



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SAN JOSE'S RESTRUCTURED PROCUREMENT PROCESS APPLAUDED

Background

On December 6, 2005, partly in response to recommendations by both the City's Auditor and the 2004-2005 Santa Clara County Civil Grand Jury, the San Jose City Council directed its City Attorney to amend provisions of the Municipal Code governing San Jose's procurement process.

Audit reports issued in June and October 2004 recommended San Jose draft procurement policies to ensure that the goods and services contracted for were those provided by the suppliers, and that stated dollar amounts are documented accurately throughout the process. Then, in a report released in June 2005, after an examination instigated due to several mismanaged technology contracts, the 2004-2005 Santa Clara County Civil Grand Jury recommended that San Jose draft formal procurement policies; adopt a conflicts disclosure policy; compel training for all personnel expected to be involved in purchasing; assign responsibility for procurement to a single department; and increase the threshold dollar amount that would trigger the need for City Council approval.

Since several of the recommendations concerning the procurement process required multi-year efforts, the 2006-2007 Santa Clara County Civil Grand Jury reviewed the City's attention to those over the past two years. By May 2007, San Jose had completely restructured its procurement process, and by doing so satisfied the recommendations stated by its auditor and the 2004-2005 Grand Jury. Specifically, the Municipal Code provisions governing procurement have been revised; comprehensive procurement policies have been adopted; training has been provided for all city employees involved with purchasing; responsibility for the entire procurement process has been assigned to the Chief Purchasing Officer in the Purchasing Division of the Finance Department; and the dollar amount of contracts requiring Council approval has been increased from \$100,000 to \$1 million for supplies, equipment, material, and delivery, and from \$100,000 to \$250,000 for services, training, and information technology support.

A host of regulations governs the means by which public agencies contract with outside suppliers for: (1) supplies, equipment, material, and delivery (collectively, goods); (2) professional services (e.g., consulting agreements), nonprofessional services (e.g., landscape, janitorial, security, installation, repair and maintenance), training, and information technology support (collectively, services); and (3) Public Works projects (which were exempted from review of the 2004-2005 Grand Jury and this Grand Jury). In general, the regulations provide an efficient and fair process for bidding public contracts

which allow local agencies to obtain goods and services at the lowest cost commensurate with quality while maintaining administrative control of the projects. This Report uses the term “procurement process” to refer to the entirety of the laws, procedures, and policies which regulate the City’s bidding and contracting for goods and services.

Discussion

California municipalities are required to “adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency” [California Government Code §§ 54201-54205]. Generally, cities must provide public notice seeking competitive bids for city contracts which exceed a threshold estimated cost to perform, and award those contracts to the lowest responsible bidder. A “competitive bid” is the price at which a responding party offers to provide the goods or services the city is seeking. To qualify as a “responsible bidder,” the responding party must demonstrate the quality, fitness, capacity, and experience to satisfactorily perform the services being solicited. The City of San Jose’s solicitation and award of contracts for the purchases of goods and services is governed under Title 4 of the San Jose Municipal Code.

In a report filed June 22, 2005, the 2004-2005 Santa Clara County Civil Grand Jury found:

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 [Santa Clara County Civil Grand Jury Report, “City of San Jose Procurement Policies, Procedures, and Practices,” June 22, 2005].

As a result of its findings, the 2004-2005 Grand Jury recommended the City draft formal procurement policies, including procedures to manage conflict of interests and ensure prudent accountability; compel training on the procurement process for all personnel expected to handle purchasing of goods and services; assign the responsibility for the entire procurement process to a single department; and significantly increase the then One Hundred Thousand Dollar (\$100,000) threshold for requiring City Council approval.

On December 6, 2005, the City Council directed the City Attorney to amend provisions of the Municipal Code governing the City’s procurement process to, among other revisions, centralize responsibility for purchasing, and to increase the dollar amount of contracts requiring Council approval [November 6, 2006 Memorandum].

After two years of coordinated effort by the City Council, City Attorney’s and City Manager’s Offices, the Finance Department, various staff members and outside suppliers, San Jose has drafted policies and procedures to create a more efficient, transparent and resourceful procurement process. Notably, since April 2005, San Jose

has had as its Chief Purchasing Officer a person who demonstrates business integrity and effective leadership skills and, as of January 2007, an administration committed to government accountability and the openness of its dealings.

The following are among the significant improvements San Jose has made to its procurement process:

- Under the San Jose Municipal Code, adopted February 27, 2007, the City's Manager, Attorney, Auditor, and Clerk are authorized to enter into specified contracts without Council approval that have a maximum value of \$250,000. The City Manager is further authorized, without first seeking Council approval, to enter into contracts for goods with an estimated cost to provide of \$1,000,000; services with an estimated cost to perform of \$250,000; and all other purchases with a maximum value of \$100,000.
- On a quarterly basis, the City Council shall receive a report describing all contracts entered into by the City's Manager, Attorney, Auditor, and Clerk which were valued at \$100,000 or more.
- To centralize purchasing, responsibility for managing the procurement of goods is now limited to a Council appointee, the City Manager, and the Finance Director. However, since contracts for services need to be administered by the Department requiring the service, a Certified Contract Specialist (CCS) position has been created in each Department expected to procure services. The CCS will liaise with the Finance Department and be required to attend specialized training and regularly scheduled meetings.
- On April 23, 2007, more than one hundred employees attended procurement training conducted by the Purchasing Division, and, in or about July 2007, more particularized training will be given to the Certified Contract Specialists.
- To ensure integrity throughout the procurement process, San Jose enacted a policy requiring, among other safeguards, that all persons involved in the process disclose in writing any potential conflict of interests, maintain confidentiality, and report any perceived misconduct to the Chief Purchasing Officer.
- An online *Request for Proposal* manual, scheduled for publication in May 2007, will provide guidance for staff, suppliers, and the public on the procurement process.

Conclusion

The method by which San Jose accomplished the restructuring of its procurement process illustrates how a unified, interdepartmental strategy, implemented by dedicated city officials and staff, can have a positive influence on public policy. This project also indicates those in decision-making positions at San Jose are genuine when they promise to conduct their business under public purview.

Bibliography

California Government Code, Sections 54201-54205.

City of San Jose Memorandum. *Implementation of Procurement Reforms*, January 25, 2007.

City of San Jose Memorandum. *Implementation of Procurement Reforms*, November 1, 2006.

City of San Jose Memorandum. *Procurement Reform Ordinance*, November 6, 2006.

City of San Jose, Office of the City Auditor. *Semi-Annual Recommendation Follow-Up Report on all Outstanding Audit Recommendations for the Six Months Ended June 30, 2006*.

City of San Jose Ordinance Amending Chapters 4.04 and 4.12, and Repealing Chapters 4.06 and 4.13 of Title 4 of the San Jose Municipal Code to Increase Administrative Contract Authority for Purchase of Supplies, Materials, Equipment to \$1,000,000 and Services to \$250,000, to Enact a Protest Procedure for Purchases, and to Amend, Reorganize and Consolidate Various Purchasing Procedures, passed February 27, 2007.

City of San Jose Policy 5.1.4. *Brand Name and Sole Source Procurements*, April 3, 2006.

City of San Jose Policy 5.1.1. *Procurement and Contract Process Integrity and Conflict of Interest – Administrative Procedures*, April 18, 2007.

City of San Jose Policy. *Procurement of Information Technology*, adoption pending.

City of San Jose Policy. *Procurement of Non-Professional Services*, adoption pending.

City of San Jose Policy. *Procurement of Supplies, Material, and Equipment*, adoption pending.

City of San Jose Policy 5.1.6. *Procurements with Grant Funds*, September 19, 2006.

City of San Jose Policy 5.1.3. *Source Selection Plan*, February 10, 2006.

Santa Clara County 2004-2005 Civil Grand Jury Report. *City of San Jose Procurement Policies, Procedures, and Practices*, June 22, 2005.

Interviews

August 14, 2006	City of San Jose official
February 12, 2007	City of San Jose official
May 7, 2007	City of San Jose official

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 22nd day of May 2007.

Ronald R. Layman
Foreperson

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Foreperson Pro tem

Kathryn C. Philp
Secretary