



## 2007-2008 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

# COUNTY CONTRACTING PRACTICES FALL SHORT ON \$20M CONTRACT

### Summary

The recent award of a \$20M contract to an outside consulting firm for services to be performed for the Santa Clara Valley Medical Center (SCVMC) shows a major weakness in the procurement/contracting process within the County of Santa Clara (County). The Santa Clara County Civil Grand Jury (Grand Jury) conducted an investigation into County contracting processes. As a result, the Grand Jury uncovered some significant deficiencies in the process and has made some detailed recommendations that will strengthen the County's procurement practices.

### Background

The County awards over \$500M worth of service contracts annually. These contracts are typically for consulting services for various County agencies ranging from process improvements to increased revenue generation. Of the \$500M, approximately \$450M is delegated to agencies that are solely responsible for the negotiating/contracting process.

Under such a delegation, SCVMC selected an outside consultant, using a competitive proposal process, to perform an assessment study. The consultant was subsequently awarded a \$20M contract for which no competitive proposals were solicited from any other vendors.

### SCVMC Initiates Contracting Efforts

SCVMC is a hospital owned and operated by the County. Its FY07 budget reflected the fifth consecutive year of deficits totaling \$86.3M over the five years. In order to reduce the deficits, the County Board of Supervisors (BOS) on September 12, 2006, formally delegated authority to SCVMC to enter into a contract (Assessment Contract) with a consultant that was to be selected based on a competitive review. The consultant was to conduct "an assessment of financial improvement opportunities for VMC" for an amount not to exceed \$500,000, with the delegated authority to expire on January 31, 2007. (Emphasis added. See Appendix for full text).

## **Assessment Contractor Selection December 2006**

All the contracting activities for the Assessment Contract and the subsequent Implementation Contract were led by the Santa Clara Valley Health and Hospital Systems Director of Planning and Business Development (SCVMC Executive Lead).

To perform the competitive review, the SCVMC Executive Lead identified six potential contractors as candidates and on September 12, 2006, having been delegated the authority from the BOS, invited them to compete with each other for the contract. He provided the candidates with a formal document called a Request for Proposal (RFP) that described the scope of the assessment, requirements for contracting with the County, and other information needed for the competitive selection process. Four of the six candidates were eliminated and the remaining two candidates, Accenture LLP and Deloitte Consulting, LLP (Deloitte), both large, national consultancy firms, were scrutinized further by an SCVMC executive team. The Assessment Contract ultimately was awarded to Deloitte for a \$350,000 engagement plus 30% for expenses with a termination date set to twelve weeks after initiation of the project. Deloitte started on December 11, 2006, and by mid-March the assessment was completed.

## **Assessment Contract Completion**

On March 22, 2007, Deloitte presented preliminary results of the assessment to the VMC Financial Planning Task Force (FPTF), a committee of the BOS. The Santa Clara Valley Health & Hospital System Chief Executive Officer (CEO) reported that “the assessment phase was conducted within the approved scope of services and within budget.” The VMC Director also laid out a potential schedule of “Milestones Leading to Consideration of an Implementation Contract” that included “Finalization of the Assessment Report” in April 2007 and a presentation to the Board of Supervisors on May 22, 2007.

## **Assessment Contract Leads to Deloitte Implementation Proposal**

In the April 30, 2007, FPTF meeting, the Santa Clara Valley Health & Hospital System CEO made it clear that she now fully expected that Deloitte would be the implementer of the initiatives that Deloitte had recommended during its assessment:

The overall objective of the engagement of Deloitte Consulting is to assist SCVMC’s leadership to evaluate, design and undertake the assessment and implementation of financial performance improvement work plans to significantly improve the revenue cycle structure and operations associated with the delivery of medical care at VMC. (Emphasis added.)

The CEO was directed to hold off until August before re-opening discussions on the implementation proposal (and contract) because of the complexity of County budget issues during that time period.

## **BOS Committees Debate Implementation Contract Terms**

Between August 21, 2007, and November 6, 2007, detailed discussions occurred at BOS committee meetings and the BOS regular meeting regarding the terms and conditions of the proposed Implementation Contract.

By the October FPTF and Health & Hospital Committee meetings, the Implementation Contract had drawn the attention of County executives. Discussions included the SCVMC Executive Lead, the Santa Clara Valley Health & Hospital System CEO, Deloitte management, representatives from the offices of County Counsel, Independent Auditor, Finance, County Executive, and Budget and Analysis.

At the October 10, 2007, meeting, the County Executive supported the proposal and said he planned to submit the proposal at the upcoming November 6 BOS meeting. The Health & Hospital Committee decided to forward their report to the Board without a recommendation "due to the magnitude of the undertaking." The committee also agreed that further reporting was necessary concerning contract expenses, the Deloitte Program Management Office, and Deloitte initiatives to improve VMC. They requested that these be presented at the November 6, 2007 BOS meeting.

The Implementation Contract was approved by the BOS on November 6, 2007, by a three to two vote.

## **Concerns**

As the Grand Jury conducted its investigation of events leading to the award of the \$20M contract, it found County policies and best practices that were ignored by the processes leading to its signing.

## **County Contracting Rules**

The BOS has the power to contract for the county and can execute a contract on its own (Board executed) or delegate its authority to the head of the Procurement Department or other County departments. Its policies govern the entire county. Board Policies regarding contracting and bidding are approved by the BOS and maintained by the Clerk of the BOS in the County of Santa Clara Board Policy Manual (BPM).

There is additionally a County Contracting Manual that is "intended to provide guidance to county employees in developing and executing contracts." The Contracting Manual is available only on the County internal web page under the Office of Budget and Analysis (OBA). Other contracting information can be found at the site, including forms, information on training, and the procedures for requesting a Delegation of Authority. The County Contracting Manual refers to and follows the BPM, but where there is a conflict between the Contracting Manual and the BPM, the BPM prevails. Such conflicts can lead to confusion.

The BPM states that the BOS has a commitment to an “open and competitive process with organizations and individuals who contract with the County” and to “promote the most cost-effective use of the taxpayer’s dollars while contributing to fairness and equal access to business opportunities in the County.” There are no exceptions for any departments, including SCVMC.

Section 5.5.3 of the BPM states:

The initial contract term (beginning and expiration) and provisions for allowable extensions shall be specified in any RFP that is issued to solicit consulting or other services as well as any agreement that may emanate from the RFP.

Extensions of agreements for consulting services on a project-specific undertaking shall not be allowed in the absence of a new competitive selection process unless the extension is needed to complete the original project; i.e. , an extension shall not be allowed to transfer the consultant from one discrete project to another.

As applied to the Deloitte contracts, it was stated by the Santa Clara Valley Health & Hospital System CEO in March 2007 that the Assessment Contract was completed on time. The Assessment Contract did not specify any extensions and the Implementation Contract was not regarded as an extension of the Assessment Contract. The two were separate contracts. Thus, Section 5.5.3 of the BPM required that a new competitive selection process be used for the Implementation Contract.

### **California Policy Regarding Follow-on Contracts**

To understand common contracting policy, the Grand Jury reviewed the State of California contracting code. California Public Contract Code, Section 10365.5(a), made into law as of July 1, 2003, states, in part, that:

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

Although the above-mentioned law is only applicable to state agencies and is not applicable to Santa Clara County, it is a useful principle for the County to follow. What this law assures is that the vendor that performs an assessment is not engaged to do the implementation.

## Process for Board-Approved Contracts

The Grand Jury noted process weaknesses in the requirements for Board-approved service contracts.

Signature requirements for service contracts with consultants are listed in Table 1 below. Contracts over \$100K (\$500K for Information Technology) do not receive the same level of procurement scrutiny as those under \$100K. For contracts above \$100K, Board delegation or approval is required, but no procurement signoff is required. County Counsel's approval is also required, but only as to "form and legality," and not as to procurement process.

The person signing (also called "executing") the contract is technically responsible for following Board Policy, but no formal procurement review is required, particularly regarding the vendor selection process.

Further, since the Implementation Contract was taken on November 6, 2007, directly to the BOS for signature with no Delegation of Authority, the contract presented required only the signatures of the Chairperson of the BOS, the Clerk of the BOS attesting to its execution, and the Lead Deputy County Counsel, for form and legality. The BOS at the November 6 meeting did decide to delegate authority for the actual execution of the contract after they approved the contract, but it clearly was too late to improve any competitive selection issues.

**Table 1: Authority to Purchase Professional (Consultants) Services**

CONTRACT AMOUNT	APPROVAL REQUIRED BY	EXECUTED BY
< \$10K		<ul style="list-style-type: none"> <li>• Director of Procurement</li> </ul>
\$10K-\$100K	<ul style="list-style-type: none"> <li>• OBA</li> </ul>	<ul style="list-style-type: none"> <li>• Director of Procurement</li> </ul>
\$100K-\$500K/yr. and total is related to current or past technology acquisition.	<ul style="list-style-type: none"> <li>• OBA</li> </ul>	<ul style="list-style-type: none"> <li>• Director of Procurement</li> </ul>
>\$100K and Non-IT or > \$500K and IT and <b>Board Delegates Authority</b> to Department Head or Director of Procurement	<ul style="list-style-type: none"> <li>• County Counsel (form, legality)</li> <li>• County Executive</li> <li>• OBA</li> </ul>	<ul style="list-style-type: none"> <li>• Public Official to whom Board delegated authority</li> </ul>
>\$100K and Non-IT or > \$500K and IT	<ul style="list-style-type: none"> <li>• County Counsel (form, legality)</li> </ul>	<ul style="list-style-type: none"> <li>• Board</li> </ul>

## **Opportunity Missed**

The entire Deloitte assessment took three months; six months were available after its completion to issue an RFP for the Implementation Contract. In April 2007 the decision was made to move the presentation for BOS approval from May to November 2007. SCVMC could present no evidence to the Grand Jury that during the intervening months, SCVMC had taken any action to ensure that the County was receiving a market-competitive proposal from Deloitte. The opportunity existed to negotiate the price, terms and conditions, and implementation alternatives through an open, competitive bidding process.

## **Fiscal Impact**

SCVMC asserted in several Board transmittals that there would be no fiscal impact from the Implementation Contract, under the assumption it would be paid for by the new revenue generation and expense reduction opportunities it created. However, the \$20M itself represented a large commitment from the County.

## **Inadequate Knowledge and Experience**

Facts gathered by the Grand Jury related to the Implementation Contracting effort indicate that SCVMC may not be sufficiently linked to County contracting resources and its practices and policies:

- The SCVMC Executive Lead, when interviewed by the Grand Jury, described adhering to a contracting procedure guidebook that was unique to SCVMC. When asked to give a copy to the Grand Jury, he later provided the Board Policy Manual and portions of the County Contracting Manual which are not unique SCVMC documents.
- The Deloitte contracting effort was done largely in isolation from other County experts that might have improved the methodology. No outside expertise was sought either from the Procurement Department or other County departments who also have relevant contracting expertise acquired through their specialties.
- The \$20M Implementation Contract was extraordinarily large for the County. While experienced with HMOs, pharmaceutical supplies, physician contracting, and other health related areas, the SCVMC Executive Lead and his team did not normally execute contracts of the type and size of the Deloitte contract.
- While County Counsel was involved, as a matter of customary practice with SCVMC, County Counsel was limited to reviews of contracts as to “form and legality” rather than business or procurement practice.

## **Conclusions**

Most interviewees indicated that the Implementation Contract was the biggest in Santa Clara County history. Yet, the County failed to ensure that this very critical and very costly contract had the high level of scrutiny and due diligence it required.

The Grand Jury was told that given the County's current financial situation, it may need more such contracts with outside experts in the future. It is imperative that those contracting with vendors have the knowledge and experience themselves or utilize available resources to achieve the best price and terms for the county.

The process to award the \$20 million contract did not allow for adequate oversight. The lack of involvement by county procurement allowed for contracting decisions to be made that did not ensure the most effective contractor was selected or the most favorable terms were achieved in an independent fashion. The County appears to have ignored its own contracting guidelines. The majority of money spent on service contracts in the county demonstrates little or no involvement from the procurement organization.

## **Findings and Recommendations**

Findings have been reviewed with the subject agency.

### **Finding 1a:**

SCVMC violated Board Policy Manual Section 5.5.3 when it did not conduct a competitive bidding process for the Deloitte Implementation Contract.

### **Finding 1b:**

The Santa Clara Valley Health and Hospital Systems Director of Planning and Business Development was the executive lead for both the Assessment and Implementation Contracts. When interviewed by the Grand Jury, he described adhering to a contracting procedure guidebook that was unique to SCVMC.

### **Recommendation 1:**

SCVMC needs to ensure that all its staff, particularly its management, understands and follows the Board Policy Manual.

### **Finding 2:**

SCVMC transmittals to the Board of Supervisors regarding the Deloitte Implementation Contract consistently asserted that there were no fiscal implications. The rationale was that the costs would be covered by the financial benefits obtained from the engagement.

### **Recommendation 2:**

If a contract proposal is the subject of the transmittal, its anticipated cost should be made clear in the transmittal.

### **Finding 3:**

The County approval and review processes for the Implementation Contract failed to note the violation of Board Policy Section 5.5.3.

### **Recommendation 3:**

The County needs to ensure that all parties involved with reviewing contracts are aware of and follow County contracting policies and the principles behind them.

#### **Finding 4:**

Processes are inadequate to ensure that procurement policies and procedures are followed by departments under a Board Delegation of Authority or for board executed contracts.

#### **Recommendation 4a:**

A periodic external audit of contracts executed under a Board Delegation of Authority and board-executed contracts should be performed, with contracts selected according to the amount of financial or other risk involved.

#### **Recommendation 4b:**

Responsibility for following County procurement procedures should be specifically designated in the approval processes for all county contracts.

#### **Finding 5:**

Board Policy does not address the problem of having the same vendor who was hired to make a recommendation being subsequently hired to implement the recommendation.

#### **Recommendation 5:**

The County should review Board Policies regarding issues similar to those covered under California Public Contract Code Section 10365.5 to clarify best practices for Santa Clara County regarding assessment contracts leading to implementation contracts.

#### **Finding 6a:**

Contracts over \$100K (\$500K for IT) do not receive the same level of procurement process scrutiny as those under \$100K.

#### **Finding 6b:**

County contracting rules are not consistently followed.

#### **Recommendation 6:**

The Board of Supervisors needs to revise and clarify contract procedures used in the Board Policy Manual and the County Contract Manual and ensure that they are followed consistently by all agencies throughout the county and for all contract dollar levels.

## **Appendix**

### **SCC BOS Delegated Authority for Assessment Contract**

From the September 12, 2006, BOS Summary of Proceedings. Item 21(b):

Approved delegation of authority to Acting Executive Director, Santa Clara Valley Health and Hospital System, or designee, to execute Agreement with consultant(s) to be selected based on competitive review relating to conducting assessment of financial performance improvement opportunities for VMC, in an amount not to exceed \$500,000, following approval by County Counsel as to form and legality, and approval by the County Executive. Delegation of authority shall expire on January 31, 2007.

## Key References

### Documents

County of Santa Clara, Board of Supervisors, Board Policies, Section 5 “Policies on Contracting and Bidding”, Revised March 11, 2005.

County of Santa Clara, Board of Supervisors. *Summary of Proceedings*, September 12, 2006.

County of Santa Clara, Board of Supervisors. *Summary of Proceedings*, November 6, 2007.

County of Santa Clara, Office of Budget and Analysis, *Contract Manual*, (accessed June 2, 2008).

County of Santa Clara, VMC Financial Planning Task Force, *Agenda, September 5, 2006*.

Deloitte Consulting, LLP, MS Powerpoint presentation, “Santa Clara Valley Medical Center Transformation 2010, Assessment Report for the Financial Planning Task Force,” August 21, 2007.

Kniss, Liz, to Kniss, Beall, VMC Financial Planning Task Force, Memo, “Recommendations Related to Santa Clara Valley Medical Center FY08,” September 5, 2006.

Kniss, Liz to Board of Supervisors, Memo, “Delegation of Authority,” September 12, 2006.

Kniss, Liz to Board of Supervisors, Memo, “Report from the Valley Medical Center Financial Planning Task Force,” September 12, 2006.

Murphy, James K. to Santa Clara County Civil Grand Jury, list in response to Request for Information, “Evaluation Committee for VMC Financial Performance Improvement Project, December, 2007.”

Murphy, James K. to Pete Kutras and Board of Supervisors, Memo, “Selection of Consultants,” August 28, 2007.

Roberts, Kim, to Kniss, Beall, and VMC Financial Planning Task Force, Memo, “Report on Scope of Services for the Selection of a Healthcare Consulting Firm (Consultant) For Financial Performance Improvement Project for Santa Clara Valley Medical Center (VMC),” September 5, 2006.

## **Documents - continued**

Roberts, Kim, to Kniss, Beall, and VMC Financial Planning Task Force, Memo, "Preliminary report relating to assessment of financial performance improvement opportunities at Santa Clara Valley Medical Center (VMC)," March 22, 2007.

Roberts, Kim, to Kniss, Yeager, and VMC Financial Planning Task Force, Memo, "Report relating to Santa Clara Valley Medical Center (VMC) Financial Performance Improvement Assessment," April 30, 2007.

Roberts, Kim, to Kniss, Yeager, and VMC Financial Planning Task Force, Memo, "Report Relating to Santa Clara Valley Medical Center (VMC) Financial Performance Improvement Assessment: Transformation 2010 (T2010)," August 21, 2007.

Roberts, Kim, to Kniss, Yeager, and VMC Financial Planning Task Force, Memo, "Report Relating to Santa Clara Valley Medical Center (VMC) Financial Performance Improvement Assessment: Transformation 2010 (T2010)," October 4, 2007.

Roberts, Kim, to Alvarado, Kniss, and Health & Hospital Committee, Memo, "Report Relating to Santa Clara Valley Medical Center (VMC) Financial Performance Improvement Assessment: Transformation 2010 (T2010)," October 4, 2007.

SCVHHS, *Request for Proposal for Financial Performance Improvement Services for the Santa Clara Valley Medical Center*, Sept. 12, 2006.

State of California, Department of General Services, *State Administrative Manual*, "Guidelines Regarding Follow-on Contracts: Policy and Review Process," March 30, 2004.

## Interviews

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Feb 15, 2008	Director Planning and Business Development, SCVHHS
March 26, 2008 and April 7, 2008	Director of Procurement, Procurement Department, County of Santa Clara
April 16, 2008	Manager, Internal Audit Division, County of Santa Clara
April 17, 2008	Senior Manager of Business Development, SCVHHS
April 30, 2008	Chief Executive Officer, SCVHHS
May 14, 2008	Member, Board of Supervisors, County of Santa Clara
May 18, 2008	County Budget Director, Office of Budget and Analysis, County of Santa Clara
May 26, 2008	County Executive, County of Santa Clara
May 30, 2008	Member, Board of Supervisors, County of Santa Clara

**PASSED** and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 12<sup>th</sup> day of June, 2008.

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Raymond A. Blockie, Jr.  
Foreperson

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Tim Cuneo  
Foreperson pro tem

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Kathryn C. Philp  
Secretary