

# City and County of San Francisco

## OFFICE OF THE CONTROLLER

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### **SOLE SOURCE CONTRACTS:**

The City Needs Better Information on and Improved Management of Its Sole Source Contracts

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CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF THE CONTROLLER

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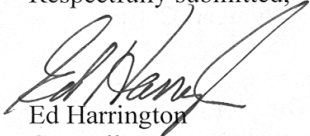
Dear City Officials:

The Controller's Office presents its report concerning the review of the sole source contracting practices of the City and County of San Francisco (City). Although there are many actors in the City's system for establishing sole source contracts, we are addressing this report to you because it includes recommendations for your departments.

This report concludes that, although the Office of Contract Administration has issued new guidelines for sole source contracting, the City's past oversight and knowledge of its contracts with sole source providers of goods and services have been inadequate. Consequently, the City cannot be sure that it has always followed proper procedures and received the best value when it obtained goods and services. We found that the City needs more information about its sole source contracts, and that the City's sole source contracting process can and should be more coordinated, controlled, and efficient.

Responses from Office of Contract Administration and the Human Rights Commission are attached to this report. The Controller's Office will work with the Board of Supervisors, Mayor's Office, and all other City departments to which this report makes recommendations to follow up on their status.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ed Harrington", written over a horizontal line.

Ed Harrington  
Controller

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# EXECUTIVE SUMMARY

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## Results in Brief

In its April 2002 report, the Civil Grand Jury recommended that the Controller audit and issue annual reports on “sole source” contracting activities in the City and County of San Francisco (City). This report is our first look at the topic and involves some of the larger issues involved in sole source contracts, rather than audits of individual contracts.

Sole source contracts are entered into without competition and are considered appropriate when a contracting department has determined that only one qualified provider of needed goods or services is available. Although new guidelines and procedures for sole source contracting have been recently established by the Office of Contract Administration (OCA), historically the City’s oversight and knowledge of its contracts with sole source providers of goods and services have been inadequate. As a result, the City cannot be sure that in all cases it has obtained the goods and services it needs through proper procedures and that it has received the best possible value.

In general, the City:

- Does not know the number or value of its sole source contracts.
- Has long-term relationships with contractors where no competitive process has occurred for many years or has never occurred.
- Improperly provides funding for specific contracts or organizations through the Board of Supervisors’ “addback” process, and
- Should make a number of changes to allow for more effective and efficient processing and tracking of sole source contracts.

## *The Effectiveness of New Sole Source Contracting Procedures of the Office of Contract Administration Has Yet to Be Proven*

In August 2002, OCA issued a memo to department heads, contract administrators, and OCA purchasers outlining a new review and approval procedure for all sole source contracts. The procedure includes guidelines for determining whether a potential contractor is a true sole source and requires written justification for each sole source contract. All departments seeking sole source contracts must request a waiver from OCA before they can proceed with or enter a sole source contract.

This new procedure for sole source contract review and approval by OCA is reasonable and should help ensure that these contracts are true sole source contracts and not contracts that require competitive solicitation. The guidelines from OCA are adequate for determining when a proposed contractor is truly a sole source and conform with the State of California's definition of a sole source contract. However, because OCA's procedure was recently implemented, its effectiveness cannot yet be determined.

***The City Does Not Know  
the Number or Value of Its  
Sole Source Contracts***

The City currently has no comprehensive and reliable data on sole source contracts, including the total number of the City's sole source contracts or their value. As a result, this potentially useful information is not available to City policy makers, City department contracting staff, or the public. None of the City's several contract databases contain sufficient information or possess adequate capability to report comprehensive information on sole source contracts.

The only citywide reporting requirement on sole source contracts is contained in the Sunshine Ordinance, which requires departments to report annually on their sole source contracts to the Board of Supervisors. However, this provision only requires departments with new sole source contracts to report this information, there is no follow up to require compliance with the requirement, and only 19 departments filed a report for fiscal year 2001-02. Thus, we were unable to use the information reported to obtain an accurate picture of the extent of sole source contracting in the City.

***The City Has Long-term  
Contractual Relationships  
With Organizations That  
Should be Subject to a  
Competitive Selection  
Process***

A few organizations have had contracts to provide key services to the City for longer than the Administrative Code allows. In response to a survey we conducted, at least three City departments—the Airport, Board of Supervisors and the Department of Public Health—reported having contracts or a series of contracts with the same organizations for more than 10 years without competitive solicitations or sole source waivers from the City's Human Rights Commission. These practices bring into question whether the City is receiving the best quality services at reasonable costs. Strengthening the City's controls over such contracting procedures would ensure that the City's interests are adequately protected when the City buys services and that City departments are complying with Administrative Code provisions.

***The “Addback” Procedure Has Allowed the City to Establish Some Contracts and Add Funding to Others Without Competition Among Potential Providers***

Some service provider organizations receive City contracts or additional funds for existing City contracts without competing for them through the City’s use of “addbacks” as part of the annual budget process. Although the San Francisco Charter prohibits the Board from prescribing or making suggestions regarding any City contract, the Board sometimes specifies organizations to receive City funds when money saved through line-item cuts is added back into the budget. Over the past three years, the Board has earmarked approximately \$10 million to specific organizations through 108 separate addbacks. When the Board earmarks addback funds for specific organizations, it circumvents the City’s normal competitive solicitation process and the City loses the benefits that such a process provides.

***The City Needs to Make a Number of Changes to Improve Its Effectiveness and Efficiency in Processing and Tracking Sole Source Contracts***

To process and track sole source contracts the City should:

- Legally define “sole source contract” in the Administrative Code.
- Modify existing databases or establish a new database to centralize and track information on sole source contracting and allow for reporting on these contracts.
- Improve contract wording to be clear about the term of the contract so that contracts cannot be repeatedly renewed or reestablished without a new competitive process.
- Change the procedures of the Human Rights Commission to ensure that only contracts requiring its approval are routed to that office.

**Key Recommendations**

*To review all existing sole source contracts under its new guidelines and better track sole source contracts, the Office of Contract Administration should:*

- Change its procedures to require departments to submit all existing sole source contracts for review within a reasonable time period so that existing contracts can be reviewed under its new guidelines.
- Develop a computerized, sole source database that includes all relevant information for each contract.

*To use information on the City’s sole source contracting, the Board of Supervisors should:*

- Enhance the Sunshine Ordinance to require reports from all departments annually on all existing, not just new, sole source contracts and direct the Clerk of the Board of Supervisors to report on departmental compliance with this requirement.



- Discontinue directing funds toward specific City contracts or contractors through the addback process. This includes no longer adding additional money to existing contracts, and no longer earmarking funds for specific new contractors. The Board of Supervisors may appropriately allocate funds to nonprofit organizations by budgeting those funds to departments that will administer the funds through the proper competitive solicitation processes.

*Departments with long-term sole source contracts should:*

- Competitively solicit for a budget analyst.
- Review existing contracts to determine if services provided under sole source contracts can now be bid competitively.
- Begin competitive solicitation processes for services provided under contracts that have been in place for 10 years or longer. In particular, the Airport and the Department of Public Health, which have sole source contracts for services that have not been solicited in over 10 years, should commence a competitive solicitation process for these services as soon as it is feasible.

*To establish a more efficient approval path for the City's sole source contracts, the **Human Rights Commission** should:*

- Discontinue reviews of sole source waivers that have been approved by the Office of Contract Administration. The Human Rights Commission should stay informed of sole source contracts so that it can continue to work with departments to try to bring contractors into compliance with the City's human rights laws.

**Department Comments**

The Office of Contract Administration agrees with the audit's assessment that the City's past approach to sole source contracting was inadequate. However, the Office of Contract Administration believes that both it and the Human Rights Commission should continue to approve waivers for sole source contracts, contrary to a recommendation in the report.

The Human Rights Commission concurs with the report's findings and recommendations on the importance of conducting competitive contract solicitations but disagrees with the recommendations on the Human Rights Commission's role in approving sole source contracts.

# INTRODUCTION

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The City and County of San Francisco (City) purchases a large variety of goods and services from other organizations. Most of these purchases are formalized in a contract between the City and the seller of the good or service. While many contracts are the result of a competitive solicitation process, some City contracts are with providers that are the only organization that is able and qualified to provide the good or service. These types of contracts are known as sole source contracts.

The San Francisco Charter (Charter) states that the director of the Department of Administrative Services is responsible for the City's purchasing function. Within that department, purchasing is the responsibility of the Office of Contract Administration (OCA) and its Purchasing Division. Other City departments are also involved in the contracting process.

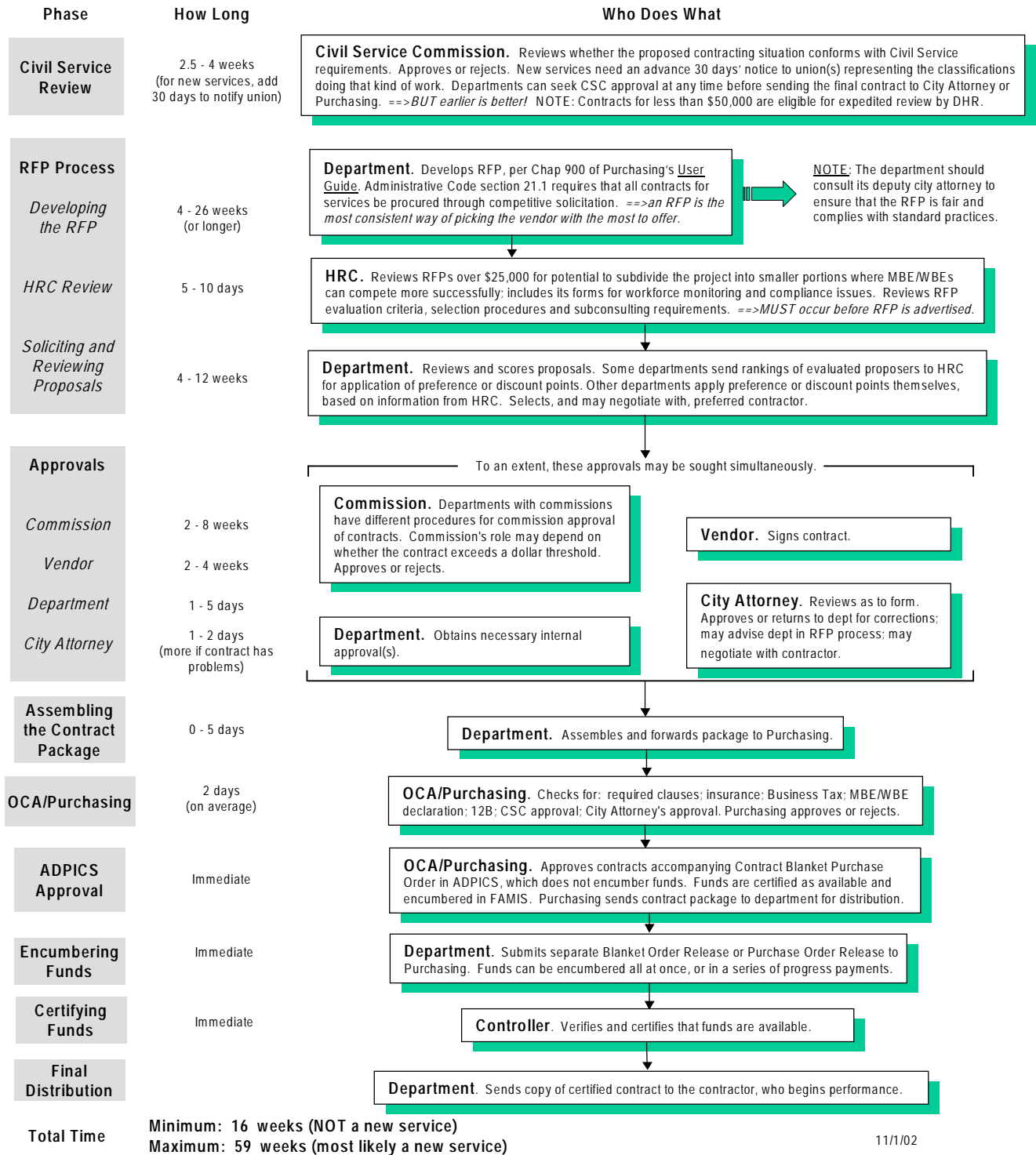
City contracts are divided into four general categories, or types of purchases. The Purchasing Division administers two of these categories, procurement of general services and commodities. The third category of contract is for construction, and architectural and engineering services related to construction. Several departments have separate contracting authority to award contracts for construction and construction-related professional services based on their own competitive solicitation processes. These departments include the San Francisco International Airport (Airport), Port of San Francisco, Municipal Transportation Agency (Municipal Railway), Department of Public Works, and Recreation and Park Department. This report focuses on the fourth type of contract, professional services, where sole source contracting is most common.

The City has a decentralized system for procuring professional services, examples of which are consulting services and services provided to City residents by nonprofit organizations. Although OCA's Purchasing Division officially awards professional services contracts, individual departments initiate and manage the competitive solicitation to select a provider, as well as the subsequent contractual relationship. The City's generic contracting process for professional services is depicted in the exhibit on the following page. The glossary below defines the acronyms used in the exhibit.

|         |  |
|---------|--|
| ADPICS  | Advanced Purchasing Inventory Control System is the City's online requisition and purchase order system for acquisition of goods and services.   |
| CSC     | Civil Service Commission   |
| DHR     | Department of Human Resources  |
| FAMIS   | Financial Accounting Management Information System is the City's system for recording and processing financial transactions.   |
| HRC     | Human Rights Commission  |
| MBE/WBE | Minority-owned Business Enterprise/Women-owned Business Enterprise   |
| RFP     | Request for Proposal is a formal competitive solicitation process used by City departments to obtain proposals from potential vendors or providers of needed services and to make a selection of a provider. |

## Exhibit

# Professional Services Contract Process



\*\* All the estimates are based on averages for transactions without problems. This chart excludes construction contracts.\*\*

As the chart shows, pending contracts are reviewed by the Civil Service Commission, Human Rights Commission (HRC), and City Attorney before coming to OCA’s Purchasing Division as a final step in the approval process.

### ***Defining a Sole Source Contract***

According to the City Attorney, there is no legal definition of sole source contracting in the City Charter or Administrative Code. The State of California’s contracting manual defines a sole source transaction as, “. . . a procurement or contract for goods or services or both when only a single business enterprise is afforded the opportunity to offer the state a price for the specified goods or services.” Although there is no legal definition in the City of sole source contracting, there are references to sole source contracts in Section 12B.5-1 of the Administrative Code pertaining to the responsibilities of HRC for enforcing the City’s Equal Benefits Ordinance and the Minority/Women/Local Business Utilization Ordinance. Sole source contracts are also referred to in the Administrative Code’s Section 12P.7 and Section 12Q.6 relating to the Department of Administrative Services’ responsibilities for enforcing the Minimum Compensation Ordinance and the Health Care Accountability Ordinance. These ordinances grant each City agency authority to waive the City requirement for competitive solicitation in contracts in several circumstances, including those where there is only one prospective contractor or the needed goods or services are available only from a sole source.

The Administrative Code, Section 21.1, states, “All City contracts for Commodities and/or Services shall be procured through competitive solicitation, except as otherwise authorized in this code.” Section 21.5(a) of the code states that procurement of commodities or services available only from a sole source shall be made in accordance with Purchaser’s regulations. This section indicates that the Purchaser’s regulations should provide guidance to departments for determining when sole source contracting is appropriate. One other section of the Administrative Code, Section 21.30, provides that sole source contracts are allowed with vendors having proprietary rights to software and hardware as well as for associated maintenance agreements. The Office of Contract Administration has adopted a new procedure for reviewing and approving waivers for sole source contracts that uses guidelines to determine under what circumstances a sole source contract is appropriate. Chapter 1 discusses the new procedure in more detail.

### **Methodology**

We conducted this review by interviewing departmental contracting staff and other participants in the City’s contracting processes, and by reviewing and analyzing Administrative Code and Charter provisions, contract documents, budget addback data, and databases. Interviewees included the directors and staffs of HRC and OCA. Additionally, we interviewed contracting officers and other staff of the Department of Human Services, Department of Public Health, Public Library, Department of Administrative Services and its Convention Facilities Management division. We also relied on assistance from the City Attorney, Civil Service Commission, and Clerk of the Board of Supervisors.

### **Glossary**

*Addbacks*— Funding that the Board of Supervisors adds back to the budget after initial cuts have been made while balancing the budget.

*MBE/WBE/LBE*— Minority-owned business enterprise, woman-owned business enterprise, or local business enterprise. These types of economically disadvantaged for-profit firms have preference under City sub-contracting rules.

*Sole Source Contract*— A contract with the only vendor that can provide the needed good or service.



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# CHAPTER 1

## **SAN FRANCISCO NEEDS MORE INFORMATION ABOUT ITS SOLE SOURCE CONTRACTS AND BETTER COORDINATION OVER THE SOLE SOURCE CONTRACTING PROCESS**

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### **CHAPTER SUMMARY**

Until recently, the City and County of San Francisco (City) had no centralized process for approving or monitoring sole source contracts. Further, the City currently has no comprehensive and reliable data on sole source contracts, including the total number of the City's sole source contracts or their dollar value. After we began this review, the Office of Contract Administration (OCA) issued, for the first time, guidelines for departments to use when seeking to establish sole source contracts. To enable City staff to identify and collect data on all of the City's sole source contracts, we recommend that the City's automated accounting system be enhanced. We also found that most departments have not reported annually to the Board of Supervisors on their sole source contracts, as required by City law, but it is unclear if departments have not reported simply because they had no new sole source contracts during the preceding year.

### **THE CITY HAS HAD NO CENTRALIZED REVIEW OF SOLE SOURCE CONTRACTS UNTIL NOW**

Until recently the City had no centralized review and approval process before a department could enter a sole source contract, nor any centralized monitoring of sole source contracting. The City has had review procedures that have served an oversight function but they were not created to determine the merit of departments' decisions to establish sole source contracts. The review procedures have been conducted by the departments themselves, the Human Rights Commission (HRC) and, in final contract document review, OCA.

At the department level, department commissions provide the primary oversight for sole source contract approval. We found that many department commissions approve sole source contracts. This oversight function is potentially valuable because it makes departments' contracting units more accountable for their sole source contracts than they would be otherwise. However, the extent to which commissions review staff justifications for sole source contracts is not known and may vary. Our understanding is that department commissions approve the overwhelming majority of sole source contracts brought before them.

The Human Rights Commission's main function concerning City contracting is to monitor vendor compliance with the Equal Benefits Ordinance and the Minority/Women/Local Business Utilization Ordinance. When departments need to use a

sole source provider, they must request from HRC a waiver from the compliance requirements in these ordinances. Departments do so by submitting a waiver request form with justification for seeking the sole source contract. Organizations contracting with the City as sole source vendors that are in compliance with the ordinance are not subject to HRC's review. The review process of HRC, while serving as a corollary oversight of some sole source contracts, was intended only to waive the ordinance's applicability to the vendor. It was not intended to assess whether the requesting City department has sufficient justification for pursuing a sole source contract and did so properly.

The Office of Contract Administration has long done a final review of each contract package to ensure compliance with procedural contracting requirements. Again, like HRC's review, this examination is focused on procedure, not justification. Until recently, monitoring by OCA was a perfunctory document check to make sure the contract package was in order, not an approval or validation of the decision by a department to contract with a sole source provider of services.

### **THE OFFICE OF CONTRACT ADMINISTRATION'S NEW PROCEDURE FOR GRANTING SOLE SOURCE WAIVERS CAN RESULT IN BETTER CITYWIDE OVERSIGHT AND INFORMATION**

On August 5, 2002, the director of OCA issued a memorandum to all departments that presents clear guidelines for when it is appropriate to enter a sole source contract, and establishes procedures for granting departments sole source waivers. Departments are now required to submit to OCA waiver requests for approval of proposed sole source contracts. The request form is intended to allow OCA to approve the actual contract between the City department and the vendor. Departments will be unable to initiate sole source contracts without this approval. Although this is a new procedure and it may be some time before its effectiveness can be documented, it should provide the City with a more cohesive and effective process for reviewing proposed sole source contracts.

The new OCA guidelines will allow departments that obtain a waiver from that office to forego the standard competitive solicitation process. The guidelines state that, for a department to enter a sole source contract, one of the following criteria must be present:

- The goods or services are available from only one source.
- Only one prospective vendor is willing to enter a contract with the City.
- The item has design and/or performance features that are essential to the department and no other source satisfies the City's requirements.
- The good or service is licensed or patented.

A department must state which of these criteria apply to the proposed procurement when it submits a waiver request to OCA. If a department wants to enter a sole source contract for any other reason, it must submit an argument to OCA to justify why the waiver should be granted. This new, centralized method for granting sole source waivers should better assure policy makers and the public that City departments are entering valid sole source contracts that have been scrutinized with the City's interests in mind. This is a

positive step toward making the sole source contracting process more accountable and consistent. Although, as noted in the introduction, the City does not have a legal definition of a sole source contract, the criteria used by OCA help define a sole source contract and are consistent with the State of California's definition.

### **THE CITY DOES NOT HAVE COMPLETE OR ACCURATE INFORMATION ON THE NUMBER OF SOLE SOURCE CONTRACTS OR THEIR VALUE**

The City cannot now produce and we were unable to obtain an accurate total number of sole source contracts the City has or a reliable figure for the total value of sole source contracts awarded. Because the City is unable to account for the total number and dollar value of its sole source contracts, it is more difficult to know if the current process for establishing sole source contracts is functioning effectively, or if it is being abused. We attempted to obtain information on the City's sole source contracts from the City's automated Financial Accounting Management Information System (FAMIS) and its purchasing module, the Advanced Purchasing Inventory Control System (ADPICS). Although information on all contracts in the City is contained in FAMIS and all transactions that occur between the City and contractors are recorded in the system, there is no practical way to extract from the system complete and accurate data on sole source contracts.

We also attempted to obtain information from the HRC database, called the Diversity Tracking System, which contains information on most contracts in the City. However, we found that the information on sole source contracts was a combination of current and historical data and, in some cases, we could not determine which contracts were current and which had expired. Another source of information on sole source contracts is the contracting departments themselves. As discussed later in this chapter, a provision of the City's Sunshine Ordinance requires that departments report their new sole source contracts to the Board of Supervisors (Board) annually. However, we found that this information also appears to be incomplete and, even if it were complete, it would show only sole source contracts established during each year rather than all such contracts.

Accurate and reportable information about the City's contracts has been lacking for too long. With the information that should be collected and reported, department contracting managers, department heads, policy makers, and the public will be able to understand the scope and cost of sole source contracting in the City and the reasons the City enters sole source contracts.

#### ***The Office of Contract Administration Should Track Waiver Requests for Sole Source Contracts in a Database***

In its August 5, 2002, memorandum establishing procedures for granting sole source waivers, OCA stated that it has created a tracking system for sole source waiver requests. However, as of our audit fieldwork, OCA was using a manual system rather than an



electronic database for this purpose. Also, OCA had not yet determined how it would be tracking the information contained in the waiver requests. A database would provide the perfect opportunity for OCA to collect meaningful information about sole source contracts and generate reports that will be of interest to City decision makers.

Information on sole source contracts that should be collected in the database includes the:

- number of contracts by department;
- dollar value of each contract;
- period for which each contract is effective; and
- criteria used for gaining sole source status.

***The Controller Should Modify the City's Accounting System to Identify All Sole Source Contracts in the City***

The City's accounting system, FAMIS, records detailed accounting transaction information. It does not, however, record administrative information such as an indication that a contract is with a sole source. The FAMIS purchasing subsystem, ADPICS, does record some administrative information, but has not had a field or function dedicated to identifying all sole source contracts until recently. Although sole source indicators historically have been recorded in ADPICS for citywide commodity contracts issued by the OCA's Purchasing Division, professional services contracts have been processed differently and have not had a sole source indicator that identifies them. In a January 21, 2003, memo, the director of OCA instructed department heads, contract officers and OCA purchasers to begin using a new code in ADPICS to identify sole source professional services contracts. With a modification to FAMIS and information that should now be available from ADPICS, the City will be able to capture sole source indicators for all sole source contracts. The Controller's Office could instruct departments to record sole source contract information in FAMIS. This information, combined with sole source contract information from ADPICS, would provide a basis for reporting on all sole source contracts in the City.

***Although the Sunshine Ordinance Requires Departments to Report on Sole Source Contracts, It Does Not Meet the City's Need for Information***

All City departments are required to report annually on their sole source contracts, but the resulting reports do not provide a complete picture of the City's sole source contracts. There is only one citywide reporting requirement that applies to sole source contracting. As part of the Sunshine Ordinance, which was initially approved in 1993, Administrative Code Section 67.24(e) states, "At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year." Departments are to report the information to the Clerk of the Board of Supervisors (Clerk), who encourages departments to submit basic information about the contract, including the name of the vendor, contract term, contract value, and reason

for the sole source award. While this reporting requirement is an important step toward public disclosure, as the Sunshine Ordinance intended, it does not meet the City's reporting needs for sole source contracts because only new contracts are covered.

Few departments actually report under the Sunshine Ordinance's sole source requirement. When we checked on August 14, 2002, we found that only 19 (29 percent) of the City's 66 departments had submitted reports to the Clerk for fiscal year 2001-02. While the Clerk sends a reminder notice and instructions to all departments in mid-June and expects that departments will respond shortly after the end of the fiscal year on June 30, the Clerk does not follow up with departments that do not submit reports. In addition, the Clerk does not compile the information it receives into a single report to the Board of Supervisors. Because departments that do not have sole source contracts are not required to submit a report under the ordinance, there is no efficient way to determine which departments that have not reported sole source contracts should be submitting reports. As a result of our discussion with Clerk staff, the 2003 letter to departments reminding them of the reporting requirement will ask them to report to the Clerk, whether or not they have sole source contracts. By requiring all departments to submit a report, the Clerk can determine the extent to which departments have complied with the reporting requirement and will obtain more complete information on the extent of sole source contracting in the City.

Another drawback of the reporting of sole source contracts that is required by the Sunshine Ordinance is that the information that is submitted to the Clerk does not appear to be used. Neither the Clerk nor any other party puts the information in a database, no one uses the information to monitor the extent or nature of the sole source contracting that is reported, and the information is not used to generate reports. In addition, the Board has no formal mechanism to periodically discuss sole source contracts or the information that departments are supposed to submit each year.

## **RECOMMENDATIONS**

To ensure fiscal propriety and responsibility, the **Board of Supervisors** should amend the Administrative Code, Chapter 21, by adding a definition of a sole source contract.

To provide City policy makers and the public with accurate and reportable information, the **Office of Contract Administration** should:

- Change its procedures to require departments to submit all existing sole source contracts for professional services for review within a reasonable time period so that existing contracts can be reviewed under its new guidelines.
- Work with departments to help them understand the Office of Contract Administration's new requirements and the procedures they must follow to comply with them.

- Make the new procedures add value to the contracting process by seeking input from departmental and other users through periodic evaluations, customer satisfaction surveys, or focus group discussions.
- Develop a computerized, sole source database that includes all relevant information for each contract, including type of contract, contracting department, name of contractor, award amount, term of contract, summary of work to be performed, and other relevant information. The database should also have the capability to produce summary reports that can be made available regularly or as needed.
- Ensure that it can produce the types of reports that the Board of Supervisors, other City officials, or the public may request, by making inquiries with individuals, departments, Board members and others on what they want to know about sole source contracts.

To enable the City to capture information on all sole source contracts for professional services, the **Controller** should modify the City's Financial Accounting Management Information System (FAMIS) to include a required field that indicates whether or not a contract is a sole source contract.

To ensure that, under the Sunshine Ordinance, it receives complete information from City departments on sole source contracts, the **Clerk of the Board of Supervisors** should:

- Request in its next letter to all City departments that they submit lists of all their existing sole source contracts to the Clerk, or report that they have no sole source contracts.
- Report to the Board of Supervisors on the extent to which departments have complied with the ordinance.

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## CHAPTER 2

### THE CITY'S CONTRACTING PROCESSES SHOULD BE BETTER CONTROLLED AND MADE MORE EFFICIENT

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#### CHAPTER SUMMARY

Some organizations have held the same contracts to provide key services to the City and County of San Francisco (City) for many years, and at least three City departments—the San Francisco International Airport (Airport), the Board of Supervisors (Board), and the Department of Public Health—have held such contracts without using competitive solicitations for many years or ever, and without requesting sole source waivers. As a result, the City cannot know whether the services provided are fairly priced, or if there are better services available at the same or less cost. Stronger controls over these contracting procedures would ensure that the City's interests are better protected when engaging providers.

Further, through the City's annual budget process, some organizations have received City contracts or additional funds for existing City contracts without competing for them. Although the San Francisco Charter (Charter) prohibits the Board from dictating or making suggestions regarding any City contract, the Board sometimes specifies which organizations should receive additional City funds when the Board adds money back to the budget. Since July 2000, the Board used addbacks to approve over \$10 million, or one-quarter of the total addback funding approved, for specified organizations to do business with the City. When the Board earmarks funds for specified organizations in this way, it circumvents the regular competitive solicitation processes that City departments should follow and loses the benefits that competitive bidding provides. We also found several examples of City contracts that do not include the contract term or the terms and conditions for renewing the contract, thus increasing the possibility of contracts being renewed when they should not be.

#### THE CITY DOES BUSINESS WITH LONGSTANDING CONTRACTORS WHO HAVE NOT COMPETED FOR THEIR CONTRACTS RECENTLY OR EVER

A few organizations have held City contracts for many years, and City departments have awarded some of these contracts without using competitive solicitations or sole source waivers. As a result, the City cannot know whether it has an advantageous, fair, or disadvantageous arrangement for these services, or if there are better services available at the same or less cost. Although some of these contracts are approved by the Board, we believe it would be a better practice if the Board, Mayor, and other City departments found and engaged all contractors using the City's normal competitive contracting processes. The Administrative Code, Section 21.1, requires that all City contracts for commodities and or services be procured through competitive solicitation, except as otherwise authorized by the Administrative Code.

After surveying all City departments as part of this audit, we found three departments that have long-running contractual relationships with organizations that do not have sole source waivers and that have not been competitively solicited. In these cases the services being provided should be competitively solicited: two services at the Airport, the Board's budget analyst, and numerous contracts at the Department of Public Health.

***The Airport Should Competitively Solicit for the Services Provided by Two Contractors***

An assistant deputy director at the Airport informed us that the Airport has two contracts that have existed for more than 10 years, both having been established in 1988, and have not been competitively solicited since their inception. One agreement is with the firm John F. Brown, a consultant that develops financial statements and other documentation for presentation to bond rating agencies when the Airport is preparing to issue bonds for capital improvement projects or when the Airport is refinancing its bond indebtedness. The Airport reports that it has paid John F. Brown approximately \$5.3 million under this contract since 1988. The second long-standing Airport contract is with Deltronics Communications Services of California, a firm that conducts proficiency testing of newly hired communications dispatchers. The Airport reports that only a few hours of work are done each year under this contract, which is only for \$25,000.

According to the Administrative Code, Section 21.9(a)(2), a contract for multiple years may be used when "the initial term of the contract and conditions for renewal or extension are included in the Solicitation, which Solicitation shall not provide for renewals or extensions of the contract for a period in excess of 10 years from the date of the initial contract." Because both of these contracts have been in place for over 14 years without a competitive solicitation, the Airport should proceed to conduct a competitive solicitation such as a request for qualifications or request for proposals to determine if other qualified providers of these services are available.

***The Board of Supervisors Has Not Competitively Solicited for the Services of Its Budget Analyst***

The Board of Supervisors has engaged the same provider to be its budget analyst for over 24 years, and we found no evidence that this arrangement was ever the result of a competitive solicitation. Although the Charter directs the Board to appoint a budget analyst based only on qualifications, the Charter does not stipulate that the Board is exempt from using a competitive process to do so. Documents held by the Clerk of the Board indicate that the City established a contract in 1978 with the Harvey M. Rose Accountancy Corporation (Harvey Rose) to serve as the Board's budget analyst. Since 1980, the Board has extended this agreement annually (23 times). The current extension, for fiscal year 2002-03, is worth \$2,036,057, and is with Harvey Rose and several other firms, which are a joint venture. In addition to the extensions of the original contract, according to the Clerk of the Board, the Board also entered into a contract for additional work with the joint venture. The first such contract was for two years, beginning on

January 1, 1998, and has two options of two years, which end on December 31, 2003. Also, on April 15, 2002, the Board approved a new contract with the Harvey Rose joint venture to commence on January 1, 2004, which is also for two years with two options to renew for two years each. Thus, the Board has already agreed to the possibility of engaging Harvey Rose through December 31, 2009. By that time Harvey Rose will have held a contract with the Board for 31 years.

The Charter, Section 2.117, says that the “Board of Supervisors shall appoint and may remove a Budget Analyst and such appointment shall be made solely on the basis of qualifications by education, training and experience for the position to be filled...” This section does not say that the Board can initiate contracts without competitive solicitation. The provision uses the word “appoint,” a civil service term usually applied only to City employees. The budget analyst is not part of the civil service system, nor does it have at-will status in the usual sense of an appointment. Rather, it is a firm providing professional services under contract and should be treated as one, subject to the same competitive standards as other professional services contracts. The guidelines issued by the Office of Contract Administration in July 2002 state that contracts for professional services over \$10,000 are to be competitively procured, with a formal solicitation required for contracts over \$25,000.

Because the budget analyst contract has not been competitively solicited, the Board is less able to demonstrate that it chooses its provider solely on the basis of qualifications. Although the current budget analyst has decades of experience in this capacity with the City, there is no assurance that the City is receiving the greatest possible value from the contract. By not using competitive solicitation for its budget analyst contract, the Board is being unfair to other providers that might submit a proposal to provide this service. Furthermore, the Board should competitively solicit for its budget analyst contract as a positive model for all other City departments.

***The Department of Public Health Has Numerous Contracts That Require Competitive Solicitation***

The Department of Public Health reported to us in late 2002 that it had 89 contracts with various organizations that have been under contract for the same service for at least 10 years, and these services have not been competitively solicited during that time. According to the information provided, some of these contracts have sole source approvals from the Health Commission, waivers from the Human Rights Commission, or both. Also, according to the director of the Office of Contract Management and Compliance at the Department of Public Health, other long-term contracts have been with certain providers because a funding organization may require particular services that are only provided by one vendor. The director also told us that, in the spring of 2003, the department will solicit for about 60 of the 89 services covered by these contracts. The department plans to solicit for all substance abuse services with one request for qualifications (RFQ) and all mental health services with another RFQ. The department also plans to use an RFQ or request for proposal (RFP) to solicit for other services provided under contract, unless they are now provided with funds that are required to go

to a specified provider. For contracts that are sole source in nature, the department will seek a sole source waiver from the Office of Contract Administration.

***Some Departments Have Worked With the Same Providers for Years, but Have Used Competitive Solicitations***

Some departments have long-standing relationships with contractors, but have legitimized these relationships by using competitive solicitations. For example, the Office of Convention Facilities Management (Convention Facilities) in the Department of Administrative Services has a contract valued at \$15 million with Moscone Joint Ventures to operate the Moscone Convention Center and the Bill Graham Civic Auditorium. The joint venture resulted from a competitive solicitation that Convention Facilities conducted in 1994 to attract the participation of minority and local businesses. In 1999, Convention Facilities renewed the contract for five years, with the Board's approval.

The Controller's Office (Controller) has had contracts with KPMG LLP and its predecessors (KPMG) to be the City's independent auditor for over 20 years but has used competitive processes to select KPMG. The Controller conducted the last two competitive solicitations for audit services in 1996 and 1999. In 1996, the Controller selected KPMG and two other auditing firms. This contract ended in 1999, at which time the Controller conducted another competitive solicitation and again selected KPMG, along with four other auditing firms that audit different units of the City. KPMG conducts the general city audit and the audit of some of the city's enterprise agencies. The contract has an initial term of three years with two, one-year options to renew. The first renewal option was used for fiscal year 2001-02 and the second renewal option is in effect for fiscal year 2002-2003. In total, the contract will be in effect for five years and is valued at approximately \$7 million.

The Controller also has long had a systems consulting contract with KPMG Consulting, Inc. (KCI, now BearingPoint, Inc.) for the implementation, support, and maintenance of FAMIS, the suite of accounting, purchasing, and budget software used citywide. KPMG Consulting was selected through a competitive solicitation in 1994 for FAMIS implementation and support. The contract ran from 1994 to 1998 and was valued at \$6 million. The contract was renewed in 1998 and has been extended through December 2003 with a value of \$9 million. Under the Administrative Code, Section 21.30(d), this type of software support and maintenance contract is treated as a sole source contract and does not require competitive solicitation.

## **THE BOARD VIOLATES THE CITY CHARTER WITH SOME OF ITS ADDBACKS TO THE BUDGET**

The Board of Supervisors has violated the Charter by making direct contracting decisions though an annual budgeting procedure known as “addbacks.” Through this procedure, the Board has continued the longstanding practice of allocating some City funds directly to specific contractors. This is a problem because it circumvents the regular competitive solicitation processes that City departments must follow, sometimes causes departments to have to enter sole source contracts, and increases the opportunity for fraud and abuse by encouraging organizations to lobby Board members for addback funds.

As part of the City’s annual budget process, the Board’s budget analyst recommends to the Board line-item cuts that could be made in various departments. Near the end of the budget process, the Board has the opportunity to add back to the budget the amount that they cut. These additions have become known as “addbacks.” The Board specifies that some of these addbacks are to fund specific City contracts or contractors.

While some of the funding that the Board adds back to departments goes to the same source from which it was cut, the funds available for addbacks are at the Board’s discretion and may be allocated to new programs or new budget line items. However, the Charter limits the Board’s role concerning contracting. Charter section 2.114, entitled “Non-interference in administration,” states that the Board, its committees, and its members shall not:

“have any power or authority, nor shall they dictate, suggest or interfere with respect to any appointment, promotion, compensation, disciplinary action, contract or requisition for purchase, or other administrative actions or recommendations of the City Administrator or of department heads under the City Administrator or under the respective boards and commissions.”

We requested an opinion from the City Attorney, which determined that the Board’s practice of designating specific contracting organizations in its addback process violates the Charter. The City Attorney’s opinion states that, under Charter Section 2.114, the Board may not direct or compel a City officer or department to contract with a particular person or organization as a part or condition of an addback, but the Board may appropriate addbacks to the various departments for general purposes or for specific programs. Further, if the Board identifies a particular contractor in an addback, a department may not use this as an excuse not to allow other contractors to compete for a contract where the law otherwise requires a competitive process. The City Attorney affirmed that violations of the Charter’s non-interference provisions may constitute official misconduct.

The City has a contracting system that relies on and gives much responsibility to departments to select and monitor contractors. Each department has contracting officers that make front-line decisions about the competitive solicitation process, and the selection



of contracts to meet the department's specific needs. This level of contracting responsibility rightly belongs with City departments, not the Board.

***In the Past Three Years, Over \$10 Million  
of Addback Funding Has Gone to  
Organizations Specified by the Board***

In fiscal years 2000-01 through 2002-03, the Board used addbacks to approve over \$10 million, or one-quarter of the total addback funding approved, for specified organizations to do business with the City. The records of the addback allocations authorized by the Board for these three fiscal years do not make clear in every case the purpose of the addback. However, we conservatively estimate that the Board authorized at least 225 addbacks totaling over \$41 million during these three fiscal years. It appears that of those 225 addbacks, approximately 108 addbacks, totaling approximately \$10 million (or 24 percent of the total addback funding), were earmarked for specific organizations.

Although we now know that the Board's distribution of addback funds to specific organizations violates the Charter, this has been a long-standing practice in the City's budget process. However, we found that the Board designated less money in addbacks to specified organizations in fiscal year 2002-03, the most recent year we analyzed, than it had in the two preceding years. From fiscal year 2000-01 to 2001-02, the Board approved \$8.6 million in addbacks for specific organizations. In fiscal year 2002-03, the Board approved just over \$1.4 million in addbacks to specific organizations. We do not question the motivation of the Board or any of its members, who seek to support nonprofit organizations that do worthwhile work in our City, but this procedure allows the Board to award City funds improperly.

***The Board of Supervisors Has Added  
Money to 100 Existing Contracts  
in the Last Three Fiscal Years***

We found many cases in which the Board, through the addback process, dictated which contractors doing business with the City should receive more money than initially approved. We found 100 instances since July 1, 2000, totaling \$9.5 million, in which organizations that had existing contracts with a City department received from the Board additional funds for their contracts or for a new service the organization wanted to perform for the City. We are told that such addbacks are often the result of organizations lobbying a member or members of the Board for such funds.

***The Board of Supervisors Has  
Awarded Money to Organizations  
That Do Not Have City Contracts***

Addbacks have the most potential for abuse when they are substituted for the City's competitive solicitations to procure the goods and services it needs. We found eight examples in fiscal years 1999-2000 through 2001-02 where the Board, through the

addback process, approved funding for nonprofit organizations that did not then have contracts with the City. These eight addbacks totaled \$467,000. Once the Board allocates money to a new service provider, the appropriate department must establish a contract with the named organization for the services that the organization will provide. However, this is clearly not the proper way to choose the organizations with which the City does business.

Using this method to select these organizations for funding is improper and undermines the City's contracting procedures. According to City employees we interviewed, in some cases the service provider chosen by the Board for funding was completely unknown to the department and the department had to call the office of the Board member who proposed the addback to ask what field the organization was in. An employee of the Department of Public Health told us of another case in which a nonprofit organization participated in a competitive solicitation for a contract with the department, but scored low enough that it was not selected to advance in the process. Later, this same organization reportedly lobbied the Board for funding to provide the same service and, through the addback process, received it. Thus, the Department of Public Health was forced to establish a contract with the organization it had previously rejected. This organization has received addback funding from the Board during fiscal years 2000-01 through 2002-03 totaling \$250,000.

The potential for a real or perceived conflict of interest also exists for the Mayor's Office, which in the fiscal year 2002-03 budget included \$1,427,220 of funding to 27 specific organizations through what are known as technical adjustments. According to the Mayor's budget director, technical adjustments correct items that were inadvertently omitted from the budget, and the adjustments for fiscal year 2002-03 did not impact the general fund. Although the City Charter does not prohibit the Mayor from suggesting or dictating with whom the City should contract, the Administrative Code, Section 21.1, does require that all contracts be established through competitive means. Thus, it would be a good practice for the Mayor's Office to avoid enabling organizations to receive City funds to provide goods or services without having to compete for the privilege.

### **ALL CITY CONTRACTS SHOULD INCLUDE RENEWAL TERMS TO AVOID CONTRACTUAL RELATIONSHIPS BEING EXTENDED WITHOUT COMPETITION**

We found several examples of City contracts that include neither the duration of the contract (contract term) nor the terms for renewing the contract, thus increasing the possibility of contracts being renewed when they should not be. The contracts we reviewed state the original start and end dates of the contract, but have no renewal terms, yet have been amended to renew the contract so that it will last beyond the end date specified in the contract. Instead, contracts should state the original contract dates and explain any options to renew (for example, "this is a two-year contract with two options to renew for one year each.")

The Administrative Code, Section 21.9, states that multiyear contracts or options to renew may be used when the services provided might take longer than one fiscal year, the initial terms of the contract and the conditions for renewal are included in the solicitation (provided that renewals do not extend beyond 10 years), funds are available, and performance obligations from succeeding years are met. In addition, the code prohibits departments from entering contracts with provisions that would automatically renew the contract without further action.

With these code provisions in mind, we looked at a small sample of contracts from six departments and the majority did not include the term or renewal conditions. The Department of Public Health (DPH), which has approximately 600 contracts, did not have terms for the life of the contract in the few that we reviewed. Moreover, DPH told us that this information is usually not in its contracts. For example, we reviewed two DPH contracts that included recitals that appeared to lengthen the original contract by six months or one year at a time. Several versions of these types of modifications were evident in the contract files we read. When a department extends a contract in this way, it is impossible to determine at what point the contract is in terms of the 10-year renewal limit by looking only at the contract. Instead, one must find the letters or other documents that extended the contract, and compute the dates. Likewise, contracts we reviewed from the San Francisco Public Library did not state the total term of the contract. These contracts, however, included past amendments so that we could discern the total contract term from the contract itself. These are merely two examples of what we expect is a common occurrence.

Although the Administrative Code requires that the term of the contract must be stated in the solicitation, it does not require that the term be stated in the contract. However, a deputy city attorney advised us that City contracts should always include the duration of the contract and the conditions for any renewals that may be allowed. Unfortunately, the City Attorney's contract review and oversight does not appear to include a check to make sure the terms of the solicitation match the terms of the contract. It is insufficient to include the contract term and renewal conditions in the request for proposal (RFP), or as one department told us it does, in the vendor notification letter, but not in the contract. This is especially true because, as we found, some departments do not always keep on file RFP documents and vendor notification letters. In these cases, the City has little ability to prevent departments from improperly renewing contracts. By not listing contract expiration dates and renewal terms in some contracts, departments reduce their ability to enforce the duration of the contract and could more easily lose track of when they should start the renewal process, if they choose to. In addition, a department that wanted to avert a competitive solicitation by improperly renewing a contract may be able to do so more easily if renewal terms are not in the original contract.

## **THE HUMAN RIGHTS COMMISSION SHOULD ADDRESS SOLE SOURCE CONTRACTS AFTER THE OFFICE OF CONTRACT ADMINISTRATION GRANTS ITS WAIVERS**

Because the Office of Contract Administration is the City agency designated to coordinate contracting citywide, its waiver process should be the main administrative method by which the City approves sole source contracts. Currently, the Human Rights Commission requires departments, when seeking approval of most agreements with organizations to provide goods and services, to obtain a waiver of the City's Equal Benefits Ordinance and/or the required participation levels of minority business enterprises, woman business enterprises, or local business enterprises (MBE/WBE/LBE). This practice involves thousands of paperwork exchanges annually between vendors and City departments, and among City departments, consuming valuable time of City employees and vendors, including overburdened nonprofit service providers.

### ***The Office of Contract Administration's Review of Waiver Requests Should Occur Early in the Process***

The guidelines issued by OCA in its August 5, 2002, memorandum do not specify at what point in the contract development process departments should seek sole source waivers. The memorandum only states that departments should request a waiver before making a commitment to a vendor and before funds are encumbered. It would be most efficient for City departments if OCA considered waiver requests at the beginning of the contracting process. Under such an arrangement, an approval by OCA of a department's waiver request would trigger the contracting process, whereas a denial would cause the department to begin a competitive solicitation for the good or service it needs. The sooner a department knows that its waiver request has been denied, the less staff time it will have spent unsuccessfully trying to establish a sole source contract.

### ***The Human Rights Commission Should Address Sole Source Contracts After the Office of Contract Administration Approves Them***

The Human Rights Commission should continue to have oversight of sole source contracts regarding compliance issues under the Commission's purview but should act only after OCA has approved the waivers for the contracts to make the process more efficient. There is no need for both agencies to be charged with granting waivers to allow sole source contracts. The Office of Contract Administration applies criteria for sole source contracting to vendors and determines if the vendor is truly the only source of the good or service and, therefore, if the requirement for a competitive solicitation should be waived. In contrast, it is HRC's mandate to seek compliance from City contractors, including sole sources, that do not offer equal benefits, or that may have opportunities to subcontract with a minority- or woman-owned business. When HRC approves a waiver request, it is allowing a department to contract with a vendor that does not comply with

HRC's requirements under the Equal Benefits Ordinance or the Minority/Women/Local Business Utilization Ordinance (MBE/WBE/LBE Ordinance).

The Human Rights Commission can still fulfill its mandate concerning sole source contracts without continuing to grant sole source contract waivers to departments. The director of HRC told us that her agency and OCA have been working together to develop complementary procedures for their reviews of waiver requests for sole source contracts. According to her, the two agencies have agreed that when HRC grants a sole source waiver first, OCA will accept the ruling without reviewing the request itself. However, HRC is not reviewing department requests to contract with sole source providers by the same criteria as is OCA. The Office of Contract Administration has developed a process for applying citywide criteria to department requests to enter a sole source contract.

When OCA grants a department a waiver to enter a sole source contract, it should notify HRC, which should then work with the department to try to bring the vendor into compliance with the Equal Benefits Ordinance and the MBE/WBE/LBE Ordinance. If OCA denies a department the waiver, then the department should begin the competitive solicitation process and should notify HRC, when it becomes necessary, later in the process.

***The Human Rights Commission Should  
Inform Departments of the Types of  
Agreements for Which It Does Not  
Require Sole Source Waiver Requests***

It appears that some City departments are unnecessarily seeking the approval of the Human Rights Commission for certain sole source agreements with nonprofit organizations that provide services to the community (as opposed to services provided directly to the City). The MBE/WBE/LBE participation rules, which are in Section 12D.A.9 of the Administrative Code, apply only to contracts. However, Section 12D.A.5 of the Administrative Code, in defining a contract, says that a contract does not include, among other things:

“awards made by the City with federal/State grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community.”

Such grant agreements are not subject to the MBE/WBE/LBE participation rules, and do not require HRC sole source review under the MBE/WBE/LBE Ordinance. The Human Rights Commission should clarify the requirements to help ensure that City departments understand when sole source waiver requests are required and when they are not.

## RECOMMENDATIONS

To avoid awarding City funds or contracts to specific contractors without using competitive processes, the **Airport** should competitively solicit for consultants for municipal bond financing and for firms that provide proficiency testing for communications dispatchers as soon as possible.

To avoid awarding City funds or contracts to specific contractors without using competitive processes, the **Department of Public Health**, Office of Contract Management, should:

- Begin competitive solicitation processes for its contractually delivered services for which it has not competitively solicited in the last 10 or more years.
- Obtain a sole source waiver from the Office of Contract Administration for contracts where the funding source designates a particular provider and for contracts that are otherwise sole source contracts.

To comply with the San Francisco Charter and encourage the use of competitive processes, and to strengthen the requirements for the content of City contracts, the **Board of Supervisors** should:

- No longer direct funds toward specific City contracts or contractors through the addback process or otherwise. This includes no longer adding additional money to existing contracts, and no longer earmarking funds for specific new contractors. The Board may appropriately allocate funds to nonprofit organizations by budgeting those funds to departments that will administer the funds through the proper competitive process.
- Competitively solicit to select its budget analyst.
- Consider amending the language in Administrative Code Section 21.9 to state that the terms of the contract, including options to renew, must be stated in both the solicitation and the contract.

To avoid awarding City funds or contracts to specific contractors without using competitive processes, the **Mayor's Office** should no longer use technical adjustments or other enhancements to the City's annual budget to add back funds to specific organizations. Although there does not appear to be a Charter prohibition preventing the Mayor's involvement, as there is for the Board, it is consistent with the Administrative Code and in the City's best interest for the department closest to the service to decide which organizations should receive contracts and funds, using competitive processes whenever possible.

To ensure that the City is getting the best possible value and that contracts protect the City's interests, **all departments** should:

- Familiarize themselves with the new procurement guidelines from the Office of Contract Administration and check their files to bring all outstanding contracts into compliance, if necessary, by using competitive solicitation when the current contracts expire.
- Always include complete contract terms including options to renew (number of renewals and length of each renewal) and conditions for renewal in the contract.
- Before the contract expires, again use a competitive process to select the provider of the services for the next period (unless the contract is an exception to the competitive solicitation process). Contracts should not be renewed beyond the contract term, including renewal periods, as listed in the solicitation document and contract.

To ensure that contracts protect the City's interests, the **City Attorney** should review all pending City contracts to make sure that the proper dates and renewal terms are clearly and properly stated in the original contract.

To establish an efficient approval path for the City's sole source contracts, the **Office of Contract Administration** should adapt its procedures to include notifying the Human Rights Commission of its decision to approve sole source contract waivers so that the Human Rights Commission may work with departments to bring sole source vendors into compliance with the City's human rights laws.

To avoid needless paperwork, gain efficiency in the contract approval process, and comply with the Administrative Code, the **Human Rights Commission** should:

- Not review sole source waiver requests that have been approved by the Office of Contract Administration. The Human Rights Commission should stay informed of sole source contracts so that it can continue to work with departments to try to bring contractors into compliance with the City's human rights laws.
- Notify all City departments that the MBE/WBE/LBE Ordinance does not require a sole source waiver for "awards made by the City with federal/State grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community."

Staff: Mark Tipton, manager  
John Haskell  
Shawna Paulson

**RESPONSE TO THE REPORT FROM  
THE OFFICE OF CONTRACT ADMINISTRATION**







Willie Lewis Brown, Jr.  
Mayor

Judith A. Blackwell  
Director

## MEMORANDUM

Date: February 3, 2003

To: Edward Harrington, Controller  
Office of the Controller

From: Judith Blackwell, City Purchaser and Director  
Office of Contract Administration

Re: Sole Source Contracts Audit Report

This memo is to respond to your Sole Source Contracts audit report No. 02001. We have reviewed the report. We find the description of the new Office of Contract Administration ("OCA") guidelines for sole source contracting to be accurate and we agree with your assessment that the City's past approach was inadequate. We have developed these guidelines as a first step toward solving this issue.

We disagree, however, with your description of the City's current data gathering techniques. Since the OCA issued a memo regarding guidelines for sole source contracting on August 5, 2002, OCA staff has been reviewing and processing sole source waivers for all departments. OCA has also developed a tracking system for all sole source contracts that come through its office.

In addition to the above, OCA has also issued another memo dated January 21, 2003 regarding Purchasing Authority Codes for professional services contracts (under the same memo as Checklists for P-500 and P-501—Professional Services Contracts). This memo addressed the issue of tracking the professional services contracts. We have asked all departments to discontinue using generic Purchasing Authority codes of "SS" (Special Services) and "PS" or "PROFSERV" (both for Professional Services Contracts). Effective February 3, 2003, departments are required to use a new Purchasing Authority codes in the ADPICS as follows:

- PROFSERV-10K – for Professional Services Contracts under 10K
- PROFSERV-BID – for Professional Services Contracts that have been competitively bid
- **PROFSERV-NOS** – for Professional Services Contracts that have not been competitively bid and where a Sole Source Waiver has been approved.

The last coding change above enables the City to begin to track the Sole Source contracts for Professional Services contracts.

OCA, as the final approving office for Professional Services contracts, will ensure that user departments are coding the contract correctly. We will continue to work with the Controller, HRC and any other departments to solve the issues that you've addressed in your audit.

On another issue, we think that both HRC and OCA functions to approve waivers are needed because the purpose of the two types of waivers is different. HRC's Waiver Request Form is "to be used by City departments requesting a waiver of Chapters 12B, 12C and/or 12D.A." as stated by the HRC's instructions on the form. On the other hand, the OCA Sole Source Waiver is used to exempt a vendor from the competitive bidding process. Generally, OCA takes the HRC's approved waivers into account as supplemental information for our analysis and approval process.



**RESPONSE TO THE REPORT FROM  
THE HUMAN RIGHTS COMMISSION**



**City and County of San Francisco**



Willie Lewis Brown, Jr.  
Mayor

**Human Rights Commission**

Contract Compliance  
Dispute Resolution/Fair Housing  
Minority/Women/Local Business Enterprise  
Lesbian Gay Bisexual Transgender & HIV Discrimination

Virginia M. Harmon  
Executive Director

March 25, 2003

Mark Tipton  
Performance Audit Manager  
Office of the Controller  
City Hall, Room 316  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Response to 3-10-03 Audit Report Number 02001

Dear Mr. Tipton:

Thank you for the opportunity to respond to audit report number 02001 concerning sole source contracts. The Human Rights Commission ("HRC") concurs with your comments and recommendations concerning the importance of conducting competitive contract solicitations. Apart from providing the City with the best services and price, an open selection process also ensures that all interested firms, and particularly minority- women- and local-owned firms, have an equal opportunity to compete for the City's contracting dollars. Additionally, competitive selection allows HRC to maximize the compliance of City contractors with the Equal Benefits Ordinance and other nondiscrimination in contracts provisions.

We respectfully disagree with your recommendations regarding HRC's role in approving sole source contracts. As explained below, to the extent that you recommend that HRC should delegate its sole source waiver responsibilities to OCA, your recommendations may conflict with both the City Charter and Chapters 12B, 12C and 12D.A of the Administrative Code. HRC is required by Section 4.107 of the City Charter to implement both the equal benefits provisions in Chapters 12B and 12C and the race and gender-conscious bid discounts and subcontracting program contained in Chapter 12D.A of the Administrative Code.

When the HRC Director waives these requirements for a particular city procurement, it means that the City may acquire goods and/or services without an open solicitation, without outreach or bid discounts to woman-, minority- or local-owned firms, and to firms that may discriminate in the provision of employee benefits or in other ways not ordinarily tolerated by the City when it is deciding how to spend its contracting dollars. City departments may request sole source waivers under the mistaken view that their needs can be met by only a single source. It is the duty of the HRC director to determine whether the requesting department has correctly evaluated its need so that a sole source waiver is necessary to meet the City's requirements.



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Mark Tipton  
March 25, 2003  
Page 2.

The City Attorney's office has informed us that because Section 4.107.6 of the City Charter requires HRC "to implement the provisions of ordinances prohibiting discrimination in all contracts..." it would require a Charter amendment to remove or restrict HRC's authority to review sole source contracts. Moreover, HRC would strongly oppose any such charter amendment. HRC is the only City agency mandated to enforce the City's policies prohibiting discrimination. In addition, HRC is not a contract awarding authority and is therefore entirely independent in its review.

We disagree with the report's conclusion that OCA and HRC use different criteria in their respective reviews of sole source waivers. As OCA's "New Sole Source Contracting Protocols" (August 5, 2002) recognize, departments must consult with both OCA and HRC to develop sufficient documentation to support a sole source waiver request. The role of both OCA and HRC is to evaluate whether the potential contractor at issue is in fact the sole entity available to perform the needed service. However, the emphasis of OCA and HRC is slightly, but significantly, different. While OCA primarily focuses on how the City can spend the least amount of money on a particular contract, the HRC focuses on how to maximize contracting opportunities for women, minority and local businesses, whether or not they are certified for participation in the City's bid discount program (S.F. Admin. Code Chapter 12D.A). The HRC also focuses on how to maximize contracting with entities that have ended discriminatory practices prohibited by Admin. Code Chapters 12B and 12C.

Contrary to what is suggested in the report, the waiver review process is not significantly delayed by two departments simultaneously evaluating sole source waiver requests. As the report acknowledges, the HRC and OCA are working cooperatively to streamline the sole source waiver process. These efforts are directed at reducing the paperwork involved and decreasing timelines to the degree possible given the mandated responsibilities of each department.

The report recommends that the HRC should "stay informed of sole source contracts so that it can continue to work with departments to try to bring contractors into compliance with the City's human rights laws." (Page 22.) This recommendation not only contradicts the HRC's legal mandates under the Charter and Administrative Code; but also, as a practical matter, would have little success. Once a contractor obtains a sole source waiver, the contractor has little to no motivation to cooperate with the HRC's compliance process. It has been our experience time and again that a potential contractor who is willing to work with the HRC on meeting the City's nondiscrimination in contracts provisions, ceases all efforts once it learns that it no longer must come into compliance because a sole source waiver has been granted.

The report also recommends that the HRC should "notify all City departments that the MBE/WBE/LBE Ordinance does not require a sole source waiver for 'awards made by the City with federal/State grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community.'" (Page 22.)

Chapter 12D.A (and therefore sole source waivers from the requirements of Chapter 12D.A.) does not apply to non-profits which receive grants from the City's general fund or from federal or state agencies to perform services to the community at large rather than services that replace or stand in the place of City provided services. Such grants are specifically excluded from the definition of "contract" under Chapter 12D.A. However, Chapters 12B and 12C sole source

Mark Tipton  
March 25, 2003  
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waiver requests still are required in such circumstances. Recipients of grants are included in the definition of a "contract" in Chapters 12B and 12C. The HRC is willing to notify departments of this distinction.

While we recognize that the audit is concerned only with contracts for professional services, please note that **only** HRC reviews requests for sole source waivers for public works contracts. OCA has no authority in the award of public works contracts, nor in the approval of sole source waivers for these contracts. HRC is the only agency to review such contracts. Therefore, even assuming that the Charter were to allow it, any possible efficiency from redirecting sole source waiver authority for professional services contracts to OCA would not apply in the context of public works construction contracts or public works related professional services (architect and engineering) contracts.

Please feel free to contact me at 415-252-2500 if I may be of any assistance.

Sincerely,

A handwritten signature in cursive script that reads "Frank Anderson".

Frank Anderson  
Acting Director





**CONTROLLER'S OFFICE COMMENTS ON THE RESPONSES  
FROM THE OFFICE OF CONTRACT ADMINISTRATION AND  
HUMAN RIGHTS COMMISSION**



## **COMMENTS ON THE RESPONSE OF THE OFFICE OF CONTRACT ADMINISTRATION**

The Office of Contract Administration (OCA) disagrees with the report's description of the City's current data gathering techniques, and adds that OCA has developed a tracking system for all sole source contracts that come through its office. We stand by our description, and note that, as of our fieldwork for this audit, OCA's tracking system consisted of paper records in binders. As we recommend on page 10 of the report, the City would be best served by OCA establishing and using an electronic database of all sole source contracts approved by OCA, which could be used to sort these data and generate reports efficiently.

The response also states that OCA thinks that both the Human Rights Commission (HRC) and OCA should continue to consider requests for sole source contract waivers because the purpose of the two types of waivers is different. Please see the section below for our comments on this issue.

## **COMMENTS ON THE RESPONSE OF THE HUMAN RIGHTS COMMISSION**

The following comments are intended to clarify our recommendation, on page 22 of the report, that HRC:

Not review sole source waiver requests that have been approved by the Office of Contract Administration. The Human Rights Commission should stay informed of sole source contracts so that it can continue to work with departments to try to bring contractors into compliance with the City's human rights laws.

The response asserts that the San Francisco Charter would have to be amended to allow this recommendation to be implemented. Although the Charter requires HRC to implement the provisions of ordinances prohibiting discrimination in City contracts, Chapter 12 of the San Francisco Administrative Code should be amended to make OCA responsible for reviewing and approving requests for sole source contract waivers from departments. We believe that the Administrative Code could be amended so that our recommendation could be implemented without the need for Charter change, and we are working with the City Attorney in this pursuit.

The streamlined review procedure for waiver requests that the report recommends would result in both faster approval of pending contracts for City departments and would allow HRC to fulfill its duty to enforce the City's provisions for non-discrimination in contracting. We believe that the expertise of OCA equals or exceeds that of HRC to determine if departments are requesting sole source waivers under the mistaken view that their needs can be met only by a single source. Thus, it is logical that the Administrative Code assign to the director of OCA, not HRC, the duty of determining whether the requesting department has correctly evaluated its need so that a sole source waiver is necessary to meet the City's requirements. Such a determination does not, in our view, deal

directly with issues of discrimination but instead should concern only whether a product or service is available from more than one source. If OCA determines that a needed product or service is available from more than one source, OCA should deny the waiver request, and HRC should then carry out its enforcement of the City's provisions that prohibit non-discrimination in City contracts.

cc: Mayor  
Board of Supervisors  
City Attorney  
Civil Grand Jury  
Airport  
Department of Public Health  
Human Rights Commission  
Office of Contract Administration  
Public Library  
Budget Analyst  
KPMG LLP