



Agenda Report

19-672

Agenda Date: 9/17/2019

INFORMATIONAL REPORT TO COUNCIL

SUBJECT

Response to the September 9, 2019 San José Spotlight article, written by Janice Bitters, titled "Santa Clara Bucked City Rules with Singer Public Relations Contracts"

BACKGROUND

This memorandum addresses inaccuracies and accusations that were made in the above-mentioned San José Spotlight article (

<https://sanjosespotlight.com/santa-clara-bucked-city-rules-with-singer-public-relations-contracts/>)

regarding the City's procurement practices and award of contracts to Singer Associates, Inc.

The article asserts that City officials did not follow: a) the City's Charter; b) typical timelines and industry best practices when bidding for a six-figure contract, and c) doubled the value of the contracts while seeking out bids. In addition, the article claims that the Civil Grand Jury could not finish its investigation into the Singer Contracts because jurors struggled to get information from the City. As reported at the September 4, 2019 City Council special meeting, the Civil Grand Jury told staff at the Exit Interview, on May 28, 2019, that there was no wrongdoing in their review of the Singer contracts and, as a result, they moved on to a review of public records requests. Additionally, the Grand Jury received all documents requested on a rolling basis from the City, as referenced in the September 4 City Council report.

These accusations ignore key facts. The article itself is misleading about the City's public procurement practices and represents a misunderstanding on the part of the author. This type of journalism does a disservice to the public and should be corrected.

The City Manager has acknowledged on several occasions that the City's rules and processes for procurement, contracting, and document control need to be reformed; however, the City did follow its procurement rules. It is also worth noting that the procurement took place in January 2018, before the City's new procurement procedures were put into place.

DISCUSSION

Allegation 1: The procurement was "a rushed process in which potential bidders had just 11 days to respond and only one bid was submitted, rather than the three required by the city's charter."

Facts: San Jose Spotlight is completely wrong about the Charter requiring three bids for a procurement and the accusation that the City, and specifically the City Manager, has violated the Charter. There are no City Charter provisions that govern the Singer contracts.

There are, however, two policies that apply:

- a) The City's Purchasing Code applies to the agreement between Singer and the City; and
- b) The Stadium Authority Procurement Policy applies to the agreement with the Stadium Authority.

The City's Purchase Code may be found online at:

<https://www.codepublishing.com/CA/SantaClara/#!/SantaClara02/SantaClara02105.html#2.105.080>
<<https://www.codepublishing.com/CA/SantaClara/#!/SantaClara02/SantaClara02105.html#2.105.080>>, and the Stadium Authority Policy may be found at

<https://www.codepublishing.com/CA/SantaClara/#!/SantaClara17/SantaClara1730.html#17.30>
<<https://www.codepublishing.com/CA/SantaClara/#!/SantaClara17/SantaClara1730.html#17.30>>.

Section 2.105.330(e2) of the City Code includes a competitive exemption provision for **professional services** where the "service or personnel is unique or the available contractors providing the service are few in number." Arguably, a justification could have been made to award the City contract on a sole source basis and the requirements of the purchasing code would have been satisfied. Award of a sole source contract is permissible by the City Code and does not violate any law or policies.

This City did not do a sole source contract; instead it administered a competitive professional services procurement and only received one bid. By conducting a competitive process, the City went beyond the minimum requirements of the Code and Stadium Policy. The bid was posted on the City's website, which was the process that was in-effect at the time of the bid and compliant with the City's processes. There is no requirement or law that requires bid documents on a website in perpetuity.

Regarding the comment that potential bidders had "just" 11 days to respond to the bid document; the Code does not specify or require a minimum notice period, and there is nothing to suggest that a longer notice period would have resulted in a greater number of bids. The complexity of the requirement and urgency for the service are considerations in determining the noticing period for a bid. The 11 days does not constitute a rushed procurement process.

Regarding the allegation that the City's Code was not followed because "...the city's charter requires three bids in a formal solicitation for contracts exceeding \$50,000," the facts are the Code requires at least three proposals for **general services** (e.g., goods, materials, equipment, etc.) procurements. The Singer bid, which is for **professional services** (e.g., service personnel, consultants, etc.) and not general services, does not apply to this requirement. These are two very different types of public contracts and procurements.

San José Spotlight's application of a rule for general services procurements to professional services procurements is wrong. San José Spotlight's motivation to present a violation of the "Charter" by applying the wrong "Charter" provision is extremely misleading to the public. A Charter violation is very serious.

Last, procurement is market-driven where bidders can choose which procurements to respond to and which they will pass on. The City has no control over the number of respondents to a bid solicitation and, even if it did, that requirement was not applicable to this professional services procurement.

Bottom line, the procurement was not rushed, it did not violate the Charter, it did not require three bids, and there is no requirement to keep an old bid document on a website.

Allegation 2: The City's Request for Qualifications (RFQ) wasn't posted online though that is best practice in the government procurement sector.

Facts: This statement is also wrong. As already stated above, the bid was posted on the City's website in accordance with the process that was in-effect at the time of the bid (January 2018). There is no requirement to keep the bid documents on a website in perpetuity.

Allegation 3: The RFQ indicated a not-to-exceed amount of initially \$50,000 per contract "but Singer's contracts awarded later that month ended up being \$100,000 each."

Facts: The amounts were increased due to the communication needs of the City and Stadium Authority becoming much greater than initially identified from when the RFQ was issued. In addition, there were unforeseen staffing changes including the resignation of the elected City Clerk, Assistant City Clerk, Communications Specialist, and the appointment of the City's Community Relations Manager to Acting City Clerk. This left the Communications functions with only one staff person, when it regularly had three.

It should be noted that Singer's proposed hourly billing rates did not change from the proposal. Increasing the value of the bids does not materially affect the procurement process and does not violate any code or policy provisions. The change is permissible under the City Manager's authority and does not constitute any irregular procurement practices. To date, the City has spent \$58,259 or 29% of the available not to exceed funding between the two contracts that end on June 30, 2020.

Allegation 4: "The city in June quietly extended the contracts with Singer that were set to expire earlier this year."

Facts: There was nothing quiet about the extension of the two contracts. Once again, San José Spotlight misleads the reader by characterizing a common extension of the term on a contract as if it was done in violation of a rule or suspiciously. It is common to amend a contract to extend the term when the full contract amount hasn't been expended and the need for service remains. The extension of these contracts is within the City Manager's contract authority, a normal business function, and there was no change to the amounts of the two Singer contracts.

Allegation 5: "Work started without a city signature - again."

Facts: While it is accurate that work commenced prior to the agreements being fully executed, the agreements were already signed by Singer and approved, as to form, by the City Attorney's Office. The agreement terms were entirely those of the City which were reflected in the agreement for professional services and Singer agreed to them by signing the contract. Work started during the final routing and signature process by the City Manager. The risk was identified to be very low because Singer had already signed the agreements, accepting the City's terms, and final City signatures were pending. This is an entirely different scenario than working without an agreement. Although this was explained to San José Spotlight, they failed to include these important facts in an effort to conclude that Singer worked without a contract.

Allegation 6: A concern raised by a member of the public that separate contracts were issued to avoid City Council approval.

Facts: The member of the public's suggestion is also completely flawed, illegal and misinformed.

It is a known fact that the Stadium Authority and the City are two separate public agencies and one agency cannot enter into agreements for the other. In fact, had one contract for professional services been executed for services for both the City and Stadium Authority, that would have resulted in a contract that was not legal.

One public agency cannot enter into contract for another public agency - that's basic government. The Stadium Policy grants the Executive Director the authority to execute service contracts up to and including \$250,000, and the City Code grants the City Manager up to \$100,000 for City contracts. Two separate public agencies MUST issue their own legal agreements.

The information presented above confirms that a proper procurement process was administered, and contracts were executed in accordance with applicable policies.

Procurement Process Reforms

As stated in the background section of this memorandum, the City Manager initiated a number of actions in 2018 to strengthen and centralize purchasing at the City, including:

- 1) In May 2018, a Purchasing Manager was hired;
- 2) At the City Council Goal and Priority Setting Session held on Jan. 31 and Feb. 1, 2019, the Purchasing Manager provided a presentation describing the current environment, outlined short- and long-term goals designed to increase competition, transparency, and equal treatment, and highlighting significant accomplishments during his seven-month tenure up to that point;
- 3) The City implemented BidSync, an e-procurement tool that was purchased and implemented to improve bid outreach, transparency and facilitate the management of bids for both goods and services;
- 4) The City hired a qualified professional procurement staff;
- 5) The City developed and introduced new bid templates to streamline and make the process more efficient; and
- 6) The City developed and implemented Citywide contract trainings on contract writing and best practices.

The Purchasing Managers presentation may be viewed at:
<http://santaclara.gov/government/council/council-goals>.

In the coming months, more amendments are scheduled including updating the Purchasing Code that will apply to both City and Stadium Authority purchases, formal bidding thresholds, introducing a protest process, a code of conduct for staff and vendors to follow, improving efficiencies with contracts management including process streamlining with expanded use of purchase orders; developing new administrative policies and procedures; conducting procurement trainings; conducting vendor outreach to the local business community; and publishing a "How to do business with the City" guide; among other opportunities that have been identified.

Reviewed by: Lenka Wright, Director of Communications, City Manager's Office

Reviewed by: Mark Giovannetti, Purchasing Division Manager, Finance Department

Approved by: Deanna J. Santana, City Manager