

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

CITY OF OAKLAND



04 JAN 15 PM 1:48

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-7367

January 27, 2004

**FINANCE AND MANAGEMENT COMMITTEE**  
Oakland, California

**Subject: REPORT AND RECOMMENDATION FROM THE CITY ATTORNEY REGARDING THE PROPOSED ORDINANCE AMENDING ORDINANCE NO. 7937 C.M.S., AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE CHAPTER 2.04, "PURCHASING SYSTEM" IMPLEMENTING MOVING OAKLAND FORWARD TEAM RECOMMENDATIONS AND CORRECTING ERRORS, DELETING OBSOLETE PROVISIONS AND UPDATING THE ORDINANCE.**

Chairperson Wan and Members of the Committee:

**INTRODUCTION**

The Moving Oakland Forward Team on contracting is recommending that the City Council increase the City Manager's authority from \$15,000 to \$150,000 for professional services contracts and from \$50,000 to \$250,000 for purchases of other goods and services, in addition to several other changes. These recommendations are described in a companion report from the Director of Finance.

In addition, the City Attorney has included new provisions setting forth appropriation requirements, a competitive process for professional services contracts and authorizing Council Committees to approve contracts at the request of the Finance Committee.

The City Attorney has also amended the ordinance to correct typographical errors and garbled language, delete obsolete provisions, reference new programs and codify longstanding and purchasing practices.

The legislation is included with the report from the Financial Services Agency regarding the Moving Forward Team's recommendation.

32  
**FINANCE & MANAGEMENT CMTE.**  
JAN 27 2004

### **RECOMMENDATION**

We recommend that the Council adopt the clean-up provisions and updates reflected in the ordinance amendment attached to the report from the Director of Finance, regardless of whether the Council adopts the policy recommendations of the Moving Oakland Forward Team. The Purchasing Ordinance (Ordinance, No. 7937 C.M.S.) was adopted in 1969 and has been amended on various occasions. The reason for the City Attorney's recommendation is that the current Purchasing Ordinance contains typographical errors that garble the language, obsolete provisions and does not reflect longstanding procedures and practices. If the Council does not adopt the ordinance attached to the Financial Services Agency's report, the City Attorney recommends that the Council direct staff to return to Council adopt the ordinance amendments needed to address general clean up.

### **DISCUSSION**

#### **A. New Provisions Adding Requirements & Codification of Existing Practices**

Per the direction of the Finance Committee, the following new provisions have been added to the proposed ordinance:

- City Manager Authority. In addition to the new contract limits and full appropriation requirement discussed in the Finance Director's Report, this section was amended reflect the City Manager's authority to make findings regarding the nature and term of service contracts. (See **O.M.C. Section 2.04.020.A & B.**)
- Emergency Contracts. This section was amended to codify existing practice. The City Manager's current practice is to provide informational reports to the City Council regarding the emergency contracts he executes. (See **O.M.C. Sections 2.04.020.D & E.**)
- Council Committee Contract Approval. This new section would authorize City Council Committees to approve contracts, with the exception of contracts requiring waiver of advertising and bidding and services contracts requiring a 2/3 vote of the Council. The legal basis for Committee approval of contracts and limitations is discussed in a separate City Attorney opinion. (See **O.M.C. Section 2.04.030.C.**)
- Existing Use of Purchase Orders and Informal Advertising and Bidding Limit. New provisions added to this section would reflect several longstanding practices for use of purchase orders and advertising and bidding of contracts within the City Manager's contract limit (known as "informal bidding"). The current practice of issuing purchase orders for all procurements and professional services contracts over \$500.00 would be codified. Purchase orders are used as a means of processing payments, regardless of the contract format. New provisions would also limit the use of informal advertising and bidding procedures to procurement and construction contracts up to \$50,000.00, regardless of the City Manager's

## FINANCE AND MANAGEMENT COMMITTEE

Ordinance

January 27, 2004

Page 3

contract authority. The Purchasing Ordinance does not currently address the use of informal advertising and bidding procedures. (See **O.M.C. Section 2.04.040.**)

### **B. Clarifications, Updating, Corrections & Obsolete Provisions**

Longstanding errors in the published version of the ordinance as well as updates and deletions of obsolete language should be done at this time, as follows:

- Local Vendor Preferences. In addition to vendor preference revisions discussed in the Finance Director's report, race-based references were deleted and language was added authorizing the City Manager to extend any preferences permitted or required by law. This brings the section into compliance with changes in state law and will allow the City to extend disadvantaged business enterprise preferences on federally funded projects, in addition to any other race-based or gender-based preferences permitted or required by law. (See **O.M.C. Section 2.04.020.C.**)
- Typographical errors. The section stating the City Manager's contract authority during the Council recess contains numerous typographical errors. Due to these errors, the provisions concerning professional services contracts are garbled. Sentences have been corrected to make these provisions consistent with the provisions for procurements and clarify that professional services contracts authorized during the recess are subject to the availability of funds. (See Section **O.M.C. 2.04.020.F.**)
- Obsolete Contract Procedures. The section delineating the use of purchase orders for procurements in excess of \$15,000.00, and use of formal (i.e., written) contracts for professional services contracts in excess of \$15,000.00, was deleted. The City's longstanding practices are to issue purchase orders for all procurement and professional services contracts in excess of \$500.00, and to execute written agreements for professional services contracts in excess of \$5,000.00. Written agreements are also executed for procurements and services contracts less than \$5,000.00 as appropriate. (See **O.M.C. Section 2.04.040.**)
- Affirmative Action Requirements. The revisions bring the section into compliance with changes in state law and will allow the City to require vendors and contractors to submit proof of Affirmative Action plans to the extent permitted and or required by law. (See **O.M.C. Section 2.04.170.A & B.**)
- Cooperative Purchase Agreements. Language was added to clarify and codify the City's longstanding practice of cooperative purchase of supplies, materials and services through the contracts of other governmental agencies without Council approval. (See **O.M.C. Section 2.04.080.**)

FINANCE AND MANAGEMENT COMMITTEE

Ordinance

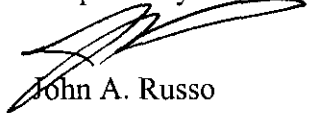
January 27, 2004

Page 4

**CONCLUSION**

If the Council decides not to adopt the Moving Oakland Forward Team's recommended increase in City Manager contracting authority and other policy changes, the City Attorney recommends that the City Council adopt the clean up provisions of the proposed ordinance. This would accomplish necessary corrections, updates and deletions pertaining to City Manager Contract authority, procedures for emergency contracts, informal advertising and bidding, payment and cooperative purchasing.

Respectfully submitted,



John A. Russo  
City Attorney

Attorneys Assigned:  
Doryanna M. Moreno

317766

3.2  
FINANCE & MANAGEMENT CMTE.  
JAN 27 2004