluating the feasibility of adding the following alternative: "The contractor receives, per City fiscal year from the City or San José Redevelopment Agency, at least the amount of the City Manager's contract authority set forth in San José Municipal Code Section	This alternative language [In Brackets] is very vague and it will be hard to be certain when it would apply and when it wouldn't This alternative language is very vague and it will be hard to be certain when it would apply and when it wouldn't. It seems that it would include entities beyond the airport examples given. (Barbara Jordan, Attorney's Office, on behalf of OCA & PRNS)

Sunshine Reform Task Force
Phase I Report and Recommendations, Public Meeting Provisions

Non-Governmental Body Feedback, 10/18/07

Provisions	Barriers to Implementation
4.04.020(A)(3)(c) and the contractor provides support services to the City that significantly impacts public access to property owned or leased by the City or prevents substantial damage to property owned or leased by the City." [The intent is to capture, among other things, airport taxi and shuttle services, airport concessions, custodial and landscaping services - to the extent that non-performance of the services would prevent the public from accessing property owned or leased by the City - and security services.]	
Section 2. Public Meetings	
2.4 Requirements for Non-Governmental Bodies	
A. Every City contract and RFP or RFQ will indicate clearly whether the contractor will be subject to Sunshine requirements and fully describe those requirements. Existing contracts will not be covered until they are renewed (if the contract includes options, Sunshine requirements must be incorporated within 3 years) or amended at which time Sunshine requirements will incorporated as specified. If a contract expires in more than 3 years, the contractor should be encouraged to agree to amend the contract to include the Sunshine requirements for no additional consideration.	How would the City know before the RFP is awarded, whether the selected contractor will be subject to sunshine if it would only apply if the contract or has more than \$ limit proscribed in the fiscal year (the City Manager's contract authority for goods and services is \$1,000,0000), unless the services subject to the RFP will clearly exceed the applicable limit? (Barbara Jordan, Attorney's Office, on behalf of OCA & PRNS) No problem. (Nick Nicols, SJ Rep)
B. Every contractor subject to Sunshine requirements must be assigned to a policy body to which the contractor will submit the reports described in Section C. When a contractor has more than one contract which, in the aggregate totals the amount of the City Manager's contract authority set forth in San Jose Municipal Code Section 4.04.020(A)(3)(c), the City must assign the contractor to one primary policy body and consolidate the reports from that contractor for presentation	No problem. (Nick Nicols, SJ Rep)

Sunshine Reform Task Force
Phase I Report and Recommendations, Public Meeting Provisions

Non-Governmental Body Feedback, 10/18/07

Provisions	Barriers to Implementation
to that policy body.	
C. Sunshine requirements to be included in contracts include the following:	No problem. (Nick Nicols, SJ Rep)
<ol style="list-style-type: none"> 1. The contractor will provide written reports to the policy body indicating compliance with contract requirements annually; 2. The contractor will provide supplemental written reports to the policy body whenever it takes an action denoted in the contract as a "Sunshine Policy Issue" as described in Section D. 	<p>No problem. (Nick Nicols, SJ Rep)</p> <p>GreenWaste Recovery, Inc. (GWR) has various contracts with the City to provide yard waste, public litter container and community clean-up collection, processing and disposal services in the City of San Jose. These contracts are guaranteed by performance bonds and provide for large penalties for failure to perform in accordance with the contract. GWR is also inspected by various City departments including Code Enforcement, the LEA and Environmental Services to insure the contract terms are being carried out. GWR is also inspected by other local and state agencies and must submit various reports to all these agencies. In addition, currently, GWR is reporting weekly to Environmental Services on the progress of our fulfillment of our contracts. Two persons from Environmental Services are assigned to monitor GWR activities to insure our compliance with all the terms of our contract. Even though the reporting required by this proposed ordinance does not look to be that extensive, it is one more report and requirement that we have to research and submit and one more report the City staff will have to research and report on. Also, from past experience, many times these reports require further explanations and sometimes evolve into much more extensive and detailed documents. GWR can see no additional value in including the garbage contractors in the Sunshine Reform Task Force requirements and their inclusion just adds a greater cost to the contractors when the new bids are requested and adds more cost to the City to enforce and process these requirements. It seems to us this particular Task Force requirement is a total waste of taxpayer money with no value to anyone. (Barry Christina, Green Waste Recovery)</p>

**Sunshine Reform Task Force
Phase I Report and Recommendations, Public Meeting Provisions**

Non-Governmental Body Feedback, 10/18/07

<p>3. Upon a determination by the Policy Body that the report on a Sunshine Policy Issue requires public discussion, the contractor must attend a public meeting of the Policy Body to present the reasons for its action and answer questions.</p>	<p>What does the Policy Body (like the Arts Commission) do with this information? (Barbara Jordan, Attorney's Office on behalf of OCA & PRNS)</p> <p>No problem. (Nick Nicols, SJ Rep)</p>
<p>D. Sunshine requirements to be included in contracts must define appropriate Sunshine Policy Issues for that service. Sunshine Policy Issues should include the following types of actions, tailored to the specific nature of the service provided by the NGB:</p>	<p>What does the Policy Body (like the Arts Commission) do with this information? (Barbara Jordan, Attorney's Office on behalf of OCA & PRNS)</p>
<p>1. Changes in revenue or expenditures that would affect the NGB's status as a going-concern;</p>	<p>No problem. (Nick Nicols, SJ Rep)</p>
<p>2. Changes in levels of service of a type and scale that affects the performance of the contract in a substantial manner;</p>	<p>No problem. (Nick Nicols, SJ Rep)</p>
<p>3. Changes in allocation of service to different areas or populations that affects the performance of the contract in a substantial manner;</p>	<p>No problem. (Nick Nicols, SJ Rep)</p>
<p>4. Changes in the number or qualifications of staff that jeopardize the ability of the NGB to fulfill the obligations of the contract;</p>	<p>No problem. (Nick Nicols, SJ Rep)</p>
<p>5. Changes in activities that maintain or preserve public facilities and/or property of a type or scale sufficient to impede public use of those facilities or to jeopardize the physical integrity of the facility;</p>	<p>No problem. (Nick Nicols, SJ Rep)</p>
<p>6. Actions that place the City or public at risk of financial loss, property damage, or personal injury beyond those risks normally associated with responsible delivery of the contracted service.</p>	<p>Now, no problem - "beyond those risks..." . (Nick Nicols, SJ Rep)</p>