

01-29-08

For Discussion by Public Records Subcommittee on 02-04-08

**Section 5**

**Public Records**

**5.1 Public Information That Must Be Disclosed**

**5.1.1 Law Enforcement Information**

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**5.1.2 Other Public Information**

**5.1.2.010 Advice from the City Attorney's Office**

Scheduled to be discussed by the Task Force on Jan. 31, 2008

**5.1.2.020 Drafts and Memoranda**

Scheduled to be discussed by the Task Force on Feb. 7, 2008

**5.1.2.030 Litigation Material**

Scheduled to be discussed by the Task Force on Jan. 31, 2008

**5.1.2.040 Personnel Information**

Scheduled to be discussed by the Task Force on Jan. 31, 2008

**5.1.2.050 Contracts with the City**

**A. City Solicitation for Contracts**

1. All correspondence regarding a City Solicitation for contracts with the City, including responses to Requests for Proposals, become the exclusive property of the City and are public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that are sent to the City are subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

2. Therefore, any proposal which contains language purporting to render all or significant portions of the proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Subsection 4.
  3. All formal bid responses become public upon bid opening and must be made available immediately after bid opening.
  4. The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to a solicitation will be subject to public disclosure. If a proposer believes that there are portion(s) of the proposal which are exempt from disclosure under the Public Records Act, the proposer must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.
  5. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the City will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.
  6. After the notice of an intent to award a City contract has been announced, the names of the evaluators and collective summaries of the evaluations or ratings must be made available if requested.
- B. When the City has negotiated the following types of agreements without a competitive process: (1) personal, professional or other contractual services or (2) leases or permits having total anticipated revenue or expense to the City of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or (3) any franchise agreements, then after the negotiations have been concluded all documents exchanged and related to the position of the parties, including draft contracts, must be made available for public inspection and copying upon request. This

subsection does not require the retention of draft contracts that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice. Upon completion of negotiations, the executed contract, including the dollar amount of the contract, must be made available for inspection and copying.

- C. San Jose Municipal Code Section 4.04.080 provides:
  - 1. The City Manager must file a quarterly report with the City Council which describes all contracts having a value of One Hundred Thousand Dollars or more that were entered into and executed by the City Manager, City Attorney, City Clerk, and City Auditor, in the preceding calendar quarter. The report must identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.
  - 2. The City Attorney, City Clerk, and City Auditor must provide to the City Manager the information necessary to enable the preparation and filing of quarterly reports.
- D. All other contracts over \$100,000 are reported to the City Council when they are requested to be approved.
- E. All contracts regardless of amount or who approved it are filed and open to public inspection at the City Clerk's Office.

**5.1.2.060 Budget and Other Financial Information**

To be decided by the Subcommittee

**5.1.2.070 Balancing Test**

Scheduled to be discussed by the Task Force on Feb. 7, 2008