



2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

CITY OF SAN JOSE PROCUREMENT POLICIES, PROCEDURES, AND PRACTICES

Summary

Following the disclosure of problems in several recent City of San Jose (City) technology projects, the 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) inquired into City procurement policies, procedures and practices. This inquiry, conducted over several months, included interviews with the City Manager and with key management personnel of the City Finance Department (Finance) and of the City General Services Department, Purchasing Division (GS Purchasing). It also included a review of procurement policies and procedures, and the evaluation of files for eight major procurements.

This report addresses procurement of supplies, materials, equipment and general services by GS Purchasing, and procurement of professional services by authorized City departments. It does not address procurement of construction activities by the City Department of Public Works, which, by state law, operates under a different set of requirements, policies and procedures.

In this report, the Grand Jury uses the term “procurement” for the full range of processes involved in acquiring goods and services for an enterprise. Similar terms include “purchasing”, “provisioning”, “sourcing”, and “supply management”.

The Grand Jury investigation resulted in five findings and four recommendations. The findings are summarized as follows:

- GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all requirements mandated by the San Jose Municipal Code and by state and federal law.
- The City has both centralized and decentralized procurement processes. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.
- GS Purchasing personnel appear to focus primarily on processing purchase orders and do not fully function as procurement professionals who are actively involved throughout the process from identification of a need to final delivery of,

and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

- Procurement files maintained by individual City departments for professional services contracts appear to be poorly documented and maintained. Files maintained by GS Purchasing for procurement of supplies, materials, equipment and general services are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.
- The San Jose Municipal Code limits the contracting authority of the City Manager, City Council (Council) appointees and certain City department heads to \$100,000 with contracts above that limit requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to approve, without discussion, the “Consent Calendar” on the Council agenda.

Background

City GS Purchasing and other City departments authorized to procure professional services collectively spend over \$200 million each year for products and services, excluding construction activities. The Department of Public Works is responsible for the procurement of construction activities, and operates under its own set of state-mandated requirements, policies and procedures.

Some key objectives of a typical municipal government procurement organization are to:

- Make certain that the city receives the best value, in terms of quality and price, obtainable for each tax dollar spent;
- Promote free, open competition and equal opportunity for all vendors who seek to conduct business with the city;
- Ensure prudent and open accountability for procurement actions taken;
- Guarantee that small businesses, and those that are disadvantaged, female, and/or minority-owned have equal opportunity to participate in city contracts;
- Monitor vendor performance to ensure reliability and financial viability;
- Ensure compliance with city, state and federal laws; and
- Keep abreast of current developments in the field of purchasing, prices, market conditions, and new products.

Several recent, high-visibility, multi-million-dollar City technology projects have encountered significant problems, resulting in unanticipated costs, project delays, adverse personnel actions and a public perception that the City government is unable to successfully execute technology projects.

A memorandum dated January 21, 2005 from the Mayor and two council members to City Council stated, "As we depend more and more on advancing technology to deliver quality and efficient services to our residents, we must have strong confidence in the process and results of our purchases of technology. Recently, however, the City has experienced significant difficulties in several recent high profile technology projects, including CUSP [an integrated utility billing, Customer Service and Performance management system], converged network [integrated communications services for the New Civic Center], and the police computer assisted dispatch system. These difficulties point to the need for checks and balances, standard procedures and guidelines, and effective management and policy oversight that will ensure that appropriate due diligence has occurred before City Council considers a major purchase of technology."

During an initial interview with the City Manager, Director of Finance and other selected department heads, the Grand Jury was told that several steps were already being taken to strengthen and improve the procurement process. Specifically, the City Manager indicated that: (1) GS Purchasing was being reassigned to Finance; (2) a search was underway to fill the newly created position of Deputy Director/Chief Purchasing Officer reporting to the Director of Finance; and (3) GS Purchasing personnel would be moving from their current, remote location on Senter Road to the New Civic Center, allowing them easier access to other city departments, and facilitating more direct oversight by Finance.

Discussion

PROCUREMENT POLICIES AND PROCEDURES

Procurement policy and procedures manuals are necessary to facilitate the consistent and orderly implementation and use of applicable procedures by all members of an organization involved in procurement activities. A detailed and comprehensive procurement manual defines how the organization complies with applicable legal requirements and best business practices during the entire procurement process, and specifies the responsibilities of procurement personnel. Responsibility for City procurement of supplies, materials, equipment and general services (excluding construction activities) is centralized under GS Purchasing, which has developed a series of policies and procedures to comply with the San Jose Municipal Code. However, responsibility for procurement of professional services is decentralized, with each City department procuring professional services to address its own needs. Procedures for the procurement of professional services are not specifically set forth by GS Purchasing, and City Departments are not required by the San Jose Municipal Code to have formal written procedures or guidelines for the procurement of professional services.

During the initial interview with the City Manager and Director of Finance, the Grand Jury requested copies of current procurement policy and procedures manuals used by GS Purchasing. Difficulties encountered by the Grand Jury in obtaining copies of current

manuals suggest a lack of an adequate process for the control and distribution of GS Purchasing manuals.

The Grand Jury ultimately reviewed the following manuals: (1) The City of San Jose Purchasing Administrative Manual; (2) the City of San Jose Purchasing Guide; and (3) the City of San Jose Request for Proposal Procedures Manual. Before reviewing these documents, the Grand Jury was told by the manager of GS Purchasing that both the Purchasing Administrative Manual and the Request for Proposal Procedures Manual were “undergoing substantial updating and revisions”. The Grand Jury noted that these manuals were being revised in an informal manner, and not in accordance with any formal change control process.

The Grand Jury met with management of Finance and GS Purchasing on several occasions to discuss concerns related to GS Purchasing manuals. It is not the intent or purpose of the Grand Jury to perform a detailed technical review of these documents. However, it was noted that the three procurement manuals reviewed did not appear to address all relevant areas of the procurement process uniformly, nor did the manuals address all applicable requirements mandated by the San Jose Municipal Code and by state and federal law. It was not uncommon to note that policies were found for which there were no associated implementing procedures. Two examples are the management of possible vendor conflict in supplying information for Requests for Proposals and the procurement of recycled products. Deficiencies related to the Purchasing Administrative Manual were previously identified by the City Auditor who, in 1986, recommended that GS Purchasing should “develop a comprehensive written procedures manual on the purchasing process”. It appears that, to some degree, a problem still exists nearly twenty years later.

PROCUREMENT PRACTICES

The Grand Jury reviewed eight major procurements, each of which had a value exceeding \$1 million and involved complex technology, professional services, or commodities. Five of the eight procurements were for professional services and were performed by user departments, specifically the Environmental Services, Finance, and Information Technology Departments. The remaining three procurements were performed by GS Purchasing. The procurement files provided to the Grand Jury were evaluated as a minimum standard for completeness according to the following criteria:

- Purchase Requisition (or authorization to purchase);
- Specification or Scope of Work to be performed;
- Vendor/Contractor List (if competitive) or sole source justification if not;
- Buyer's worksheet for determining lowest responsive bidder;
- Department recommendation for award;
- City Council authorization memorandum;
- Review and approval by GS Purchasing Manager and Director of General Services;

- City Attorney approval;
- Copy of purchase order/contract;
- Type of purchase order or contract identified, e.g., Firm Fixed Price, Time & Materials, Cost plus Fixed Fee, etc.;
- Evidence of invoice(s) payment;
- Request For Proposal/Quote/Qualification; and
- Winning bidder's proposal.

The five procurement files for professional services were found by the Grand Jury to be incomplete, inconsistent and in disarray. Most of these files consisted of sets of documents assembled in no specific or logical order and were bound by paper clips or rubber bands. The absence of key procurement documents and vendor correspondence in these major procurement files also raised significant concerns.

The three procurement files prepared by GS Purchasing tended to be more complete and better organized than those prepared by user organizations for professional services. However, there still appeared to be no uniform standards for the contents and organization of the files.

All eight procurement files were inconsistent in the information they contained. The Grand Jury found it very difficult to determine what service or product was being procured, who was bidding, what service or product was being delivered, what the acceptance testing criteria and procedures were, and how payment was to be made to the vendor(s).

The Grand Jury found limited participation in the procurement process by personnel in GS Purchasing. Even for those procurements performed by GS Purchasing, personnel appeared to focus primarily on processing purchase orders, with little evidence of overall procurement management and follow-up. During discussions with the Grand Jury, Finance and GS Purchasing management asserted that, due to the limited resources available, GS Purchasing personnel could not perform day-to-day procurement management of major contracts. Rather, they performed procurement management on an “exception” basis as problems arose or were identified. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user’s requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

In addition to this evaluation of eight sample procurement files, the Grand Jury has issued a separate report on the problematic procurement and implementation of the San Jose Police Department Computer Aided Dispatch System, entitled “Problems Implementing the San Jose Police Computer Aided Dispatch System”.

PROCUREMENT APPROVAL AUTHORIZATION AND ACCOUNTABILITY

The Grand Jury also observed that the San Jose Municipal Code limits the contracting authority of the City Manager, Council appointees, and certain City Department heads to \$100,000, with contracts above that limit requiring approval by the Council. Requiring

Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, all items listed on the “Consent Calendar” of the Council agenda.

The \$100,000 procurement approval authority is low in comparison with other major cities. A survey of cities and counties in California and Arizona by the California Association of Public Purchasing Officers found that major cities and counties generally had a much higher threshold for council or board approval, particularly for procurement of equipment and materials when normal procedures had been followed and budget had been appropriated. Some of the cities and counties that require either no council or board approval or a threshold of at least \$1 million before approval is required under these circumstances include: Santa Clara County, Sacramento County, City and County of San Francisco, San Diego County, City of Los Angeles, City of Merced, City of Oxnard, City of San Diego and City of Ventura. While ranked as the eleventh largest municipality in the United States, San Jose’s threshold for Council approval ranks with those of smaller California cities.

The Grand Jury believes that strict adherence to City policies and procedures is central to accountability and all personnel involved in procurement actions must be trained to understand and comply with governing policies and procedures. Full documentation of procurement actions taken must be created and preserved for subsequent financial and performance audits. And finally, full disclosure of all conflicts of interest relevant to any procurement must be made and considered by appropriate management and legal authorities.

Conclusions

The importance of the procurement function to the overall financial and operational success of the City of San Jose cannot be overemphasized. Obtaining goods and services through prudent procurement practices adds to the success of an organization by ensuring that correct, quality products are received at competitive prices. The following Findings and Recommendations do not address procurement of construction activities by the City Department of Public Works.

Finding 1

GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all applicable requirements mandated by the San Jose Municipal Code and by state and federal law.

Recommendation 1

GS Purchasing should ensure that all relevant City, state and/or federal requirements are adequately addressed in procurement policies and procedures, and should implement a formal configuration control or change control process for the maintenance and revision of procurement manuals. Consideration should be given to using the services of a professional consultant to assist in updating and revising the procurement manuals. Once policies and procedures are in place, all personnel involved in any procurement process should receive mandatory training on these policies and procedures, including periodic refresher training.

Finding 2A

The San Jose Municipal Code authorizes both centralized and decentralized processes for procurement. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user's requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

Finding 2B

GS Purchasing personnel appear to focus primarily on processing purchase orders, and do not fully function as procurement professionals who are actively involved throughout the procurement process from identification of a need to final delivery of, and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

Recommendation 2

The San Jose City Council should: (a) revise the Municipal Code to specify that, excluding construction activities, GS Purchasing is *fully* responsible for procurement of *all* supplies, materials, equipment, and general and professional services; and (b) assure that sufficient staffing, training, financial resources and information technology systems are provided to enable GS Purchasing to carry out this expanded role. GS Purchasing should be located closer to the City user departments to facilitate involvement in the day-to-day development and management of major contracts.

Finding 3

The Grand Jury evaluated a sample of eight procurement cases. Procurement files for five of these cases were managed by individual City departments for procurement of professional services. They appear to be poorly documented and maintained. Files for the other three cases were managed by GS Purchasing for procurement of supplies, materials, equipment and general services. These are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.

Recommendation 3

Documentation standards in Procurement procedures should be strengthened. A checklist of key procurement records could be a useful way of identifying and organizing documents to be accumulated and included in a procurement file. It may be appropriate for the City Auditor to conduct a more complete assessment of the quality of existing procurement documentation in order to fully address deficiencies.

Finding 4

The San Jose Municipal Code limits the contracting authority of the City Manager, City Council appointees and certain City department heads to \$100,000, with contracts above \$100,000 requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, the “Consent Calendar” on the Council agenda.

Recommendation 4

Once appropriate steps are taken, the San Jose City Council should revise the San Jose Municipal Code to significantly increase the \$100,000 threshold for requiring Council approval. These steps would include revision of procurement policy and procedures manuals (Recommendation 1), provision of sufficient procurement staffing, training, financial resources and information technology systems (Recommendation 2), and institution of measures to manage conflict of interest and ensure prudent accountability. In the interim, consideration should be given to increasing the limit on contracting authority for procurement of equipment and materials when normal procedures are followed and the procurement budget has been appropriated.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 9th day of June, 2005.

Michael A. Smith
Foreperson

References

Documents

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2. City of San Jose City Auditor's Report 91-10 – An Audit of the City's Formal Bidding Process Administered by the General Services Department/Purchasing Division, 15 Oct. 1991.
3. City of San Jose City Auditor's Report 04-05 – A Review of the CUSP Request for Proposal Process, 25 June 2004.
4. City of San Jose City Auditor's Report 04-06 – A Review of the Request for Proposal for the New Civic Center Converged Network System, 8 Aug. 2004.
5. City of San Jose Memorandum: Municipal Code Amendments Regarding Contract Authority, 3 May 2001.
6. City of San Jose, Office of the City Attorney/Office of the City Auditor, Report 04-06, A Review of the Request for Proposal for the New Civic Center Converged Network System, Aug. 2004.
7. City of San Jose Meeting Agenda: "Procurement Meeting...", 26 Aug. 2004 – with the following documents as attachments:
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 - "General Services – Purchasing "The Purchasing Puzzle", PowerPoint Presentation of 26 Aug. 2004.
 - City of San Jose Purchasing Guide (Nov. 1997, Revised Dec. 2002).
 - Contract Administration and Management Guidelines.
 - Specifications Writing Handbook – Department of General Services, Revised 1 April 2003.
8. City of San Jose Memorandum: Contract for New Civic Center Communications/Data Technology, 3 Aug. 2004.
9. City of San Jose Memorandum: Converged Network RFP, 20 Aug. 2004.
10. City of San Jose Memorandum: Cisco "Standardization", 20 Aug. 2004.
11. City of San Jose Memorandum: Investigation Summary Converged Network RFP, 3 Sept. 2004.
12. City of San Jose Memorandum: Investigation Summary into Alleged Misconduct of City Staff Regarding the Converged Network for the New Civic Center Request for Proposals, 3 Sept. 2004.
13. City of San Jose Memorandum: Council Investigations Pursuant to Charter Section 416, 10 Sept. 2004.

Documents – (cont'd.)

14. City of San Jose Memorandum: Report on Technical and Procurement Services for the New City Hall Converged Network Request for Proposals (RFP), 7 Oct. 2004.
15. City of San Jose Memorandum: Request for Proposals & Conflict of Interest, 14 Oct. 2004.
16. Letter: City of San Jose Procurement Process, Director of Finance, 19 Oct. 2004 – with the following documents as attachments:
 - City of San Jose Request for Proposal Procedures Manual, 25 July 1995.
 - City of San Jose Purchasing Administrative Manual, 15 Sept. 2001.
 - City of San Jose Department of Public Works Bid Documents, 23 Sept. 2003 & various dates.
17. City of San Jose Memorandum: Request for Proposals & Conflict of Interest, 14 Oct. 2004.
18. City of San Jose Memorandum: Procurement Strategy for the New City Hall Converged Network, 12 Nov. 2004.
19. Supplemental Report: Independent Investigation Regarding the Request for Proposals Related to the Converged Network for the New San Jose Civic Center, Hanson Bridgett/Marcos Vlahos Budy LLP, 11 Jan. 2005.
20. City of San Jose Memorandum: Converged Network and RFP process, 21 Jan. 2005.
21. City of San Jose Memorandum: Status Report on Request for Proposal Procedures, 9 Feb. 2005.
22. City of San Jose Fiscal/Budget Contacts, Revised 8 Feb. 2005.
23. City of San Jose Procurement Files for Eight Purchase Orders Greater than \$1 Million, 1 July 2000 through 19 April 2005.
24. Email: Purchasing Documentation, Purchasing Manager, 30 Nov. 2004, 5:04PM – with the following documents as attachments:
 - City of San Jose Purchasing Administrative Manual – GS Purchasing Manager, Revised Feb. 2003.
 - City of San Jose Purchasing Guide (Nov. 1997, Revised Dec. 2002).
 - City of San Jose Request for Proposal Procedures Manual, (undated).
25. Email: RE: Procurement Data, Deputy Director of Finance, 11 Feb. 2005, 9:20AM - with the following document as an attachment:
 - Computer-Generated Report of Purchase Orders Greater than \$1Million, 1 July 2000 through 30 June 2004.

Documents – (cont'd.)

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 - Purchasing Organization Chart – FY 04-05, 13 April 2005.
 - City of San Jose Retention Schedule – General Services, 5 April 2005.
27. Email: FW: Increasing Approval Authority for Procurement Contracts, Chief Purchasing Officer, 4 May 2005, 8:00AM.
28. Email: RE: Increasing Approval Authority for Procurement Contracts, Chief Purchasing Officer, 11 May 2005, 12:34PM – with the following document as an attachment:
 - Council Board Approval Limits by Agency –Thresholds Survey for CAPPO, 6 Feb. 2004.
29. Report by the 2004-2005 Santa Clara County Civil Grand Jury, “Problems Implementing the San Jose Police Computer Aided Dispatch System,” June 2005.

Interviews

1. GS Purchasing Manager, 26 Aug. 2004.
2. City Manager, Finance Director, Interim General Services Director, and Personnel Director, 7 Oct. 2004.
3. Finance Director and GS Purchasing Manager, 29 Nov. 2004.
4. Finance Director, City of San Jose Deputy Director of Finance , Interim Purchasing Manager, and Senior Purchasing Agent, 11 April 2005.
5. Deputy Director of GS Purchasing, Consultant to Deputy Director of GS Purchasing, and Senior Purchasing Agent, 19 April 2005.

Meetings

1. City of San Jose City Council Meeting, 14 Sept. 2004.