

# PROFESSIONAL SERVICES CONTRACTING

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## PROFESSIONAL SERVICES CONTRACTING

### OVERVIEW

In San Francisco there are in excess of \$1 billion in city contracts for "Professional Services" with an average duration of 2-4 years. Although the Department of Administrative Services (DAS) is responsible for the oversight of all purchasing conducted by San Francisco, the purchasing itself is done on a highly decentralized basis by various city departments. Additionally, the Human Rights Commission (HRC) is involved extensively in the process because of its jurisdiction over matters pertaining to non-discrimination. DAS does not provide the leadership required and, as a result, there is inadequate emphasis on obtaining the best value for the people of San Francisco. Enhanced leadership coupled with improved processes would result in substantial savings for the City.

### BACKGROUND

Contracting in San Francisco is managed by different departments, depending on the type of contract involved:

- The Purchasing Division (Pur) -- within the Office of Contract Administration (OCA) --

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for "commodities and general services" (about 1/3)

- Six City departments for "public works and construction" (about 1/3)
- Individual City departments for "professional services" (about 1/3)

Broad procedural direction for contracting is provided in the 1996 Charter and in the Administrative Code (Chapter 6 for construction, Chapter 21 for commodities/services, and Chapter 12 for minority-, women-, locally-owned business utilization). In addition, Pur, HRC, and most departments have detailed procedure manuals dealing with purchasing. Pertinent Charter and Administrative Code provisions are included in Attachment 1.

The 2001-2002 Civil Grand Jury (CGJ) chose to focus its investigation on the Professional Services aspects of purchasing. This selection was driven by a number of issues, including --

- the broadly distributed nature of the expenditure decisions
- the wide range of procedures followed in the purchase of professional services
- widespread dissatisfaction with the inefficiency of non-profit contracting (a subset of professional services contracting) by both the potential contractors and government officials
- periodic allegations of malfeasance in the hiring of consultants and other service providers
- a lack of distinction between professional services contracts and grants - the latter having no legal requirements in the Charter or the Administrative Code

The flow chart in Attachment 2 depicts the process and timeline for professional service contracting. Notable are the following --

- the roles of the department conducting the purchasing, HRC, the Civil Service Commission (CSC), the City Attorney, and Pur
- the projected timeline of 62 weeks for a new service and a minimum of 18 weeks to re-bid for a current service.

Commonly accepted principles of purchasing require consideration of --

1. the social impact of sourcing decisions
2. the quality of goods or services provided
3. the costs of those goods or services

1. Relative to the social impact, the active participation of HRC, in implementing Chapter 12 provisions, results in broad consideration of contracting opportunities for minority-, women-, and locally-owned businesses, including --

- application of financial preferences

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- solicitation and certification of potential bidders
- direct HRC participation in key contract steps.

Also, as part of the social impact, consideration is given to environmental concerns, supplier wages and benefits, and potential supplier relations with companies in Northern Ireland and Burma.

2. Relative to quality considerations, Professional Service contracting is managed by the department which budgets for and uses the service. The departments --

- define and fund the service
- control the selection criteria
- manage the evaluation panel
- negotiate with the supplier
- ensure supplier performance.

The primary method used is a Request for Proposals (RFP) which asks potential suppliers to define their recommended approach to the project within a stated budget amount. This methodology allows the contracting department the opportunity to ensure selection of high quality suppliers.

3. Relative to the cost considerations, the premise is that the using department is motivated to minimize costs and has the skills to structure and negotiate effective contracts. The variety of procedures followed indicates that this is not always the case.

Section 3.104 of the City Charter designates the City Administrator and DAS as the responsible authorities for policies and procedures relative to procurement. This authority is delegated to Pur, which is now part of OCA within DAS.

### **INVESTIGATIVE PROCESS**

CGJ reviewed all of the appropriate Charter and Administrative Code sections as well as departmental policies and procedures. In addition, we --

- participated in a City training session on Professional Services Contracting
- reviewed extensive purchasing history data and contract files
- attended a conference of service providers
- conducted interviews with representatives from -
  - o the Department of Administrative Services
  - o the Office of Contract Administration
  - o the Controller's Office
  - o the Human Rights Commission

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- o the City Attorney's Office
- o the Department of Public Works
- o the Department of Human Services
- o the Department of Public Health
- o the Department of Human Resources

### FINDINGS AND RECOMMENDATIONS

**Finding 1** DAS does not provide the leadership required, and, as a result, there is inadequate emphasis on obtaining the best value possible. Pur plays a very minor role in establishing policies and procedures and overseeing professional service contracting. Instead, HRC has assumed the primary and most visible role in the purchasing process. The most significant impact of this is that HRC issued the following instructions --

- **price is not to be considered in selecting suppliers** (but is to be considered for later negotiation)
- expert panel members are not to discuss their perspectives on potential suppliers or bid proposals
- project managers are not to participate in selection panels.

These directions are included in City training programs organized by the Department of Human Resources (DHR), HRC procedures manual, and oral and written instructions to the departments from HRC. HRC has continued to promulgate these positions even after the Administrative Code was amended in 2000 to specifically indicate that these types of decisions were to be made within the using department with the participation of Pur and the City Attorney.

**Recommendation 1** Consistent with the Charter and the Administrative Code, Pur and HRC should review purchasing instructions and provide direction that places balanced emphasis on price competition and the desire to prevent discriminatory practices. In addition, Pur and DHR should expand training programs (which currently focus on administrative mechanics) to ensure that all City personnel performing a purchasing function are well versed in the following --

- requirements for competitive bids
- management of sole-source contracts
- negotiating skills
- determination of reasonable costs
- the pros and cons of various techniques, such as "time and materials" pricing versus "fixed price" bids
- guidelines for maximum contract duration, renegotiation, and supplier transitions
- the development of specifications to include key performance measures and

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penalty/incentive clauses

- the periodic rotation of purchasing personnel
- evaluation of personnel who have purchasing responsibilities

Required Responses -

City Administrator -- 60 days  
Human Rights Commission -- 60 days

**Finding 2** In November 2000, OCA was created within DAS to bring together --

- purchasing
- contractor wage and health benefits enforcement
- supplies management
- central shops
- city printing and mail service

The role of this group has not been explained clearly to the many city departments involved in contracting.

**Recommendation 2** The City Administrator should issue a notice to all departments explaining the organization and purpose of OCA, particularly as it relates to Charter and Code provisions that place purchasing leadership within the office of the City Administrator.

Required Response -  
City Administrator -- 60 days

**Finding 3** The current process flow has Pur receiving the proposed contract after all parties -- including the supplier -- have signed off. This effectively eliminates any chance for Pur input relative to contract structure and content or supplier history.

**Recommendation 3** Pur should receive a draft of all professional services contracts **before** they are sent to the supplier for signature. Earlier input should be sought from Pur on larger or unusual contracts.

Required Response -  
City Administrator -- 60 days

**Finding 4** There are significant gaps in current legislation affecting "Professional Service" contracting. The Administrative Code provisions for "Acquisition of Commodities and Services"

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specifically exclude "agreements making a grant of city funds to private entities for the purpose of providing a benefit to the public." Since there is no city legislation covering grants, there is no requirement for competitive bids for many of the nonprofit agencies (or technically, even for profit companies) providing social services to San Francisco residents. This gap contributes to widely different approaches to contracts affecting social services.

**Recommendation 4** The Board of Supervisors should enact legislation governing grants of city funds to private entities for the purpose of providing a benefit to the public. These provisions should be similar to the requirements in Chapter 21 of the Administrative Code for professional services contracts, while recognizing that different requirements may be attached to grants originating at the federal or state level.

Required Response -  
Board of Supervisors -- 90 days

**Finding 5** The Controller's audit group rotates its performance audit activity among the city departments and has not done a comprehensive audit of the purchasing function in many years. There is a "post audit" group that ensures accounting activities, such as matching invoices with purchase orders are properly accomplished.

**Recommendation 5** Given the magnitude of the dollars involved and the diverse nature of professional service contracting, this area of purchasing should receive a comprehensive management audit at least every three years.

Required Response -  
Board of Supervisors -- 90 days

**Finding 6** While the city utilizes a web site and standardized forms to make purchasing more efficient, there are numerous indications that procedures are unacceptably cumbersome:

- training materials indicate that the time to implement a professional services contract is 18 to 62 weeks
- the process of becoming certified as being in compliance with the city's equal benefits requirements is described by HRC as "extremely complex and time consuming"
- a majority of contracts are approved after the fact by some commissions

These factors add administrative cost for suppliers and the City, and discourage potential suppliers from participating.

Following the 2000-2001 CGJ report on Nonprofit Contracting, the Board of Supervisors, in October 2001, passed a resolution creating a task force to make recommendations relative to --

- contractor certification

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- contract management and performance evaluation
- contract payment and revenue management
- other matters related to City contracting with non-profit health and human services providers referred to it by the Board (See Attachment 3)

This task force first met on February 28, 2002, without representation from HRC or CSC, both of which impose significant administrative requirements on these contracts.

**Recommendation 6a** The task force designated by the Board of Supervisors in October 2001, should consider opportunities for major improvement through --

- standardization of procedures and forms
- automation
- concurrent parallel consideration by several groups (e.g., CSC, unions, HRC, Pur, City Attorney) with processes and results benchmarked with "best practices" from comparable cities

OCA and the Controller should play lead roles in this task force, perhaps with the assistance of consultants with expertise in purchasing and change management. HRC and CSC should participate in this task force.

### Required Responses -

Board of Supervisors -- 90 days  
City Administrator -- 60 days  
Controller -- 60 days  
Human Rights Commission -- 60 day

**Recommendation 6b** Future City web site development should include online vendor registration, bidding, and payment, in addition to the current capability to view a portion of the available city contracts. All departments should be required to post all contract bid notices and solicitations through the Pur web site.

### Required Responses -

City Administrator -- 60 days  
Controller -- 60 days

**Finding 7** The San Francisco Campaign and Governmental Conduct Code and various state laws provide protection for government "whistleblowers" (and to a lesser extent those who are private

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citizens) under the direction of the Ethics Commission. Wrongdoing in contracting is difficult to identify and is not always fully investigated.

**Recommendation 7** An individual in the Controller's Office should be designated to investigate allegations of purchasing improprieties, and information should be provided to the public relative to accessing this person. The role of the CGJ in investigating citizen complaints should also be publicized.

Required Response --  
Controller - 60 days

Summary of Required Responses -

Board of Supervisors - Recommendations 4, 5, and 6a

City Administrator - Recommendations 1, 2, 3, 6a, and 6b

Controller -- Recommendations 6a, 6b, and 7

Human Rights Commission - Recommendations 1, 2, and 6a

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## GLOSSARY

**CGJ = Civil Grand Jury**

**CSC = Civil Service Commission**

**DAS = Department of Administrative Services**

**DHR = Department of Human Resources**

**HRC = Human Rights Commission**

**OCA = Office of Contract Administration in DAS**

**Pur = Purchasing Division of DAS**

**RFP = Request for Proposals**