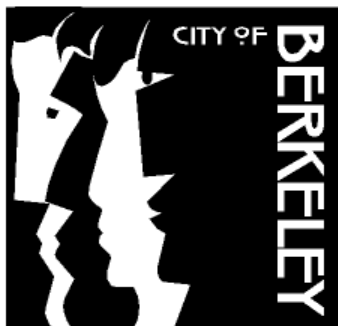


City of Berkeley



Office of the City Auditor
Ann-Marie Hogan, City Auditor

Citywide Contract Compliance Audit Report

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I. OBJECTIVES OF THE AUDIT

The objectives of this audit were to:

1. Determine whether departments were in compliance with the City's competitive solicitation policies.
2. Determine the frequency of contract services being performed prior to contract execution.
3. Determine whether contracts were executed or amended after the expiration of the contract.

This audit was scheduled as part of the fiscal year 2004 audit plan, which was presented to Council on June 10, 2003.

II. AUDIT RESULTS

Our audit identified instances of the following concerns:

- City contracts appeared to lack evidence of competitive solicitation and bidding. (Finding 1)
- Competitive solicitation and sole source requirements were waived without sufficient documentation. (Finding 2)
- Contract work started prior to contract execution. (Finding 3)
- Departments executed and amended expired contracts. (Finding 4)
- Project managers exceeded approved spending limits. (Finding 5)
- Contract Management System (CMS) data was inaccurate and incomplete. (Finding 6)
- Initial vendor bid price did not adequately include consideration of vendor maintenance costs. (Finding 7)

Most of the audit findings in this report were presented in a point sheet to Department Directors and Project managers on November 7, 2003.

III. BACKGROUND

As required by City Charter, Article XI, Section 65, the City Manager must sign and the City Auditor must register and countersign all City contracts. For several years, prior to July 1, 2002, the Auditor's Office reviewed all contracts for compliance with specific policies and procedures, and reported contract deficiencies quarterly. This report was provided to the City Manager and department directors so they could take steps to identify and correct weaknesses in contract preparation.

Effective July 1, 2002, the City Auditor's Office further reduced the level of review of City contracts, as a result of required staff cuts. Thereafter, departments were solely responsible for executing their contracts in compliance with citywide procedures. This

was done with the intent that the Auditor's Office would later conduct a formal audit to determine if departments complied with citywide contract procedures, with substantially less oversight from the Auditor's Office. This audit was performed for this purpose.

IV. SCOPE AND METHODOLOGY

The audit scope included all expenditure contracts executed or amended during the 21-month period of July 1, 2001, through March 31, 2003.

Using Audit Command Language software (ACL), the Auditor's Office extracted data from the City's CMS system and identified 679 expenditure contracts and amendments. The auditor continued to extract the data and identified 33 contracts with at least one of the following attributes:

1. All new contracts under \$25,000 that were amended during the 21-month period (13 contracts).
2. All contracts (including amendments) executed after the expiration date (10 contracts).
3. A random sampling of expenditure contracts that were executed 200, 300 and 400 days after the start date (10 contracts).

Of the 33 contracts identified, 15 were excluded from the sample. One contract was excluded because it was a revenue contract. One contract was excluded because it was a duplicate contract. An additional 11 contracts were excluded because their records in CMS contained input errors, or, upon further review, the contracts did not meet the sampling criteria. Another contract was identified as an expired contract and was excluded because, according to the City Attorney's Office, construction contracts should be viewed, for practical purposes, as contracts which do not expire. During fieldwork, an additional contract was identified and added to our sample. In the end, 19 (33-15+1) contracts were selected for detailed testing. (See Table 1)

The method used to determine the sample included selecting those contracts that were executed late. There were no community agency contracts in the audit sample.

The information used to complete this audit was obtained primarily through:

- Review of the City Manager's online contract procedures, which were updated and posted on the City's Intranet on April 25, 2002.
- Analysis of data from CMS using ACL software.
- Review of contract files for contract terms and amounts, invoices, and extension letters.
- Discussion with project managers regarding contracting practices.

Table 1: Total Population of Citywide Contracts

Period	Revenue	Expenditure	TOTAL
July 1, 2001 – March 31, 2003	118	679	797*

*Includes amendments

Audit work was performed in accordance with Generally Accepted Government Auditing Standards. Audit work was limited to those areas specified in the scope and methodology section of this report.

V. FINDINGS AND RECOMMENDATIONS

Finding 1 Lack of Evidence of Competitive Solicitation and Bidding Requirements in Contract Package.

A. Project Managers Failed to Provide Evidence of Competitive Solicitation or Bidding for 26% of the Contracts Reviewed

Of the 19 contracts packages reviewed in detail, 5 (26%) lacked evidence of competitive solicitation or bidding, including but not limited to phone quotes, written quotes, Request for Proposals (RFPs) or Council approval of RFPs. Amounts of these contracts ranged from \$4,500 - \$50,000.

According to the City Manager's on-line contract procedures, personal service contracts up to \$5,000 require three telephone quotes, contracts between \$5,001 and \$15,000 require three written quotes, contracts between \$15,001 and \$25,000 require a Request for Proposal (RFP), and contracts exceeding \$25,000 require Council approval of the RFP. Pursuant to Council action on November 4, 2003, expenditure authority for purchases of materials, supplies, and equipment exceeding \$50,000 require Council approval. Purchases of all services, and expenditures of public funds for all other purposes such as loans, grants, guarantees, leases, etc. remains at \$25,000, with the exception of capital improvements. Capital improvements, including play area improvements and equipment, require Council approval exceeding \$100,000. However, this did not affect requirements for competitive solicitation and bidding.

There were two project managers responsible for five contract packages that lacked evidence of competitive solicitation or bidding. The auditor asked one of the project managers why there was no evidence of competitive solicitation, and the project manager responded that competitive solicitation was not required for contracts that were less than \$25,000. The other project manager, whose contract neared \$50,000, could not locate any documentation regarding how the vendor was selected.

Competitive solicitation and bidding requirements help ensure that the City is not overpaying for goods and services, while allowing businesses to fairly compete for City business. When vendors are selected without adhering to competitive solicitation or bidding requirements, the risk of potential fraud by City staff increases.

City Manager's Response
Agree with the finding.

B. Project Managers Failed to Include Bid Abstracts in Contract Packages

Of the 19 contract packages reviewed, 15 were for amounts exceeding \$15,000. The procedures specify that if a contract amount exceeds \$15,000, the project manager is required to submit a bid abstract (signed by the General Services Manager-Finance) with

the contract package.

The purpose of a bid abstract is to document that the Purchasing Division received and recorded the bids. This is important because it helps to ensure that an independent third party records the bids, and excludes bids which are not in compliance with the City's bid procedures. This step also helps to limit the project managers' contact with the vendors, so that City employees will not be able to exclusively solicit and select certain vendors.

Of the 15 contracts reviewed exceeding \$15,000, five contracts should have contained a bid abstract in the contract package and did not. However, when the auditor continued to inquire about the abstracts and the bidding process, three of the bid abstracts were located in Finance-Purchasing Division. Two of the bid abstracts could not be located, either in the originating department or in Finance-Purchasing.

City Manager's Response

Agree with the finding.

C. Project Managers Failed to include Competitive Solicitation or Bidding Information in 89% (8 out of 9) of the Requisitions Reviewed.

Of the 19 contract packages reviewed, 9 contract packages should have contained competitive solicitation or bid information in the requisition. Of the 9 contract packages that should have contained competitive solicitation or bid information, 8 (89%) of the contract packages did not contain the required information. The procedures specify, "For Personal Service Contracts up to \$5,000, three (3) telephone quotes are acceptable. User departments must document the telephone quotes and this documentation is submitted with the contract package and documented in the requisition. For contracts between \$5,001 and \$15,000, three written (or faxed) quotes are required. The written quotes must be submitted with the contract package and documented in the requisition. For contracts between \$5,001 and \$25,000, a Request for Proposal is required. Proposals are documented in the requisition." This information is documented by inputting information into the City's Purchasing-Inventory System (FUND\$).

It appears that 89% of contract requisitions did not have competitive solicitation information in the requisitions. Based on the auditor's discussion with project managers and evidence within the requisitions of those who prepare requisitions, it appears that 95% of the project managers do not enter contract requisitions. However, according to the procedures, the responsibility for contract preparation rests with the project manager.

The City Manager's procedures state, "While various departmental staff and other departments may be involved in processing contracts, the project manager is the person in the department who is responsible for the contract. He or she ensures that all the requirements related to the contract are met before the contract is sent to the Department Director and other reviewers." Furthermore, the procedures stipulate, "By signing the form, the project manager is agreeing that the contract package is complete and accurate. The department head's signature indicates that he or she knows about and approves of the contract."

City Manager's Response

Agree with the finding.

Recommendations for the City Manager and Finance

1.1 We recommend that the City Manager reiterate to the Department Directors that it is their responsibility to ensure that the project managers adhere to City policies about contract package preparation and that those steps related to evidence of competitive solicitation are properly documented.

City Manager's Response

Agree with the recommendation. The recommendation was implemented on April 12, 2004. In addition, the City Manager's Office now reviews contract packages for evidence of competitive solicitation prior to City Manager signature.

1.2 We recommend that staff in the Purchasing Unit in Finance perform periodic sample reviews of the requisitions to see that evidence of competitive solicitation is documented. The results of periodic reviews should be sent to the Department Directors with copies to the City Manager when no evidence is provided.

City Manager's Response

Agree with the recommendation. The recommendation will be implemented by June 30, 2004.

1.3 We recommend that if a project manager cannot provide evidence of competitive solicitation, Purchasing should not approve the purchase without written approval from the City Manager.

City Manager's Response

Agree with the recommendation. The recommendation will be implemented by June 30, 2004.

1.4 Finally, to facilitate this oversight, we recommend that the City Manager confirm that it is the specific responsibility of the General Services Manager-Finance to provide independent oversight of purchasing for the City.

City Manager's Response

Agree with the recommendation. The recommendation was implemented on April 12, 2004.

Finding 2 Competitive Solicitation and Sole Source Requirements were Waived without Sufficient Documentation

Four waivers were submitted to the City Manager's Office, and two of the waivers (50%) were submitted without sufficient documentation to substantiate whether the waivers of competitive solicitation and sole source were appropriate. In the first of the two waiver requests (a waiver of competitive solicitation), the project manager stated, "Staff is actively seeking other companies to supplement the three companies we now contract

with for this service.” It appears from this statement that the competitive solicitation waiver should not have been requested because there were other vendors offering the same type of service. The second waiver request (sole source waiver) was made the following year for another vendor providing the same type of service as last year’s waiver. Based on the information from last year’s waiver, it appears that this vendor was not a sole source vendor and a sole source waiver should not have been submitted. Both contracts were under \$25,000.

Based on the auditor’s discussion with the project manager, it appears that this was not an emergency or an instance where time was of the essence. The project manager stated that he contracts with any vendor providing the service at a specified rate. Since there are at least three vendors providing the service at the specified rate, it appears that this contract should have been open for competitive solicitation.

The procedures state, “Waivers from competitive solicitation for services may be granted in emergencies, when the service is so specialized that it cannot be evaluated against others or the service is not provided by any other vendor (sole source) or in instances where time is of the essence (such as the service must be provided immediately).”

Furthermore, “ Sole or single source [waiver], may only be used when there is only one source for the service or competition is found to be inadequate after informal or formal solicitation, or there is an emergency.”

The General Services Manager approves waivers under \$25,000. Denials by the General Services Manager “may be appealed to the Finance Director and City Manager. A written request to the City Manager is required for a sole source waiver over \$25,000.”

If a vendor is awarded a sole source contract, but the vendor fails to meet the definition of sole source, it effectively prevents other businesses from competing for the City’s business. In addition, misrepresenting these situations could hide possible collusion between City employees and vendors.

City Manager’s Response

Agree with the finding.

Recommendations to City Manager, Finance, and Information Technology

2.1 We recommend that the City Manager reiterate to department directors that it is their responsibility to ensure that project managers adhere to City policies about contract We recommend that the City Manager reiterate to department directors that it is their responsibility to ensure that project managers adhere to City policies about contract

City Manager’s Response

Agree with the recommendation. The recommendation was implemented on April 12, 2004.

2.2 We recommend that the City Manager confirm that it is the specific responsibility of the General Services Manager to provide independent oversight of purchasing for the City including competitive solicitations and sole source waivers under \$25,000.

City Manager’s Response

Agree with the recommendation. The recommendation was implemented on April 12, 2004.

2.3 We also recommend:

- Requiring Department Directors to sign off on the request for waivers.
- Adding a question to the waiver of competitive solicitation form, asking whether the services have been waived in the past, and the reason.
- Creating a sole source waiver, separate from the waiver of competitive solicitation, so that the criteria are listed separately. Also, consider inserting language that requires the General Services Manager to sign the waiver, if the services are under \$25,000. (The City Manager is required to sign if the services are above \$25,000.)
- Considering the addition of a tracking mechanism (field) in CMS, which identifies competitive solicitation and sole source waivers. (Information Technology)

City Manager’s Response

Agree with the recommendation. The process will be reviewed and adopted as appropriate, no later than September 2004.

Finding 3 Contract Work Started Prior to Contract Execution

Four hundred and seventy-six (70%) of the 679 expenditure contracts and amendments had a start date and an execution date in the City’s CMS system during the 21-month audit period. Of the 476 expenditure contracts and amendments, 450 (95%) were executed after the start date of the contract.

Of the 19 sample contracts selected for detailed testing, 11 (58%) had invoices for work performed prior to the contract being executed. In two cases, the contracts were executed 200-299 days after the contract start date, and in another, 400-499 days after the contract start date.

Table 2: Contracts With An Invoice Dated Before the Contract Execution Date

	Date of 1st Invoice	Date of Execution
Contract A	5/1/02	6/14/02
Contract B	5/31/02	8/30/02
Contract C**	10/30/01	5/24/02
Contract D	7/31/02	8/1/02 (expired)
Contract E	1/30/01	6/25/01
Contract F**	8/10/02	1/3/03
Contract G***	5/22/03*	3/26/03
Contract H	10/24/02	12/9/02
Contract I	1/23/02	1/2/02 (expired)
Contract J	2/28/02	3/19/02
Contract K	7/31/01	11/27/01

* The invoice was dated 5/22/03; however the services were for August 2002-May 2003.

** The Contract was executed 200-299 days after the start date.

***The contract was executed 400-499 days after the start date.

The procedures state, “ A binding contract is not formed, and work may not begin under

the contract until the contract is executed. 'Executed' means signed by all parties to the agreement (the Contractor, the City Manager, and the City Auditor)." Please note that a contract is not formed simply by Council authorization. Council's authorization means that the City Manager is authorized to execute a contract.

Based on the auditor's discussion with the project managers, some of the reasons work began prior to the contract being executed included:

- Insufficient time to complete extensive contract requirements.
- A need for the contracted services to be started or strict timelines.
- A need to avoid disruption of services.
- Difficulty due to the City's "hefty" contracting requirements.

When a contractor starts work on a contract prior to the contract being executed, it may result in the following:

- Delayed payment to the contractor.
- Possible unforeseen problems, such as violations of contract terms, scope, and conditions.
- Increased risk of liability to the City due to lack of or inadequate insurance.
- Possible litigation.
- Contractor's failure to comply with Council's initiatives, such as living wage, workforce composition, and oppressive states compliance. In addition, if a contract were inappropriately awarded, for example, without a competitive bid process, it would be too late to stop the process and put the contract out to bid.

City Manager's Response

Agree with the finding.

Recommendations for the City Manager

3.1 We recommend that the City Manager reiterate in a memo to Department Directors and City staff the importance of not starting work on an expenditure contract prior to the contract being executed. In addition, the City Manager should consider adding specific contract language to the contract boilerplate to discourage this practice among contractors.

City Manager's Response

Agree with the recommendation. The recommendation will be completed by May 2004.

3.2 We recommend that the City Manager also consider establishing a focus group for the purpose of determining ways to expedite contract execution and amendments.

City Manager's Response

Agree with the recommendation. A focus group or similar will be considered and results reported back by December 2004. Contract administration and oversight, along with the streamlining of the contracting process, are citywide issues involving every City department. A Cost Saving Team is already in place and has been assigned the job of reviewing contract administration in general. Depending on their recommendations, one

or more “user groups”, or focus groups, will be convened to address both the administrative and operational needs, and to identify possible efficiency improvements.

Finding 4 Contracts Executed or Amended After Contract Term Expired

Of the 679 expenditure contracts executed during the 21-month audit period, 268 contracts had an expiration date and execution date in the CMS system. Of 268 contracts, two contracts were *executed* after the contract term expired, and two contracts were *amended* after the contract term expired (one contract was excluded because the City Attorney’s office signed off on the expired contract). Once a contract expires, the terms and conditions of the initial contract are null and void (See Table 2).

The procedures state that, “ ... work may not begin under the contract until the contract is executed.” The procedures also state “...a contract whose term has expired cannot be amended.”

One project manager indicated that the reason the contract was executed after the contract term expired was because it took a long time to obtain the insurance forms from the vendor. Another project manager stated that she did not know that a contract was required based on the “low” contract dollar amount of \$5,387.

The project manager who executed the amendments after the contract expired noted that the contracts were placed in the review process prior to the contracts expiring (two days prior to the contracts’ expiration dates). However, the procedures document that “The process from Council authorization to filing by the City Clerk will take at least 18 working days and up to 28 days or more, depending on the project manager and contractor’s ability to gather the remaining documents needed.”

On June 23, 2003, the City Attorney issued a memorandum titled “Letter Extensions to Personal Services Contracts”. This memorandum details the City’s procedures to extend the term of a personal service contract by giving written notice for contracts above \$25,000. Previously, contracts exceeding \$25,000 required Council approval to extend the term of the contract. However, these provisions are not documented in the contracts on-line procedures.

The reasons that contracts should be executed prior to commencement of work and term date expiration is that the process of executing the contract ensures that the service is authorized and that the contractor is in compliance with City requirements, including insurance provisions, payment provisions, and Council directives.

City Manager’s Response

Agree with the finding.

Recommendations for the City Manager

4.1 We recommend that the City Manager draft a memo to Department Directors and City staff reminding them that expired contracts should not be executed or amended. The memo should direct staff to go back to City Council to seek authorization retroactively, if the contract for services exceeds \$25,000, or the cost of supplies, materials, and equipment exceeds \$50,000. If the contract is less than the threshold amount, the department should resubmit a new contract to the City Manager's Office with an explanation for the expired contract or amendment.

City Manager's Response

Agree with the recommendation. The recommendation will be completed by May 2004.

4.2 We recommend that the contract on-line procedures be updated to include the City Attorney's June 23, 2003, provision documenting the authority of the City Manager to extend the term of a personal service contract by giving written notice.

City Manager's Response

Agree with the recommendation. The recommendation will be completed by December 2004.

Finding 5 Project Managers Exceed Approved Spending Limits

A project manager exceeded the authorized contract spending limits by \$16,351.22. The approved contract amount was \$85,000. However, instead of amending the contract, the project manager paid for excess contract services using a blanket purchase order and a voucher. A blanket purchase order was used to pay invoices in the amount of \$14,381.99. A voucher payment in the amount of \$2,281.25 paid for services beyond the scope of the original contract. In the end, the authorized contract amount was exceeded by \$16,351.22.

Administrative Regulation 3.14 (FNO24 Voucher Processing) states that vouchers should not be used to pay for services. Instead the contract should have been amended to include the scope modification and additional funding.

Similar situations in which contracts should have been amended to pay for services provided were noted in other operating departments. In one department, there were two contracts under \$25,000 with the same vendor. The two contracts were improperly used to pay invoices for services outside of the terms of the contracts in the amount of \$4,500 and to pay invoices using blanket purchase orders in the amounts of \$660 and \$240. The two contracts had overlapping terms, which enabled the department to pay invoices from either contract.

In establishing a second contract with the vendor, the project managers effectively circumvented the requirement that Council authorize the additional expenditures. The funds linked to the second contract were inappropriately used to pay for outstanding invoices associated with the initial contract. Furthermore, the project manager executed the first contract under \$25,000, just below the amount requiring Council approval,

specifically to avoid going to Council.

There was another situation where there was an existing contract for \$75,000 and the project manager was in the process of initiating a larger contract with the same vendor. However, the project manager exceeded the \$75,000 and later paid the remaining balance of \$3,942.50 against the new contract to pay for the additional costs. The original contract should have been amended because the costs were incurred under the scope of this contract.

When project managers circumvent the system and use new contracts, blanket purchase orders, and vouchers to make unauthorized payment for services, not only do they violate City policies by ignoring the internal controls system imbedded in the City's purchasing procedures, they also violate existing contract provisions, posing unnecessary additional risks to the City. The increased risks would include potential wrongdoing by City staff and vendors, as well as increased risk that the City might be paying more for services because the City's practice of competitive solicitation and bidding requirements has been ignored. It should be noted that since the scope of our audit was limited to an examination of executed contracts, there may have been instances of payments made for services for which a contract was not formed.

City Manager's Response

Agree with the finding.

Recommendations for the City Manager and Finance

5.1 We recommend that the online contract procedures be updated to explicitly state that a new contract, blanket purchase order, or voucher, should not be used to pay for expenditures associated with an existing contract.

City Manager's Response

Agree with the recommendation. The recommendation will be completed by December 2004.

5.2 On occasions when it comes to Purchasing's attention that a project manager has inappropriately submitted a purchase order or voucher instead of a contract or amendment, we recommend that Purchasing bring the issue to the Finance Director's attention and direct the project manager to prepare or amend a contract, as appropriate.

City Manager's Response

Agree with the recommendation. The recommendation was implemented on April 14, 2004.

5.3 We recommend that Purchasing consider developing a tracking mechanism to document and report on the frequency, dollar amounts, and associated vendors tied to the names of project managers who inappropriately use purchase orders and vouchers to pay for services that should be established through a contract. This report should be prepared by Purchasing and distributed to Department Directors with copies to the City Manager periodically throughout the year.

City Manager's Response

Agree with the intent of the recommendation. A tracking mechanism will be investigated, but it is unclear at this time if implementing such a tracking mechanism will be cost effective, with a sufficiently strong cost/benefit ratio.

Finding 6 Contract Management System (CMS) Data was Inaccurate and Incomplete

The purpose of the CMS system in FUNDS is to allow users to track the progress of a contract in the review process and to generate various management reports on citywide contracts. However, during the auditor's review of the CMS database, numerous input errors and omissions were discovered. These errors were so significant that the auditor could not perform some of the planned analyses, such as determining how much the City expended for contracted services.

The procedures state, "The project manager must enter contract information, including the contract's effective date and expiration date in CMS. Contracts will be reviewed by the City Manager's Office and those missing the required information will be returned, resulting in a delay in the process."

Input errors noted in the CMS system include:

- Duplicate and incorrect contract, amendment, and CMS numbers.
- Incomplete information or blank fields such as contract numbers, contract amounts, project manager names, and dates.
- More than one start or expiration date.
- Inconsistent methods of determining the contract amount when amending a contract, i.e., the amount of the amendment or the not to exceed amount for the entire contract.
- Unintelligible references documented in the "department field", such as "17" and "05 Project Impact".

If the information entered into the CMS system continues to be incorrect and incomplete, its usefulness as a management tool for tracking and monitoring contracts significantly diminishes.

City Manager's Response

Agree with the finding.

Recommendations for City Manager, Finance, and Information Technology

6.1 We recommend that the City Manager consider taking steps to improve the accuracy of data input into CMS by developing an on-line CMS training class for project managers.

City Manager's Response

Agree with the recommendation. However, there are insufficient resources at this time to develop such training. It will be reconsidered in FY 2006. Meanwhile, the City Manager's staff will perform some limited review of accuracy of start dates and other key data in CMS..

6.2 The City Manager should also consider creating a centralized contract-review function in an existing department to review the CMS records for completeness and accuracy and use those records to periodically monitor contract compliance issues, such as competitive solicitation, which represent potential risk to the City. This task could be assigned to Purchasing; alternatively, since staff in the City Manager's Office review contracts before they are executed, they could perform this review.

City Manager's Response

Agree with the recommendation. A centralized contract review function will be developed by December 2004.

6.3 The City Manager should also consider requesting Information Technology to make the following changes to the existing system:

- Adding a look up feature for project managers, departments, and vendor names either in the existing CMS system or a future system.
- Adding a required field for contract amounts and not-to-exceed amounts.
- Eliminating the "Effective" date code, since most project managers use it interchangeably with the "Start" date code.

City Manager's Response

Agree with the recommendation. Information Technology and Finance are planning both short and long-term changes to the CMS system. Short-term changes may be able to be made in an acceptable manner as early as last quarter, FY 2005. Longer-term changes, which may include components of the new workflow software or other alternatives, may take several years, and may not be included on the respective departmental work plans before FY 2006.

Finding 7 Initial Vendor Bid Price did not Adequately Include Consideration of Vendor Maintenance Costs

The City appears to have a history, when soliciting for initial services, of entering into contracts (or in some cases no contract) with vendors which contracts result in sole source relationships. This appeared to be the case with the proprietary equipment for the energy management system in the Public Safety building as well as the elevators and phones in City Hall.

The City's contracting procedures do not require vendors to include maintenance costs as part of their initial contract bid beyond the first year. This becomes a concern when maintenance must be purchased from the same vendor (sole source). The City's ability to negotiate costs tied to maintenance becomes limited.

If the additional disclosure of maintenance costs is included in the initial bid, the City

will be in a better position to evaluate its options. This information could change initial selection of vendors and help to ensure a competitively priced maintenance agreement.

City Manager's Response

Agree with the finding.

Recommendation for the City Manager and Finance

7.1 We recommend that when the City issues an RFP for equipment where maintenance can only be provided by the vendor, the City considers requiring the vendor to include maintenance costs as part of their initial bid beyond the first year.

City Manager's Response

Agree with the recommendation. The recommendation was partially implemented on April 14, 2004. The Finance Director has instructed the General Services Division of Finance to work with Public Works and other affected departments to review this problem, and to improve the City's administration and contracting in this complex arena. Where possible, and in addition to the usual initial year now included, pricing for additional years' warranty or maintenance for equipment will be included in the RFP or RFB bid specifications. Where that is not possible or advisable, the working group will review improvements to assure best possible pricing and appropriate competitive bidding.

VI. CONCLUSION

Our sample identified several areas of weakness in contract processing by project managers, including lack of evidence of competitive solicitation and bidding in the contract packages [Finding 1], work starting prior to contract execution [Finding 3], executing and amending expired contracts [Finding 4], and use of vouchers and purchase orders to circumvent controls over contract spending limits [Finding 5]. Additional concerns include inaccurate and incomplete information in CMS [Finding 6], and lack of maintenance cost consideration in vendor bids [Finding 7].

The auditors did not determine the full range of reasons for all incidences of noncompliance. Concerns with the timely provision of service were noted [Finding 3], as was apparent lack of knowledge of City requirements. While the internal controls over contract execution, particularly in areas of competitive solicitation, are designed to minimize risk of employee fraud, there was no evidence that controls were bypassed for reasons of personal gain. Our recommendations, which include developing a focus group to determine ways to expedite contract execution and amendments [Finding 3], confirming authority of the General Services Manager over purchasing concerns [Finding 1], and issuing City Manager memos reiterating the City's solicitation and bidding policies [Finding 1], provide for both improving internal controls and informing staff of procedural requirements. It is an accepted practice that the cost of a control should not exceed the benefit of the control. We believe that implementation of these recommendations will assist in strengthening controls, but may also result in more efficient procedures.

We want to thank City staff, particularly the project managers, for their cooperation during the course of this audit.

VII. DEFINITIONS

City Manager Waiver: If one obtains a City Manager waiver of competitive solicitation for Personal Services, the waiver must be submitted with the contract.

NOTE: The City Manager's waiver of a competitive bid or solicitation DOES NOT constitute waiver of other compliance requirements.

CMS: An acronym for the Contract Management System, a citywide contract database. The initiating departments and the reviewing departments use the system to enter information, such as contract date, vendor name, type of contract, date submitted to Risk Management, insurance expiration date, contract expiration date, etc. This database includes links to the FUNDS\$ accounting system for convenience in looking up vendor and purchasing information.

Competitive Solicitation: A process whereby either informal or formal bids or proposals are received from vendors for projects under \$25,000. In the case of bids, the lowest responsible bidder is selected. In the case of proposals, the lowest bidder may not be the selected vendor, since experience and other evaluation criteria are taken into consideration, in addition to pricing.

Request for Proposals (RFP): A document that is advertised and a proposal process which opens at a specific date and time. Proposals are evaluated against each other and experience and solution to the problem are more important than price. Negotiation is allowed after the opening date. This process is usually used for services.

Request for Qualifications (RFQ): A document whereby "Requests for Qualifications" are advertised and open at a specific date and time. The document only asks for a company or person's qualifications (for example, architects or engineers). Prices are not usually requested. This process is used to select a contractor based strictly on experience and qualifications. Rates are negotiated with the firm of choice. For projects over \$100,000 a formal advertisement is made and an interview panel makes the selection. After the initial interview, selected firms may be asked to interview and make a presentation. For informal projects (under \$100,000), firms are solicited from an established list and the project manager makes the selection.

Sole Source Waiver: A sole or single source, may only be used when there is only one source for the needed product or service, competition is found to be inadequate after informal or formal solicitation, or there is an emergency. Certain things cannot be competitively bid. This would be the case if there were only one company that produces a particular product for which there is no substitute, or if a company (or individual) provides a particular service that the company cannot be evaluated against others.