

CITY OF OAKLAND
COUNCIL AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2005 JAN 27 PM 3: 58

TO: Office of the City Administrator
FROM: Budget Office
DATE: February 8, 2005

RE: QUARTERLY REPORT FROM THE BUDGET ADVISORY COMMITTEE (BAC) ON
ACTIVITIES THROUGH DECEMBER 31, 2004 INCLUDING RECOMMENDATIONS
ON CERTAIN IMPROVEMENTS TO THE CONTRACTING PROCESS

SUMMARY

This document transmits the Budget Advisory Committee's (BAC) fourth-quarter report on activities through December 2004. The BAC's report also includes three attachments: **Attachment A** – a report recommending improvements to the City's contracting process for contracts *subject to* the City's Purchasing Ordinance requirements; **Attachment B** – a report recommending improvements to the City's process for contracts *outside* the Purchasing Ordinance; and **Attachment C** - a memorandum to the City Administrator suggesting refinements to the Citywide Citizens' survey.

FISCAL IMPACT

There is no direct fiscal impact resulting from these reports. The BAC's recommendations are intended to have a positive long-term fiscal impact.

BACKGROUND

The Budget Advisory Committee was established in March 1999, and consists of 15 members, with four appointed by the Mayor, eight appointed by Councilmembers (one each), one by the Community and Economic Development Committee Chairperson, and two by the Finance and Management Committee Chairperson. Meetings are held the third Monday of every month, with staff support provided by the Budget Office.

The Budget Advisory Committee's primary focus over the last three months has been an evaluation of the City's contract process. The BAC has also reviewed, and provided comments on, the upcoming Citywide Citizens' survey.

Item: _____
Finance & Management Committee
February 8, 2005

DISCUSSION

In Attachment A to the BAC report, the BAC provides some recommendations for standardizing the City's processes related to "City Contracts Under the Purchasing Ordinance."

In Attachment B, the BAC provides substantive comments and recommendations to standardize requirements and revise the process by which "City Contracts Outside the Purchasing Ordinance" (as defined by the BAC) are solicited and opened for competition, awarded, renewed and managed.

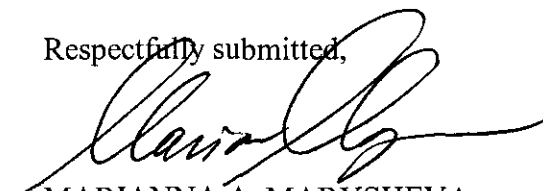
Attachment C is a memo from the BAC to the City Administrator, recommending certain refinements and additional questions for the Citywide Survey.

The BAC chairperson will be available to present the quarterly report and respond to any questions at the February 8, 2005 Finance & Management Committee.

RECOMMENDATION

Staff transmits the BAC report and recommends City Council's consideration of the attached documents.

Respectfully submitted,



MARIANNA A. MARYSHEVA
Budget Director

Prepared by:
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Budget and Operations Analyst, Budget Office and
Staff to the Budget Advisory Committee

Forwarded to the Finance & Management Committee


OFFICE OF THE CITY ADMINISTRATOR

Attachment: Quarterly Report from the BAC, including Attachments A, B and C

BUDGET ADVISORY COMMITTEE QUARTERLY REPORT FOR QUARTER ENDING DECEMBER 31, 2004

The Budget Advisory Committee (BAC) hereby submits this report for the fourth quarter of the 2004 Calendar year.

The BAC's Review of the City's Contracting Process

Over the past year and a half, the Budget Advisory Committee conducted a review of the process by which the City of Oakland enters into and manages contracts. We interviewed staff members from many different departments (e.g., Public Works, Parks and Recreation, Contract Compliance, the City Attorney's Office, the Auditor's Office, . . . etc), and we reviewed many of the City's contracts. Attached to this memorandum are two reports that are the result of this review. (See attachments A and B.)

The Committee divided the City's contracts into two categories: contracts under the City's Purchasing Ordinance and contracts outside the City's Purchasing Ordinance. Most City contracts come under the Purchasing Ordinance, and for these there is a well-established set of procedures that the Committee found works fairly well (although the Committee does have a few suggestions on how these procedures could be improved – see Attachment A). However, for contracts outside the purchasing ordinance, the Committee found that there is no set of procedures or guidelines, and the structure of the contracts varied widely. The Committee recognizes that due to the nature of these contracts this is to an extent necessary, but the Committee found that there are important considerations that should be addressed in all of these contracts. The Committee therefore recommends that guidelines be developed for these contracts that would ensure that these considerations are accounted for in these contracts. These considerations are discussed in the attached report on Contracts Outside the Purchasing Ordinance. (Attachment B.)

The purpose of this report is to comment on the contracting process as a whole, and not to comment on any particular contract. In the report, the Committee uses many examples from particular contracts to illustrate various points. These examples are purely intended to be illustrative. The Committee is not making any comments on the value of any particular contract, and this report is not intended to be a critique on any particular contract. The purpose of this report is to comment on the process of contracting, and to provide suggestions on how this process could be improved to help ensure that the City gets the most from the limited funds that it has to expend.

The BAC's Participation in the City Administrator's 2005 Citizen Survey

At its December 20, 2004 meeting, the BAC reviewed with Niccolo De Luca, Deputy City Administrator, the proposed questions for the City Administrator's 2005 Citizen Survey. The BAC came up with several comments and suggestions that were summarized in the attached memorandum (Attachment C).

Ben Fay
BAC Chairperson

CITY CONTRACTS UNDER THE PURCHASING ORDINANCE

PREPARED BY THE OAKLAND BUDGET ADVISORY COMMITTEE SEPTEMBER 16, 2004

The Budget Advisory Committee has conducted a review of the City's contracting process for contracts under the Purchasing Ordinance. These are contracts where the City is purchasing goods or services from outside vendors or service providers.

The Municipal Code contains a process for putting these contracts out to bid. The process provides for open and competitive bidding. The Committee found that the procedures are good and are generally followed. However, the Committee's review did find a few points of concern.

First, it is sometimes difficult to locate a contract. This can cause both legal problems and difficulties in enforcing the contract. There should therefore be a central repository for all City contracts that is readily accessible.

Second, there is no uniform procedure to follow when only one or no bids are received in response to a call for bids. The bidding process works only when there is competitive bidding. When only one or no bids are received, there is no competition. This was not found to be a common occurrence, but it does occasionally happen. At present, this situation is addressed on an ad hoc basis. The Committee recommends that uniform guidelines be created for those situations when only one or no bids are received.

Third, there are no guidelines for sole-source contracts. Although sole-source contracts should be disfavored, there are times when they are appropriate. The Committee therefore recommends that uniform guidelines be adopted for sole-source contracts, and that these guidelines include the following provisions:

- a. When a sole-source contract is selected, a written statement should be prepared by the City staff person in charge of that contract. This statement should explain with particularity why that contract needs to be sole-sourced and why putting the contract out to bid under the usual process would not work. This should not be a form statement, but rather a statement explaining why the factual situation of that particular contract requires sole-sourcing. All of these statements should be included in the quarterly report to the City Council, including those for contracts entered into by the City Administrator under her own authority.
- b. If a contract is sole-sourced because it was put out to bid and no bids were received, and if the terms of the sole-source contract are substantially different from the terms that were originally put out to bid, then the new contract should be put back out to bid using the new terms before being sole-sourced.

Lastly, there needs to be more accountability in the contracting process. One problem encountered by the Committee was a difficulty determining which City staff person had made certain decisions on a particular contract. Therefore, the Committee recommends that for every contract there should be a signed certification by a City employee declaring that all procedures have been followed. This should be the City employee who has primary responsibility for the City's entry into that particular contract.

CITY CONTRACTS OUTSIDE THE PURCHASING ORDINANCE

PREPARED BY THE OAKLAND BUDGET ADVISORY COMMITTEE OCTOBER 20, 2004

In this report, the Oakland Budget Advisory Committee (BAC), a City Council-appointed citizen advisory group, examines a particular set of City contracts, which we loosely refer to as Contracts Outside the Purchasing Ordinance (COPOs). After defining a COPO contract, we focus on the systemic problems and current difficulties of these types of City contracts. We propose new uniform procedures for solicitation, oversight, and renewal of such contracts.

While the Purchasing Ordinance explicitly governs the expenditure of City funds for the purchase of goods or services, the primary thrust of a COPO contract is not the purchase of goods or services, and so by definition the Purchasing Ordinance is not normally applied. Nonetheless, COPO contracts provide for important municipal functions and can have significant financial impact both for the City and for residents. Since (by definition) COPOs fall outside the purchasing ordinance, there is no consistent process in place for solicitation, oversight, and renewal .

We want to clarify, that the difficulties and issues associated with COPO are not a reflection of the competence or dedication of City employees. Rather, the lack of a clear and unified COPO policy and procedure creates situations where efforts of even the most inspired City employees are likely to fall short.

Executive Summary

A large body of contracts in the City of Oakland fall outside the purview of the Purchasing Ordinance, yet are important means of carrying out municipal functions, and also have significant fiscal implications for Oakland. We have reviewed many of these widely varying and 'one-of-a-kind' contracts and have concluded that the City needs develop a uniform policy for Contracts Outside the Purchasing Ordinance (COPOs). We recommend a consistent set of rules to govern the solicitation process, the oversight and auditing of contracts, and the renewal process. In particular, we recommend that a competitive solicitation process be adopted for all contracts with exceptions only for entities dubbed 'City Affiliates' such as the Children's Fairyland. For all COPOs, held by city affiliate or otherwise, we propose a process to create a Statement of Requirements which specifies, among other things, the City's objective(s) for the contract, the performance criteria and applicable audits, and clarifies liabilities. In certain named cases, a public hearing is recommended to aide in this process. We recommend the city attorney's office coordinate inclusion of standard contract clauses. We suggest that oversight provisions be written into the contracts upfront, with financial audits to be performed by outside auditors, while performance audits are performed by the City department responsible for the contract, with both being reviewed by the City Auditor. Furthermore, we propose a central repository of contracts, with a renewal trigger, to ensure the process is initiated at an appropriate time before the end of the previous contract. To this end, we argue the City needs a centralized computer database which keeps track of all contracts, names the associated city staff for each contract, and records renewal initiation date. We also recommend that contract approval procedures include disclosure of political contributions by any bidder at the time of contract approval.

What is a COPO?

Contracts Outside the Purchasing Ordinance (COPOs) provide for important municipal functions. Though their primary focus is not the purchase of services through City funds, the City and its residents are financially impacted. For example, the City does not pay from the general fund to have each resident's trash removed. Instead, a mandatory fee structure is put in place through Waste Management. Though this fee is not a tax, it is not discretionary, and in fact residents who do not pay may have a lien placed on their house. The level of service and fees are not elective, but rather are determined collectively, impacting all residents. Other examples of COPO, such as the Children's Fairyland, the Metropolitan Golf Links, Knowland Park Zoo, and the Dunsmuir House, collect user's fees but may also be subsidized directly or indirectly by the City. Examples of subsidies can include direct financial support from the City's general fund, the underwriting of bonds by the City, or even with the provision of City labor and staff. In many cases, operators of a City asset also have an important role in care and upkeep of that asset, and the City frequently assumes some liability for the operations. The level and type of service and usage fees are important public

issues which impact users and help establish Oakland's reputation. An example of a COPO is the bus shelter contract with Clear Channel in which Clear Channel builds and subsequently places advertising in bus stops all over the city. In a similar fashion, cable television is a franchise granted to an operator in the City. Another example of a COPO is the Towing Contract. In most cases, the City does not purchase the towing service, but rather, the towing company collects fees from the towed car owners and gives the City some portion of those fees. When vehicles are evidence in crimes, the City does pay outright for the towing and storage of the evidence. The towing fee paid by citizens, the amount of that fee shared by the City, and the amount the City pays when it asks for vehicles involved in crimes to be towed are all questions which have important public implications.

These COPOs are obviously very different types of activities, yet they involve provision of important municipal services and also have important financial implications. The City enters into such contracts in order to perform a function which it may not be in a position to do itself and can make use of outside expertise and resources. In doing so, the City removes itself from the day to day operations, which complicates oversight. However, the City remains responsible for the asset or service provided and the cost to citizens.

A&B Towing

The City's towing contract is a prime example of a COPO contract. For the most part, the City does not pay the towing company, rather the towing company charges the car owners and remits a portion of the revenue to the City. Thus, no formal open solicitation was performed or is required. Is the City getting the best towing service? What is good towing? Are the fees to the car owners reasonable? Could the City be making as much money from the towing as many other Bay area cities do? The contract was initially awarded to Oakland Tow Car Association (OTCA) in 1981. The contract has been renewed 5 times without an open solicitation or competitive bidding. In fact, according to the Sept 2003 OTCA Contract Compliance Audit, the "OTCA exists in name only. The contract is actually carried out by A&B Auto company and A&B Vehicle Processing, Inc. OTCA does not possess the characteristics to classify it as a business. Among other things, it does not have a license to do business in the City of Oakland."

The contract had been repeatedly renewed so far in advance of the end of the contract, that an open solicitation has been repeatedly pre-empted. In an absurd instance, the 1999-2002 contract extension was approved in 1996 - three years before the end of the existing contract! Renewal of the incumbent negated the opportunity for a competitive solicitation process, or even an evaluation if the terms of the contracts should be updated. For comparison, the City of San Jose, with an open, competitive process, gets \$50 for each tow, while Oakland only receives \$18. This \$32 difference per tow would result in about **\$800,000 per year** in additional City revenue applied over Oakland's typical 25,000 tows per year.

How can we create a unified approach to these contracts? We can start by providing better definition of COPOs and explaining some of the important issues. COPOs typically include one or more of the following:

- a. Authority to collect funds or fees from users with implications for level and quality of service and/or revenue share for the City
- b. Control or operation of a City asset, with implications for maintenance
- c. Authority to operate an exclusive franchise within the City
- d. Subsidies from the City including direct funding, City labor FTEs, bond underwriting, or assumption of other risk or liability

In addition, we can make some generalizations about those who hold these contracts. While some may be not-for-profits and some may be for-profit entities, another perhaps more important distinction is whether the entity constitutes a "City Affiliate." A City Affiliate is a standing organization typically formed by the City to perform a function as an extension of the City. Such an organization is different from a contractor. For example, the Dunsmiur House and Children's Fairyland are organizations that the City played a role in creating. Often, the City participates in appointing the board of a City Affiliate. They would be contrasted with Waste Management and A&B Towing, which are simply contractors. In many cases, City Affiliates are non-profits, but non profits may also be contractors. Though COPO contractors and City Affiliates share many of the same problems, we make some recommendations that apply to both and some that apply to only one or the other.

The Problem with COPO Contracting.

Each COPO contract tends to be uniquely drafted, solicited, awarded, and renewed. There is no comprehensive approach to competition. Such lack of procedural structure leaves open liability issues, the opportunity for sub-optimal performance, and even the potential for abuse and corruption. With a few exceptions, we have observed the following significant problems resulting from a lack of consistent approach.

- There is no process or policy that favors competition (as in the purchasing ordinance) to make sure the best provider is selected and that citizens are getting the best combination of services and fees possible.
- Each contract has been uniquely drafted. The contracts which the BAC reviewed varied tremendously. They ranged from micro management to laissez faire. Standard contract terms were not used.
- These contracts generally have poorly defined goals. For example, nowhere in the golf course contract is it stated what the objectives of the City are in maintaining this municipal golf course. For that matter, what does Oakland consider to be a 'good' Zoo and how does the City evaluate whether the Zoo is performing well? Are the City's horse stables achieving the goals the City expects? In general, are the citizens getting the best value in terms of a combination of the most service for the least fees? Are they the right services?
- The issue of risk management and liability is being defined on an ad hoc basis. In general, the City seems to be moving towards asking its contractors to carry the insurance and indemnify the City. At first glance this sounds good- we are protecting the City which is self insured. But upon closer evaluation, this may simply transfer the risk to an operator who must get insurance, which is paid for out of usage fees and or an increase in the City's contribution, meaning the City actually pays a

higher price for the operators insurance than if it had gotten insurance itself. Who should carry insurance? The City, which may qualify for better rates because of its size and amalgamation of risks, or the contracting entity, which may be in a better position to control the risks? In addition, the ad hoc approach prevents amalgamating liabilities across City Affiliates.

- The renewal procedures are poorly defined. A number of contracts were forced to be extended or renewed simply because there had not been advance notice that the end of contract date was approaching. With no time left to begin a solicitation process, the City had no choice but to extend the contract. At the other extreme, the towing contract was renewed so far in advance as to pre-empt the initiation of a renewal process.
- The function of providing oversight, monitoring, and audits – both performance and financial - is ad hoc, with oversight resources and responsibilities not always well defined, and contractors in some cases reluctant to provide information about funds they collect on behalf of the City. The lack of a formal statement of the performance requirements as described above further complicates the contractual enforcement aspect of oversight.
- The City has no centralized contract database or contract repository.
- The City has no central person or unit to monitor contracts and to control initiation and renewal
- Given this poorly defined process, there is almost certainly lost opportunity to gain the best combination of price and service for citizens, not to mention, at least, the potential for contract awards to be affected by political donations or other influence.

The Oakland Horse Stables

In November 1990, the citizens of Oakland passed Measure K, a bond measure put on the ballot by the Oakland City Council and Citizens for Oakland's Open Space (COOS). Among other projects, it funded the acquisition of Vista Madera Stables, in order to save equestrian facilities that were being sold for development.

In 1995 the City issued a Request for Qualifications (RFQ) to the equestrian community to identify people or organizations that could provide public benefit programs at the stables. There were about 12 responses. Subsequently, a Request for Proposals (RFP) was sent out to the equestrian community for a concessionaire to manage the boarding of private horses, maintenance of the facility and programs for youth and citizens of Oakland. The RFQ respondents were available for partnering. Unfortunately, the RFP also included a requirement for the concessionaire to fund the capital improvements estimated at \$995,000. As an equestrian facility has a slim profit margin and all improvements become the property of the City of Oakland, there were no viable responses to the RFP. The City did not issue a new RFP. Instead staff went back to the RFQ proposals and selected the Wildcat Canyon Ranch Youth Program, inc. (WCRYP) to be the concessionaire. WCRYP had no experience and little interest in running the facility. They were not required to fund the capital improvements.

After 5 years, the community requested that an RFP be issued to see if another group could run the stables. Supporters of the WCRYP on the Council wanted to renew their contract, but gave them a 3-year renewal instead of 5.

The City Stables Advisory Council, the Park and Recreation Advisory Commission and City staff recommended that an RFP for a concessionaire be issued. The WCRYP had lost its funding and was in financial trouble, the program was diminished, the facility was in greater disrepair and relations with the neighbors were poor – so much so that the neighbors filed a nuisance lawsuit. A grant from a State Parks bond was available to make some of the needed repairs, but Council put the funding on hold because it was unclear whether the WCRYP would be able to continue operations. The WCRYP lost its insurance and the City voided its contract with the WCRYP. During the three-month transition to closure, the Office of Parks and Recreation made urgent repairs to the facilities and managed stable operations, at which time the neighbor's suit was dropped. The City closed the stable in September 2004 and an RFP to operate the stables was issued at that time. The process of identifying a concessionaire is still underway.

Recommendations for a Proper COPO Process

The Budget Advisory Committee reviewed numerous City contracts and interviewed many City officials. We observed that each COPO was a 'one of a kind' contract. The Dunsmuir House contracts and issues were vastly different than those of the City's waste management or parking garage contracts. Never-the-less, we observed repeated themes in these COPOs, and we began formulating procedures and guidelines for COPOs, borrowing heavily from best practices used by other cities, the federal government, and general purchasing policies. We have condensed and formulated the procedures and guidelines described below. In some cases, our recommendations apply both to contractors and to City Affiliates, in other cases they apply to only one category. The recommendations and their applicability are outlined in the table below and explained in more detail in the following narrative.

Applicability	Type of Organization	
	City Affiliate	Non-City Affiliate
Process for Clear Statement of Requirements and Performance Goals	Yes	Yes
Standardized Clauses and Risk Management	Yes	Yes
Competition for Renewal	No	Yes
Good Oversight/Accountability and Audit Needed	Yes	Yes
Consistent Renewal Process and Timing Needed	Yes	Yes
Need to Review Consistency of Governance at Renewal?	Yes	No
Assets revert to City upon liquidation of organization	Yes (normally)	No

DRAFTING THE STATEMENT OF REQUIREMENTS

The most important part of a contract is the Statement of Requirements and the solicitation for competition. Greater effort in correctly drafting the contract will result in better value for the City and less work maintaining the contract. In other words, putting in effort in the beginning defining the contract's purpose will save greater efforts later in contract compliance, liability, degradation of assets, and disputes. As in other realms, the exercise of composing a comprehensive statement of requirements helps focus and unite city staff and council members on the same objectives. The solicitation should define the following:

1. What is the desired objective? The overriding goal of the City for entering into any contract should be explicit and included with every contract. Why does the City want to have City golf courses? While the City's objective for the Fairyland might obviously be to supply children's activities, it is not clear why the City wants to own and operate municipal horse stables. What does the City want to achieve with the bus shelter contract? Even for existing contracts, since these are questions of providing public services, we suggest that a public hearing can be valuable early in the process of defining the requirements, and possibly be mandatory when one or more conditions are present –

- a. total revenue/fees are greater than a pre-defined amount,
- b. control or operation of an asset over a certain threshold value is granted

- c. any case of exclusive franchise rights.

2. What are important criteria in determining the best value to the City and service users? In other words, what is the balance of the cost or fees to residents vs. the level of service the City is expecting? For cable TV, is the tradeoff reliability and channel selection vs. rates? What are good golf services, - a world class golf course, easy access for all citizens, or a high quality pro-shop? For towing, what share of the revenues should go to the City? These factors come from the values defined in section 1 and then can be used to create criteria which drives competition. Some types of criteria include:

- a. What level of services will be provided?
- b. What fees will be charged to users?
- c. How will the City asset (if applicable) be maintained and/or improved? This is specified in some COPOs, but not all.

Maintenance and improvements are currently contentious issues in the contracts for the horse stables, and Dunsmuir House. Clear definition of the requirements should be framed in the statement of requirements. Where this is applicable, those submitting competitive proposals must demonstrate their plans which will be measured against competitors to see who can offer the most.

3. What are the proposal evaluation criteria?

Having defined what is important, the City must concretely describe the proposal/contract evaluation criteria by which competitors will be evaluated. Numerous factors should be ranked in importance and weight. It is these criteria which will be used in awarding the contract as well as monitoring the contract compliance. The proposals indicate how each competitor will provide the best combination of service and cost. For an example like towing, given a certain towing fee structure, competitors could compete to see who can create the most efficient operation and provide highest revenue participation for the City. Proposals would be evaluated on the offers made, and the offers become a binding and enforceable part of the contract for the entity selected.

4. How will the ongoing contract oversight be done? With respect to performance reviews and audits, the contract **must** clearly define all of the following,

- a. the frequency of performance and financial audits, and ongoing oversight.
- b. the entity or entities responsible for executing the audits, and ongoing oversight.
- c. the source of funds and manpower to execute the audit, and ongoing oversight.
- d. the penalties for poor performance

The Children's Fairyland

The initial contract between the City of Oakland and Oakland Children's Fairyland, Inc. was for 10 years and was to expire in July 2004. Contract renewal discussions have been under way for several months and, as of this writing, have not been resolved. Delays on contract renewal have resulted in uncertainty for scheduling of programs and funding. Several unresolved issues in the renewal discussions are common to the other COPOs and would benefit from better, comprehensive contract procedures. In the example of Fairyland, the delay in a contract renewal decision affects the planning and execution of Measure DD funds voted for in November 2002. Delays increase costs. Unanticipated costs affect delivery of improvements referred to in the ballot measure.

Additionally, there has been a question as to the responsibilities for repair of deterioration to the City-owned facilities resulting from deferred maintenance prior to the non-profit board's assuming responsibilities for Fairyland. This same issue includes the upgrade of utilities and sewers to rehabilitate aging facilities and meet new government regulations.

Paying for the full liability insurance costs can be a major expense for a non-profit service provider such as Fairyland. Fairyland's income is in part dependent on gate receipts. Raising entry fees will have the effect of reducing the number of young children that will be able to experience this literacy and educational program. This same issue is found in many other non-City funded public/private partnerships and should be governed by City policy that is administered equitably and that is identified early enough in the contract process. (As of January 4th, Council has authorized a new agreement and the City is working with Fairyland to execute.)

- e. the entity responsible for checking that the audit itself was, in fact, performed,

This level of definition is needed at this early stage for two reasons. First, proposers need to know, while formulating proposals, what support and accountability they will have. Secondly, to the extent that staff costs are needed for oversight, those costs of oversight should be quantified and provided for. While the City may save money by contract performance, it is still responsible for the service, and oversight costs must be figured in up front. This may mean that a defined portion of the revenue stream is taken off the top and transferred to the City for oversight. If this is the case, it needs to be defined in the statement of requirements, so proposers can figure this cost into their proposals. The penalties for poor performance must be clearly defined and agreed to by all parties. We have more specific suggestions for an infrastructure for managing and overseeing contracts described in later sections.

5. How will risk and liabilities be managed? Ultimately, the City bears the risk for its actions. In general, the City seems to be moving towards asking its contractors to carry the insurance and to indemnify the City. At first glance this sounds good- we are protecting the City who is self insured. But upon closer evaluation, this may simply transfer the risk to an operator who must get insurance, which is paid for out of usage fees or it may increase the need for subsidies, meaning the City actually pays a higher price for the operators insurance than if it had gotten insurance itself. Who should carry insurance? The City, who may qualify for better rates because of their size and amalgamation of risks, or the contracting entity, who may be in a better position to control the risks? Should risks be allocated by who can control them best? Could amalgamation of risk amongst City Affiliates reduce rates? Are standardized contract clauses being used where appropriate? Without recommending one option of the other, it is clear the City would gain from a more comprehensive risk management analysis. To the extent possible, these issues should be defined so that all bidders may make the same risk assumptions.

6. What termination options are available to the City? Termination for cause and/or termination for convenience should be included in every contract. The City must have the ability to terminate a contract for poor performance as outlined by the contract evaluation criteria. One option is a procedure where the City has an annual renewal milestone, where it must make the choice to renew the contract annually based on the performance evaluation or it will be terminated without prejudice.

7. What financial responsibility or other contract provisions should be included? The City has already adopted fiscal requirements regarding contracts involving services to the public, contracts involving operation of City facilities, and grants and loans. Yet these are not included in the COPO contracts, adding risk to the contract and extra effort to individual negotiations. The Table of Contract Clauses Related to Financial Responsibility, proposed by the City Auditor and adopted by Council on November 27, 2001, explicitly describes contract requirements with respect to financial responsibilities (see attachment). This should be further developed and adhered to. Over time, additional contract clauses may be identified, and folded into the renewal process.

THE SOLICITATION PROCESS

Competition and open bidding should be encouraged for COPO contractors, with a different treatment where City Affiliates are involved. Competition should be explicitly required where there is an existing industry base that can provide the service (e.g. towing). Just as in the City's purchasing ordinance, competition should be the default assumption for COPO contractors. Competition for COPO contracts need not be restricted to purely lowest price bidding, since the Statement of Requirements, as described above, allows the City to weigh a combination of evaluation factors- price, level of service, and others factors. The Statement of Requirements, helps ensure that the outside

industry expertise will competitively focus on meeting the goals the City has formulated, and will perhaps even suggest alternative methods and approaches to meeting these goals. Proposals will be evaluated based on the evaluation criteria described in the previous section. In some cases, rounds of competitive negotiations may be conducted.

For the case of City Affiliates, since these organizations are created by the City and in a sense are an extension of the City, it does not make sense for the organization to have to compete to renew its contract. However, many other aspects of the process described here would still benefit even City component contractors going through renewal. Reviewing the purpose of the contract and updating the Statement of Requirements is important whether the contract is to be competed or if it to be renewed by bilateral agreement. Public hearings may make sense to review past performance and lessons learned and reset the direction. Where the City Affiliate itself is actually procuring goods or services for their purposes, every effort should be made to get competition to ensure the best value is obtained, whether the City purchasing policies completely apply or not.

Renewal is also an appropriate time to review the governance agreements of component agreements, as they vary widely between Oakland City Affiliates, for issues such as board appointments, and financial reporting. For example, the City has no input on the Board that oversees the Zoo, but does for Fairyland and Dunsmuir House. There may be good reason for the differences, and it is beyond the scope of this report to comment on the merits of the differences, but currently there is no provision for consistent review of the City Affiliate by-laws. Consideration should also be given to whether the function should be a City Affiliate, or if it should be contracted out, as a COPO commercial contract. While union agreements prevent this from occurring within the City, where City Affiliates are composed of non-union members, the decision can be considered openly

While many City Affiliates are non-profits, not all non-profits are City Affiliates. Non-profits which are not City Affiliates may be simply functioning as contractors. In many of these cases, volunteer efforts and expertise may present a unique value to the City. In some cases performance through a non-profit may have other social benefits as well. However, we point out that 'non-profit' status, in itself, is not a guarantee of most efficient performance or value to the City. Competition amongst non-profits may also be valuable. We suggest setting a policy of open bids and competition as the norm for COPO contractors unless they are City Affiliates. Where sensible exceptions arise, justification for bypassing the competitive process should be stated explicitly and sent to the same level of approval needed for contract approval.

Where competition is pursued, we suggested the following procedure.

- a. Proposals in response to the solicitation should be evaluated based on definitions and objectives in the solicitation as described in the statement of requirements.
- b. Competitive negotiations and rounds of discussions should be allowed. This is important, particularly if the industry has alternative ideas of how to meet the objectives of the solicitation.
- c. In the case of one bidder, a negotiation based on the proposal offered should be conducted based on its costs elements.
- d. In the case of no bidders, the solicitation should be re-evaluated.

We also suggest the following practices.

- a. Subject to thresholds for public hearings described above, these contracts should be sent for City Council approval.
- b. Political contributions to any City official involved with the contract solicitation or renewal should be disclosed as part of the renewal process ***at the time the contract is brought forward for approval***, even if disclosed under other mandatory disclosure statutes with different timelines.

CONTRACT COMPLIANCE AND OVERSIGHT

To maintain a performance incentive, an annual audit of a contract needs to be performed, as well as ongoing oversight. The criteria for this audit comes from the objectives and goals specified by the contract Statement of Requirements as mentioned in previous section, as well as the oversight plan, and as may be further defined by the contractor's proposals. The ongoing oversight will include making sure that a specific person is named as a day to day point of contact to resolve problems as they arise and ensure the City fulfills its obligations under the contract. In the case of poor performance by a contractor, the City should begin the solicitation process for a new contractor and terminate the contract when a new bidder has been obtained. An annual audit and the ability of the City to terminate the contract will provide incentive for the contractor to ensure that the goals and objectives described in the solicitation and the contractor's proposal are met throughout the contract period.

We suggest that financial audits be performed by outside auditors, and reviewed by the City Auditor, while performance audits be performed by the City department responsible for the contract. The person designated as the day to day point of contact would reside within the department responsible for the function. Oversight of both financial and performance audits should lie with the City Auditor.

CONTRACT RENEWAL

The most important aspect of contract renewal is that the solicitation process is triggered at an appropriate time before the current contract ends. The solicitation process and ensuing negotiations require adequate lead-time before renewal or cancellation of a contract. From the service provider and City's viewpoint, there is a need to prepare annual program and fiscal plans to insure continuity of service. Contract renewal and/or termination should be in sync with both the City and service provider's program and fiscal year plans. Contracts that abruptly end within a two-year City budget cycle can leave the City without expertise or ability to perform services that have community support and need. A solicitation/renewal process which is initiated too late results in possible interruption of service and/or a defacto renewal with the incumbent.

Timely renewal initiation can be accomplished with a database of City contracts, described below, which notifies the responsible City employee that a solicitation process need to begin again. This allows the solicitation process to occur in a reasonable timeline so that a new contract award may be made when the current contract expires.

Contract Infrastructure

We believe that the City crucially needs an improved approach to properly control its contracts. First, the City needs to establish a database of all its contracts and maintain files of signed contracts, both those under the purchasing ordinance as well as the COPOs described in this report. Currently, the City clerk is responsible for maintaining files of City contracts. However, in the "Review Of Contract Records" dated October 14, 2002, only 29% of the contracts approved by City Council from July 1 to December 31, 2001 were on file with original signatures in the Office of the City Clerk. This is due largely to the various ad hoc efforts of the departments. Another option would be to locate the files and data base of COPOs in an office under the control of the City Administrator, which may encourage the departments to provide copies more consistently. Regardless of its location, a database needs to be created which has several functions:

- a. to help track the many contracts the City enters into

- b. to automatically alert the City and responsible City staff that a contract expiration date is approaching and a solicitation process needs to be initiated
- c. to provide clearer hand-off of responsibilities as City staff personnel change
- d. to provide to the Council visibility of existing financial obligations and upcoming contract expirations during budget decisions

We can not over-emphasize the need for the City to be alerted to the expiration of a contract in a timely manner. Given the staff turn over, variable contract lengths, multi-year terms, we believe a computer database is the only way to ensure that staff are alerted at an appropriate time to be able to start a solicitation process. Locating this alerting function under the direction of the City administrator may create visibility for the renewal timelines, and would encourage the various departments to adhere to the timelines. We suggest that at least two City staff are alerted- one would be the staff person assigned to the contract in the City agency responsible for the contract. We also suggest that a second staff person, in an office under the direction of the City Administrator, be alerted in order to follow up that the agency has begun a solicitation process. This oversight might rest with an office under the control of the City Administrator such as the Contract Compliance Office. While the Contract Compliance Office is appropriately named, it currently has a different function. The department responsible for the functional area of the contract will:

- a. maintain the ongoing administration of the contract
- b. resolve issues as they arise
- c. ensure the City is meeting its obligations under the contract
- d. perform ongoing performance monitoring
- e. be responsible for gathering the content of the contract Statement of Work

This will encourage a sense of ownership in the area closest to the functional responsibility. At the same time, the auditor would be responsible for overseeing the performance monitoring of the agencies, and for reviewing the independent financial audits as well.

The City Attorney would be responsible for reviewing each contract for consistency and for maintaining a list of standard contract clauses to address issues like liability, so that they may included at contract renewal. Including the City Attorney's Office in the beginning of the contract would also assure a consistent approach to risk management.

Attachment 1: Table of Contract Clauses Related to Financial Responsibility

	Operating Agreement for City Facilities	Grants and Loans			Contracts with City for Services to Public		
		Aggregate Under 100K	Aggregate 100K - 300K	Aggregate over 300K	Contracts Under 100K	Contracts 100K - 300K	Contracts Over 300K
Maintain an up-to-date general ledger on the accrual basis in accordance with Generally Accepted Accounting Principals (GAAP).	Required	Required	Required	Required	Required	Required	Required
Submit interim compilation financial statements including a balance sheet and income statement.	At City's option, may be required by governing agency or City Auditor	At City's option, may be required by governing agency or City Auditor	At City's option, may be required by governing agency or City Auditor	At City's option, may be required by governing agency or City Auditor	Required for each fiscal year quarter	At City's option, may be required by governing agency or City Auditor	At City's option, may be required by governing agency or City Auditor
End of year financial statements prepared by a Certified Public Accountant acceptable to the City Auditor in accordance with GAAP.	Audit	Review	Audit	Single Audit	Review	Audit	Single Audit
Provide a management letter from a Certified Public Accountant	Required	Required	Required	Required	Required	Required	Required
Books open to inspection and audit by agents of the agency governing and the City Auditor	Required	Required	Required	Required	Required	Required	Required
Compensation and drawings paid to owners subject to limit.		Yes	Yes	Yes	Yes	Yes	Yes
Perquisites to owners and officers subject to limit		Yes	Yes	Yes	Yes	Yes	Yes
Tax reports and payments currently filed and paid.	Required	Required	Required	Required	Required	Required	Required
Timely reports on expenditures of funds in conformity with the contract.		Required	Required	Required			
Fire and casualty insurance adequate to cover loss and naming the City as co-beneficiary.	Required	Required	Required	Required			
Life insurance on key persons naming the City as co-beneficiary.		Required on loans	Required on loans	Required on loans			
Record Retention: Records to be retained to the later of four years after the termination or two years after the closure of any disputed application. Such records are throughout that period to be retained at the site of local administration or at a storage site nearby with availability to city.	Required	Required	Required	Required	Required	Required	Required

ATTACHMENT C

To: Deborah A. Edgerly, City Administrator
Niccolo De Luca, Deputy City Administrator

From: Ben Fay, Chair of the Budget Advisory Committee

RE: 2005 Citizen Survey

Date: December 23, 2004

The BAC has the following suggestions for the survey. These are not listed in any particular order.

1. Include in the contract the requirement that the demographics of the survey population (e.g. age, home ownership, educational attainment, etc. as captured in questions 23-35) be cross-tabulated with the most recent census data for Oakland. This will enable the City to determine how accurately the sample represents the City. This should be included in the contract so as not to become an added cost later.
2. In order for results from these surveys to be useful in the budget process, the BAC recommends that in future such surveys be conducted earlier in the budget cycle. This would allow the results to be used in the strategic planning of the budget.
3. Modify question number 4 of the survey, which asks the responder to list the three most serious issues facing residents of Oakland that the responder would like to see prioritized in the City's budget, to specifically exclude education as a response. In the 2002 survey, education was one of the top responses. However, education is not a City function, and this result might have obscured other responses that would have been more relevant to the City.
4. The BAC suggests adding the following questions:
 - a. How important is it for Oakland to keep major league sports teams in the City?
 - b. How important is public transportation to the vitality of the City?
 - c. Should the City spend money to attract and to keep businesses in Oakland?
 - d. The BAC also recommends a question where the already-identified core functions of the City are listed, and the responder is asked to rank them in order of importance.
5. The BAC also believes that shorter, more focused surveys would be very helpful. In particular, a survey on the business environment. Should we try to attract and keep businesses? What do businesses want? What do they not care about? Also, a survey on redevelopment would be useful.

Thank you for taking the time to meet with us to discuss this survey.