



Council Meeting: October 14, 2008

SUBJECT: Request for Proposals (RFP) Review by Council Prior to Issuance (Study Issue)

REPORT IN BRIEF

The City Council has requested a Study Issue to explore the pros and cons of providing Council the opportunity to comment on the development of specifications for the procurement of goods and/or services when a Request for Proposals (RFP) is utilized for such purchases. Currently, RFPs are prepared, issued and evaluated by staff without advance review or input by Council, whose involvement in the RFP process takes place at the point of contract award when the procurement is above the City Manager's contract award authority of \$100,000. RFPs between \$50,000 and \$100,000 do not require Council approval. One exception to this practice includes those RFPs for services in which Council is the "end user" such as executive search firms for Council appointees. Another notable exception in recent years was the SMaRT Station operating contract, whereby Council requested advance approval of the RFP prior to issuance.

Staff recommends that the current practice continue, with enhancements designed to give Council additional information at the point of RFP award, including evaluation criteria/weighting (if applicable), a complete list of proposers and an explanation of why a proposal was selected for recommended approval. Over the past year, staff has been incorporating this information on an ad hoc basis into Reports to Council to award RFPs and is now recommending a more systematized approach.

Should the Council desire to provide comment on RFP development, it is recommended that direction be provided at the policy level for only those purchases that require Council approval and are likely to generate extraordinary public interest, as determined by the City Manager or as requested by Council. By providing direction at the policy level, the Council could create the framework under which RFP specifications would be developed.

BACKGROUND

The City Charter establishes a centralized purchasing system for all City procurements, codified in Sunnyvale Municipal Code Chapters 2.08 and 2.09. The City Council is the awarding authority for all purchases over \$100,000 in a single transaction and the City Manager is the awarding authority for purchases \$100,000 or less. Goods and services are procured through formal or informal processes designed to ensure fairness and equity, to obtain the highest value, and to safeguard the quality and integrity of the public purchasing system.

Generally, informal procurements are those anticipated to cost \$50,000 or less in one transaction where verbal or written solicitations can be made but are not necessarily required (depending on graduated dollar threshold amounts). Formal procurements are those anticipated to cost more than \$50,000 in one transaction. Written competitive bids (Invitation for Bids or "IFBs") or proposals (RFPs) are absolutely required for formal procurements and are subject to public noticing and other requirements, including use of well defined specifications which describe in great detail the required goods and/or services.

Formal competitive proposals, or RFPs, are utilized when the City has defined a situation for which it seeks a solution in the form of goods, services or a combination of the two, and which may require exceptional technical or professional knowledge beyond staff's level of expertise. As a matter of practice, the City mainly utilizes RFPs for services, rather than for the purchase of goods, which are customarily procured through IFBs. Types of RFPs include, but are not limited to:

- Design, Engineering and/or Professional Services for large-scale capital projects or infrastructure planning – Examples include Murphy Avenue Streetscape, Pavement Rehabilitation, Strategic Infrastructure Planning;
- Design, Furnish and Installation – Examples include Solar Photovoltaic System at Fire Station No. 2;
- Cost of Service or Other Special Studies – Examples include Solid Waste Utility Rate Cost of Service Study, Optimal Staffing Studies;
- Service Provision – Examples include Senior Lunch Program, Copier Leasing;
- Purchase of Goods – Example: Polymer Flocculant.

By law, competitive bids (IFBs) result in contract awards based on the lowest responsive and responsible bidder, while competitive proposals (RFPs) can result in contract awards based on factors in addition to price. It should be noted that some informal procurements, e.g., those less than \$50,000, are done by issuing RFPs or Requests for Quotations (RFQs) if staff thinks that the initial cost estimate is too low and could result in a procurement above the \$50,000 threshold.

It is important to note that the purpose of this Study Issue is to explore Council's involvement in the development of specs for competitive proposals, or RFPs, not for competitive bids.

EXISTING POLICY

City Charter Article XIII, Section 1317, Centralized Purchasing. A centralized purchasing system shall be established for all City departments, offices and agencies. The City Manager shall recommend and the City Council shall consider and adopt by ordinance, rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any department, office or agency of the City government.

Sunnyvale Municipal Code Chapter 2.08. Purchases of Goods and Services.

Code of Ethics and Conduct for Elected and Appointed Officials, B. Conduct, 4. Conduct with City Staff. Do not get involved in administrative functions. Elected and appointed officials must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

DISCUSSION

Several factors should be considered by Council before deciding whether specifications for RFPs should be reviewed prior to issuance. These include the City's current practice, best practices recommended by professional organizations, policies and practices of other jurisdictions, and the impact on workload/service levels.

Current Policy/Practice to Develop, Issue and Award RFPs

The Sunnyvale Municipal Code establishes centralized purchasing system "to provide for the fair and equitable treatment of all persons involved in the purchasing process, to obtain the highest possible value in exchange for public funds, and to safeguard the quality and integrity of the purchasing system." (SMC §2.08.020) Within this system, the "end users" work with purchasing staff to develop and fine-tune the specifications which are incorporated into the RFP document. The RFP is then advertised and notice

is given as to the specific date, time and place the proposals will be received and publicly opened. After all proposals are received and publicly opened, an evaluation committee comprised of appropriate City staff reviews the RFPs and makes a determination as to which proposal offers the best value to the City based on the evaluation criteria. Once this determination is made, the City Manager (or the Purchasing Officer as delegated by the City Manager) or the City Council will award a contract to the most responsive proposer, depending upon the award threshold.

Historically, the City Council has not been involved in the review of specifications prior to issuance, with the exception of those RFPs for services in which Council is the actual “end user” such as executive search firms for Council appointees. Another notable exception to this practice was the SMaRT Station operating contract, where Council requested advance approval prior to issuing the RFP.

Over the past year and on an ad hoc basis, staff has been incorporating evaluation criteria in Reports to Council to award RFPs, along with the list of proposers and an explanation of why a proposer is being recommended for approval. Going forward, this approach could be standardized to ensure that all staff reports contain this information.

Best Practices Review

In conducting this study, staff researched various professional organizations to determine whether they have established/recommended best practices for the development of specifications associated with RFP issuance.

The leading organization for public procurements is the National Institute of Governmental Purchasing, Inc. (NIGP), which recommends as a best practice the implementation of a centralized purchasing system “independent of internal special programs and special interests.” The NIGP procurement model assumes that overall responsibility for the development of RFP specifications rests with staff through the centralized purchasing office, though the organization has not formally adopted policy in this regard.

The Government Finance Officers Association (GFOA), the Institute for Local Government (ILG) and the International City/County Management Association (ICMA) have no recommended best practices in this area.

Policy/Practice of Other Jurisdictions

Staff surveyed surrounding cities to determine what role, if any, their City Councils play in the review/comment of RFPs prior to issuance. Survey cities include Fremont, Mountain View, Palo Alto, San Jose and Santa Clara.

Jurisdiction	Council Review of RFP Specs Prior to Issuance?	Exceptions
Fremont	No	None noted
Mountain View	No	None noted
Palo Alto	Not typically	Council may review/comment on items if they are the end-user such as Council appointed position evaluation consultants, executive search firms for vacant positions such as City Manager or City Auditor, or for issues receiving extraordinary public attention
San Jose	No	On matters of high public interest, <i>programmatic input</i> is requested from Council (policy direction on service delivery strategy)
Santa Clara	No	None noted

As noted in the table above, of the surrounding cities surveyed, only the City of Palo Alto provides Council the opportunity to comment on RFPs prior to issuance. Such comment is limited to items of specific relevance to the Council (for Council-appointed positions), or for issues that will or are expected to generate extraordinary public interest. The cities of Fremont, Mountain View and Santa Clara make no provision in policy or practice for Council review/comment on the development of RFP specifications. The City of San Jose, by practice, will request programmatic input from Council on matters of high public interest prior to issuing RFPs for services, affording their governing body the opportunity to provide policy direction on service delivery strategies rather than actually developing the RFP specifications. An example of this is their Commercial Waste Redesign Program to increase recycling and waste diversion goals (from a non-exclusive franchise system to an exclusive franchise system).

Additionally, staff conducted an email survey through the California Association of Public Purchasing Officers (CAPPO) list serve. Of the thirteen responses received, no respondents afforded their governing bodies the opportunity to review and comment on development of RFP specifications as a matter of course. One agency (Santa Cruz County) requests approval of RFPs prior to issuance by their governing body for issues of high public interest or large dollar amount, such as electronic voting machines, but could provide no examples over the last five years where their Board actually commented on the development of RFP specifications. One agency's

governing body (Santa Clara Valley Water District Board) reviews qualifications of professionals/consultants for services in which they are the end users such as executive search firms or independent auditors.

Service Level Considerations/Increased Workload

In FY 2003/2004 and in response to the economic downturn, the City Council eliminated one Buyer position in the Department of Finance and reduced the service level for formal purchases by increasing the procurement cycle time from 50 to 55 days. At the time, the slowing economy and resulting budget cuts reduced the amount of goods and services being purchased, and staff was able to keep pace with formal procurements. As the economy improved, however, backlogged purchase requisitions started coming on line without an increase in staff to process them, which has led to longer procurement cycle times. For example, in FY 2006/2007, only 44% of formal contracts were issued within 55 days. For FY 2007/2008, only 37% of formal contracts were issued within 55 days. The average number of days to issuance for all formal contracts in FY 2007/2008 was 91 days.

It must be noted that if Council requires RFP review/comment prior to issuance, the process would be lengthened considerably given the time needed to prepare the RFP specifications combined with established deadlines for submitting Reports to Council. Presumably the Council's involvement would occur at Public Hearing, or at a Study Session. While the Council would be afforded the opportunity to review/comment earlier in the RFP process, this advantage would be outweighed by the additional time needed to issue a contract and the resultant increase in procurement cycle time. Given the relative complexity of each RFP, it would be difficult to quantify how much longer the process would take, but staff estimates a minimum of 30 days simply based on the timeframe required for completing Reports to Council.

Options for Council Consideration

Currently, staff prepares and issues RFPs without advance review by the City Council, with noted exceptions. Should Council desire to have increased input into the RFP process, several options could be considered.

Option #1 – Continue current practice of preparing, issuing and evaluating RFPs without advance review by Council, but provide additional standard information in staff reports including RFP evaluation criteria/weighting (if applicable), a list of proposers and an explanation of why a proposal is being recommended for approval.

This option would provide Council with additional information on which to base a decision to award a particular contract. At its option, Council could

accept or reject such a recommendation. This option is unlikely to result in increased procurement cycle times.

Option #2 – Create a policy framework whereby Council would provide direction on RFPs of high public interest as determined by the City Manager or as requested by Council for those procurements that require Council approval.

This option would afford Council the opportunity to provide policy direction on certain procurements over \$100,000 for which RFPs are utilized, as determined by the City Manager or as requested by Council. Under this scenario staff would identify for Council the particular good or service required and would outline any potential policy considerations. The Council could then provide guidance on how the RFP should be prepared and issued. Depending upon the vehicle used to obtain policy direction, i.e., through the Public Hearing or Study Session process, this option would increase procurement cycle time.

Option #3 – Provide Council the opportunity to review/comment on the development of RFP specifications prior to issuance, if Council approval is necessary.

This option would entail bringing forward RFP documents prior to issuance so that Council could provide review/comment on the development of specifications. Depending upon the process utilized to obtain such input, this option would have the greatest impact on staff's ability to timely award contracts.

CONCLUSION

In deciding whether the Council should play a role in developing specifications for RFPs prior to awarding contracts, the Council should carefully balance its desire for process involvement with its overall policy-setting role and the potential impact on service delivery. Should the Council wish to review and comment on the development of specifications, involvement in the process should only occur with those formal procurements that require Council approval, i.e., purchases over \$100,000 in a single transaction. Consistent with the Council Code of Ethics and Conduct and the State's ethics laws, the Council must be personally disinterested in contracts awarded by the City in order to avoid even the appearance of a conflict of interest.

FISCAL IMPACT

There is no fiscal impact as a result of this Study Issue. Should the Council decide to review/comment on development of RFP specifications prior to issuance for those items requiring Council approval, procurement cycle

times would increase such that service levels would have to be modified or additional staff would need to be hired to manage the increase in workload.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Continue the current practice of preparing, issuing and evaluating RFPs without advance review by Council, but provide additional standard information in staff reports including RFP evaluation criteria/weighting (if applicable), a list of proposers and an explanation of why a proposal is being selected for recommended approval.
2. Create a policy framework whereby Council would provide direction on RFPs of high public interest as determined by the City Manager or as requested by Council for those procurements that require Council approval.
3. Provide Council the opportunity to review/comment on the development of RFP specifications prior to issuance when Council approval is required.

RECOMMENDATION

Staff recommends Alternative 1, to continue the current practice of preparing, issuing and evaluating RFPs without advance review by Council, but provide additional standard information in staff reports including RFP evaluation criteria/weighting (if applicable), a list of proposers and an explanation of why a proposal is being selected for recommended approval. This alternative would provide Council with enhanced information on which to base a decision to award a particular contract, and is unlikely to result in significantly increased procurement cycle times.

Reviewed by:

Mary J. Bradley, Director, Finance

Prepared by: Pete Gonda, Senior Management Analyst, Finance

Approved by:

Amy Chan
City Manager

Attachments

A. Council Study Issue Paper

Proposed New Council Study Issue

Number FIN-2
Status Pending
Calendar Year 2008
New or Previous New
Title RFP Review by Council Prior to Issuance
Lead Department Finance
Element or SubElement

1. What are the key elements of the issue? What precipitated it?

Currently, Requests for Proposals are prepared and issued by staff without advance review by City Council. Council's involvement in the RFP process takes place at the point of contract award. This study would explore the pros and cons of providing Council the opportunity to comment on the development of RFP specifications earlier in the process.

2. How does this relate to the General Plan or existing City Policy?

Legislative/Management Subelement (7.3)

"The most important function of the Council is its policy development role, as the policies guide current and future City activities and set community standards and priorities."

3. Origin of issue

Council Member(s) Moylan
General Plan
City Staff
Public
Board or Commission none

4. Multiple Year Project? No Planned Completion Year 2008

5. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? No
If so, which?
Is a Council Study Session anticipated? No
What is the public participation process?
 None

6. Cost of Study

Operating Budget Program covering costs
 Program 740
Project Budget covering costs

Budget modification \$ amount needed for study
N/A

Explain below what the additional funding will be used for

7. Potential fiscal impact to implement recommendations in the Study approved by Council

Capital expenditure range None

Operating expenditure range None

New revenues/savings range None

Explain Impact briefly

Unable to determine at this time.

8. Staff Recommendation

Staff Recommendation None

If 'For Study' or 'Against Study', explain

9. Estimated consultant hours for completion of the study issue

0

Managers

Role	Manager	Hours
Lead	Wesely, Elaine	Mgr CY1: 20 Mgr CY2: 0
		Staff CY1: 0 Staff CY2: 0

Total Hours CY1: 20

Total Hours CY2: 0

Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.

Reviewed by

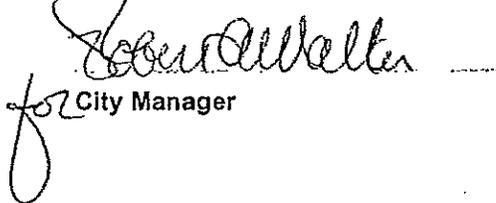


Department Director

11/20/07

Date

Approved by


for City Manager

11-20-07

Date

Addendum

A. Board / Commission Recommendation

Issue Created Too Late for B/C Ranking

Board or Commission	Rank	Rank
	Rank	Rank
	1 year ago	2 years ago
Arts Commission		
Bicycle and Pedestrian Advisory Committee		
Board of Building Code Appeals		
Board of Library Trustees		
Child Care Advisory Board		
Heritage Preservation Commission		
Housing and Human Services Commission		
Parks and Recreation Commission		
Personnel Board		
Planning Commission		
Board or Commission ranking comments		

B. Council

Council Rank (no rank yet)
Work Plan Review Date (blank)
Study Session Date (blank)
RTC Date (blank)
Actual Complete Date (blank)
Staff Contact