

## Professional Services Contracting

### GLOSSARY

CGJ - Civil Grand Jury

HRC - Human Rights Commission

OCA - Office of Contract Administration

RFP - Request for Proposal

### TERMINOLOGY

Competitive Solicitation - a seeking of offers from multiple potential suppliers for the purchase of goods or services; can be either in the form of a request for bids (a specific price for a specified product or service) or a Request for Proposals (RFP) (supplier-identified products or services to meet a customer-identified need, often within an identified budget). RFPs are distinguished from requests for bids in that they allow greater flexibility for the supplier to specify the goods or services to be provided and often place less emphasis on price

Purchasing - the division within the Office of Contract Administration (OCA) responsible for approximately 1/3 of all contracting conducted by the City (individual departments handle the remaining 2/3)

Purchaser's Regulations - instructions issued by OCA's Purchasing Division for use by City departments conducting purchasing functions. Also called "Guide to Ordering Goods and Services".

## PROFESSIONAL SERVICES CONTRACTING II

### CONTRACTS BELOW \$50,000 AND SOLE SOURCE CONTRACTS

#### OVERVIEW

Following its Contracting for Professional Services Report on April 2, 2002 -dealing with the requirement for leadership by the City Administrator, the absence of legislation covering grants, and the need for a balanced approach between quality, social impacts, and cost - the Civil Grand Jury (CGJ) continued its investigation into City Contracting. After reviewing more than 50 Professional Services contracts CGJ found that -

- There is widespread failure to adhere to requirements for competitive solicitation and for Human Rights Commission (HRC) review of contracts under \$50,000;
- A significant number of Professional Service contracts are initially established for less than \$50,000 and subsequently amended after implementation to exceed \$50,000 without further competitive solicitation or HRC review. These contracts are frequently for public affairs and public relations consultants.
- Departments frequently issue Professional Services contracts (above or below \$50,000) on a "sole source" basis as a matter of convenience rather than as intended in the Administrative Code.

#### BACKGROUND

San Francisco Administrative Code (the Code), Chapter 21, requires that all contracts for commodities and/or services purchased by the City shall be procured through competitive solicitation, except as otherwise authorized. The Code also requires that procurement shall be in accordance with the Purchaser's regulations:

- if the total amount of the purchase is below \$50,000 or
- if the circumstances are such that commodities or services are available only from a sole source.

HRC and Chapter 12 of the Code require, at minimum, an informal competitive solicitation process for contracts between \$10,000 and \$25,000, as well as a formal competitive solicitation process for contracts over \$25,000.

The City Attorney interprets the intent of the Code's "sole source" provision to cover situations in which

- services are truly unique (e.g., training by a patent holder)
- there is specialized, proprietary data
- the purpose is to preserve professional accountability or warranties
- unusual situations make a seemingly ordinary contract or contractor unique (usually when a contractor in place is the only economically practical service provider for additional, related work)

## INVESTIGATIVE PROCESS

CGJ sought explanations for 50 contracts executed by eight departments (Office of the Mayor; Department of Human Services; Department of Elections; Redevelopment Agency; the Port; the Transportation Agency (Muni); Treasure Island; Office of Emergency Services) relative to the requests for proposals (RFPs), bidders lists, evaluation panels, approval processes, and documentation of suppliers' performance. Interviews were held with contracting parties when documentation was unclear. In addition, counsel was sought from the City Attorney's office relative to requirements for contracts below \$50,000 and "sole source" contracts.

## FINDINGS AND RECOMMENDATIONS

### Finding 1

Purchasing regulations governing Professional Services contracts have not been updated significantly since 1989. As a result, purchasing regulations do not reflect 1996 Charter revisions which affect contracting or 1999 revisions to Chapter 21 of the Code which governs purchasing of commodities and services. Thus, there is no current direction from Purchasing to the departments relative to procedures for contracts below \$50,000 or sole source contracts.

### Recommendation 1

The Purchasing division within the Office of Contract Administration should update Chapter 900 (Personal Services and Lease Contracts) of the "Guide to Ordering Goods and Services" manual to specifically address contracts under \$50,000 and "sole source" contracts. This update should be consistent with HRC requirements.

Required Response -

- Office of Contract Administration - 60 days

### Finding 2

CGJ found that there is a widespread practice of awarding Professional Services Contracts below \$50,000 without following a competitive solicitation process. Generally, departments believe that the absence of Purchasing regulations for contracts under

\$50,000 negates any requirement for competitive solicitation or, in many cases, HRC review.

Several contracts for Professional Services were also found to have been developed using questionable practices relating to contract amendments. In those cases, the departments initially awarded contracts for less than \$50,000 which excluded items integral to the contract, in order to stay below the \$50,000 threshold. Once the contract was signed, amendments were provided that increased the contract beyond \$50,000 - without a new competitive solicitation process (and, at times, without HRC review). A significant number of contracts with one or more of the problems found above were for public affairs and public relations consultants.

#### Recommendation 2

The Controller should conduct an audit of all Professional Services contracts below \$50,000 to ensure compliance with HRC and Purchasing requirements. Special attention should be placed on public relations contracts and those contracts which have not included a well defined scope of work and where amendments subsequently include items such as printing and materials.

#### Required Response

- Controller - 60 days

#### Finding 3

Sole source exemptions are frequently declared by the contracting departments on an assumption that there will not be other bidders, and often without documentation of a rationale. Validation - that the service provider is compliant with HRC rules, minimum compensation, and health-care accountability requirements - is generally taken as the only requirement necessary to allow declaration of a "sole source" circumstance. This is a frequent practice in the human services area, as well as in others.

#### Recommendation 3

The Controller should provide an annual report to the Mayor and to the Board of Supervisors on the number, dollar value, and rationale of "sole source" contracts for each department.

#### Required Response

- Controller - 60 days

#### Summary of Required Responses:

- Office of Contract Administration - Recommendation 1
- Controller - Recommendations 2 and 3