

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 SEP 29 PM 12:08

TO: Office of the City Administrator
FROM: Budget Office
DATE: October 12, 2004

RE: Quarterly Report from the Budget Advisory Committee (BAC) on Activities through June 30, 2004

SUMMARY

This document transmits a report from the Budget Advisory Committee (BAC), for activities during the second quarter of Calendar Year 2004 (April 1 – June 30, 2004). BAC Chairperson Benjamin Fay is available to answer questions and/or provide additional information.

FISCAL IMPACT

This is an informational report and, therefore, contains no fiscal impacts.

BACKGROUND

On March 2, 1999 the Oakland City Council approved Resolution No # 74826 establishing the Budget Advisory Committee (BAC). This action combined the City Council's previously created Citizens' Budget Advisory Committee with the Business Budget Advisory Committee for the purpose of advising the City Council regarding the City's two-year policy budgets.

The BAC consists of 15 members, with four appointed by the Mayor, seven appointed by Councilmembers for each of the seven Districts, one by the Community and Economic Development Committee Chairperson, two by the Finance and Management Committee Chairperson, and one by the At-Large Councilmember. Meetings are held the third Monday of every month, with staff support provided by the Budget Office.

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STATUS REPORTBAC Vacancies

The BAC currently has one vacancy, which must be appointed by the Chair of the Finance and Management Committee from a list provided by the Oakland Chamber of Commerce. Additionally, two positions are filled by incumbents who must be re-appointed in order to continue serving on the committee for a second two-year term: the appointee from Council District 1, and, the appointee of the Chair of the Finance and Management Committee.

BAC Activities

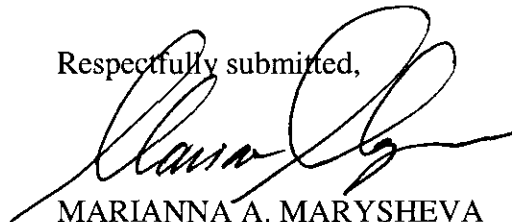
The BAC's primary focus over the last three months has been an evaluation of the City's contract process and purchasing legislation. In the attached quarterly report they provide substantive comments and recommendations on the revisions to the City's Purchasing Ordinance. In addition, a subcommittee of the BAC has been reviewing the process by which non-City funded (and yet City-related) contracts are awarded and renewed. The BAC plans to present a report that will include recommendations for standard contracts and for "Non-City-Funded" contracts in the next month.

The Quarterly Report of the Budget Advisory Committee is attached here for your review. BAC Chairperson Benjamin Fay is available to answer questions and/or provide additional information.

RECOMMENDATION

Staff recommends acceptance of this report.

Respectfully submitted,



MARIANNA A. MARYSHEVA
Budget Director

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

Approved for forwarding to
Finance & Management Committee


OFFICE OF THE CITY ADMINISTRATOR

Attachment: Quarterly Report from the BAC

Item: _____
Finance & Management Committee
October 12, 2004

Budget Advisory Committee Report for the Second Quarter of the 2004 Calendar Year
(through June 30, 2004)

Presentation at the October 12, 2004 Finance & Management Committee meeting

The Budget Advisory Committee (BAC) hereby submits this report for the second quarter of the 2004 Calendar year. This report consists of two parts: first, comments on the revisions to the purchasing ordinance, and second, a report on the status of our current and future projects.

Comments on the Revisions to the Purchasing Ordinance

Summary

The BAC has reviewed the revisions to the City's purchasing ordinance and makes the following comments:

1. Increasing the City Administrator's authority to approve contracts for supplies and services to \$250,000 and to approve contracts for professional services to \$150,000 is a good idea and the BAC supports it.
2. Using an "informal" bidding process for smaller contracts can be a good idea. However, the ordinance should explicitly require that such a process have certain basic requirements, including open solicitation of bids and fair and open competition for the contracts. The administrative procedures for the "informal" bidding process should be published and easily accessible to the public.
3. The BAC is concerned that there appears to be an internal conflict between sections of the ordinance that needs to be resolved. The BAC has brought this to the attention of the City Attorney's office, and it may already have been addressed. The problem is that while some sections of the revised ordinance provide that the "informal" bidding process would only apply to contracts with a value of less than \$50,000, other sections establish the informal bidding process dollar threshold at \$150,000 or \$250,000. The BAC recommends that this apparent conflict be resolved by having the "informal" bidding process apply only to contracts up to \$50,000. All contracts over \$50,000 should be subject to the "formal" bidding process, regardless of whether the contracts are within the approval authority of the City Administrator.

Discussion

1. The increase on the City Administrator's authority to approve contracts.

Increasing the City Administrator's authority to approve contracts is a good idea. It is consistent with the City Council's role as the legislative and policy making body for the City. It should free the Council up to focus on legislative and policy matters, and it should speed up the City's ability

to enter into contracts. The BAC supports increasing the approval authority of the Administrator. In fact, there was sentiment on the BAC that these new limits could be made even higher.

2. The creation of an “informal” bidding process.

The BAC supports the creation of an “informal” bidding process for smaller contracts, with certain reservations. The BAC is somewhat concerned that this process could be too informal. Such an “informal” process should still include all of the basic elements of an open and competitive bidding process in order to ensure that the City obtains value for its money and to avoid the danger of favoritism in the contracting process. Therefore, any “informal” process should still include the open and publicized solicitation of bids and a fair and open competition for the contracts. Moreover, the administrative procedures developed for the “informal” bidding process should be published and easily accessible to the public.

3. The apparent conflicts in the revised ordinance regarding the application of the new “informal” bidding procedures.

There appears to be a conflict regarding the dollar amount at which the “informal” bidding process may be invoked. While some sections of the ordinance provide that the “informal” bidding process would only apply to contracts with a value of less than \$50,000, other sections provide that all contracts that fall within the City Administrator’s authority would be bid under the “informal” bidding process, which includes contracts up to \$250,000. This has been brought to the attention of the City Attorney’s office by the BAC and may already have been addressed. The BAC recommends that this be resolved by limiting the use of the “informal” bidding process to contracts under \$50,000

The conflict arises between sections 2.04.010, 2.04.040(B), and 2.04.020.

Section 2.04.010 and section 2.04.040(B) state that the “informal” bidding process would only apply to contracts up to \$50,000, and that the regular formal bidding process would apply to contracts over \$50,000.

Section 2.04.010 states:

“Formal Bidding” as used herein means the solicitation and bidding or request for proposal (“RFP”) or request for qualification (“RFQ”) processes required under Sections 2.04.050 and 2.04.051, below, for purchases, procurements and construction, services and professional services contracts in excess of fifty thousand dollars (\$50,000).

“Informal Bidding” as used herein means the solicitation and bidding or request for proposal (“RFP”) or request for qualification (“RFQ”) processes required by the City Administrator and set forth in City Administrator-issued Administrative

Instructions for purchases, procurements and construction, services and professional services contracts of fifty thousand dollars (\$50,000) or less.

Section 2.04.040, subdivision (B), which explains when the “informal” and formal Bidding procedures should be used, provides:

- B. Use of Informal and Formal Contracting Procedures.
 - 1. Informal solicitation, bidding or RFP or RFQ procedures established by the City Administrator shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds five hundred dollars (\$500.00), but is less than fifty thousand dollars (\$50,000.00) in any one transaction or term agreement;
 - 2. Formal advertising, solicitation, bidding or RFP or RFQ procedures . . . shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.

In contrast to sections 2.04.010 and 2.04.040(B), section 2.04.020 states that the “informal” bidding process corresponds to the City Administrator’s authority, which would mean that it would apply to contracts for supplies and services of up to \$250,000 and to contracts for professional services of up to \$150,000. Section 2.04.020 states:

- A. Supplies and Services Procurement Contracts. Subject to 1) the availability of funds, 2) findings by the City Administrator that contracts for services are of a scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract or purchase order, involving an expenditure not exceeding two hundred fifty thousand dollars (\$250,000) in any one transaction *by an informal advertising and bidding process* and without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City,
- B. Professional Services and Consultant Agreements. Subject to 1) the availability of funds, 2) findings by the City Administrator that the contract is for services of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract, involving an expenditure not exceeding one hundred fifty thousand dollars (\$150,000) in any one transaction *by an informal*

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solicitation process and without previous specific action by the City Council, for the payment for services to be furnished to the City, . . .

This conflict should be resolved in order to avoid any legal complications in the future. Moreover, the BAC recommends that this be resolved by limiting the use of the “informal” bidding process to contracts up to \$50,000. Contracts above \$50,000 are large enough that it is worth subjecting them to a more rigorous bidding or solicitation process, particularly because they will not be reviewed by the Council.

Current and Future Projects

The BAC is completing an extensive review of the City’s contracting process. We plan to complete our report in the next month. We have looked at the process for awarding contracts to purchase goods and services as well as less standard contracts, such as those for the use of City facilities or to provide a service in conjunction with the City. For want of a better term, we have called these “non-city-funds” contracts, because they do not involve the expenditure of City funds and therefore are generally not subject to the bidding requirements.

We are currently exploring several new possible projects, including expenditures outside the budget process, use of redevelopment funds, Police Department expenditures, and Public Works spending. Suggestions are certainly welcome.

Respectfully submitted,

Benjamin P. Fay
Chair of the Budget Advisory Committee