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COMMITTEE ACTION SHEET

(a-b)

COUNCIL DOCKET OF _____				
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Adoption	<input type="checkbox"/> Consent	<input type="checkbox"/> Unanimous Consent	Rules Committee Consultant Review

R -

O -

Managed Competition Status

Reviewed Initiated By Budget On 6/18/08 Item No. 3

RECOMMENDATION TO:

<p>Forward the Independent Budget Analyst's Report to the full City Council and include these additional requests:</p> <ol style="list-style-type: none"> 1. Outstanding issues to continue to be discussed with stakeholders and recommendations brought forward to full City Council; 2. Methodology Auditor will use; 3. Direction to the City Attorney to provide legal analysis and draft Ordinance regarding access to government records and right to Audit provisions; and 4. Analysis of County versus City's process regarding Right to First Refusal.
--

VOTED YEA: Atkins, Faulconer, Frye, Hueso, Madaffer

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO. 08-65

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Revised Attachment 1 to IBA Report No. 08-65; Independent Budget Analyst's June 18, 2008, PowerPoint
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COUNCIL COMMITTEE CONSULTANT 



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: June 12, 2008

IBA Report Number: 08-65

Budget and Finance Committee Date: June 18, 2008

Item Number: 3

Update on Managed Competition Issues

OVERVIEW

On May 28, 2008, representatives from the Mayor's Office, the Office of the Independent Budget Analyst, Councilmember Atkins' office, the labor organizations, and the Center for Policy Initiatives (CPI) met to discuss outstanding issues and concerns related to the managed competition process.

FISCAL/POLICY DISCUSSION

The following highlights the key issues discussed.

Issue #1: Clarification of IRB's Role Early in the Process

The Municipal Code states that the pre-competition assessment will be transmitted to the Managed Competition Independent Review Board (IRB) "for its consideration". The role of the IRB, as it relates to "for its consideration" needs to be clearly defined.

Issue #2: Discussion of Accelerated Step for Identifying which Functions Proceed to Competitive Procurement

A new step in the flow chart (that illustrates the managed competition process) has been proposed that would decide earlier in the process which functions would proceed to the pre-competition assessment (PCA). Discussion occurred on treating this similar to an environmental review, in which there is an initial screening to consider the factors listed in the Municipal Code, to determine whether to implement the BPR or proceed to PCA. More in depth study would occur at the PCA if determined appropriate. Documentation on this step needs to occur. Also, the communication of the results from the pre-screening and PCA process needs to happen as soon as they are announced.



Issue #3: Proposed Council and IRB Review and Approval of Preliminary Statement of Work

The committee has previously discussed and taken action on the review and approval of the Statement of Work (SOW) by Council. The Municipal Code states that when a service is selected for pre-competition, a preliminary written SOW will be prepared which will outline "service specifications" to be included in the SOW. The Mayor's Office plans to implement this requirement and is proposing IRB and Council review and approval of the Preliminary SOW. The preliminary SOW needs to be defined and included in the Guide.

Issue #4: Status of CPI Issues

CPI raised five issues (See Attachment 1 for proposals) at the Budget and Finance Committee on March 26, 2008 relative to Managed Competition. In response, on April 15, 2008, the Mayor's Office essentially agreed with four of the five CPI proposals (see attachment 2). Additional discussion is still ongoing on incorporating these changes as part of the implementation ordinance and/or revisions to the Managed Competition Guide.

Issue #5: Discussion of Pre-screening Proposals for 10% Savings Requirement

Discussed the desirability of including an initial screening step by the Purchasing Director on bids received to determine if the bids meet or exceed the cost savings of 10%.

Issue #6: Status of Pending BPR Ordinance Revisions

Discussed impact of possible revisions to the Proposed Amendments to the BPR Ordinance as presented by the IBA (Report No. 08-25) and approved by the Budget and Finance Committee on March 26, 2008. The Proposed Amendment for BPR Implementation states "(c)ompleted BPR studies which show that cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion. Meet and confer requirements, pre-competition assessments and Council approval must be completed within this six month time period. A function that is involved in an active managed competition procurement process is exempt from this requirement." Issues that have been raised:

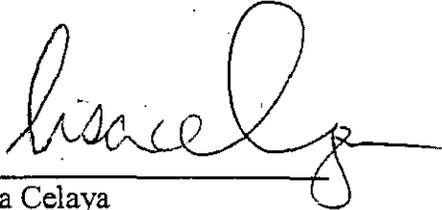
- A specific time period for meet and confer to be completed should not be identified.
- Completion of Pre-competition Assessment (PCA) in six-month period may not be necessary with new accelerated decision step.

CONCLUSION

The meeting on May 28th enabled multiple stakeholders in the managed competition process to discuss outstanding issues and understand the various viewpoints of concern as they relate to the process.

Additional work is needed to finalize outstanding issues and the following steps have been identified to occur in the next 4-6 weeks.

- Development of recommendations by IBA and Mayor's Office on the issues summarized above including changes to the Guide and/or Ordinances.
- Identification of impact on Proposed Amendments to BPR Ordinance as developed by IBA and approved by the Budget and Finance Committee.
- Additional discussion of this topic at Budget and Finance Committee and/or City Council.



Lisa Celaya
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment 1: CPI's Proposals for Managed Competition
Attachment 2: Mayor's Response to CPI Issues

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PROPOSALS FOR MANAGED COMPETITION**(1) HEALTHCARE - LOSS PREVENTION**

The Mayor and the City Council must ensure that the Managed Competition process does not result in workers losing health insurance, especially when private contractors get an unfair advantage in their bids by contributing less towards health insurance for workers. The Charter requires the Managed Competition process to be "protecting the public interest" [Charter §117(c)]. Public interest is not protected when the cost of health insurance is transferred from the employer to the taxpayers. This proposal does not require contractors to provide health care benefits or increase their level of coverage. This proposal is similar to federal law, which does not allow cost savings derived from health insurance coverage as the determining factor in evaluating managed competition bids.

Amend the San Diego Municipal Code Sec. 22.3713 to add the following:

(a) (5) the independent contractor does not receive an advantage for a bid proposal that would reduce costs by:
(A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or
(B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the City.
This provision does not require contractors to provide the same health care as City employees, but is intended to ensure that a contractor does not get an unfair advantage in the contracting out cost comparison that is based on a reduced amount of health insurance coverage.

(2) SERVICE QUALITY PROTECTION

The Charter requires the managed competition process to "maintain service quality" [Charter §117(c)]. The Mayor and City Council must ensure that all activities within any function subjected to competition are measured and incorporated accurately into the Statement of Work. The Statement of Work (SOW) describes the specifications of the contract. It specifies the minimum standards for service levels as well as the methods of monitoring performance of the services. Service levels could be enumerated either as desired outputs, performance levels or outcomes.

Amend the San Diego Municipal Code Sec. 22.3702 to add the following:

(a) ... This report will be transmitted to the Managed Competition Independent Review Board for its consideration. As a strong safeguard to maintain service quality, the City Council shall approve the Statement of Work in a public hearing, prior to issuance of any solicitation for services.

(3) AUDITOR APPROVAL OF COST TO TAXPAYERS

In order to ensure that services are delivered in the most economical way, resulting in the most savings for taxpayers, the city's auditor must review and approve the cost comparison data during the managed competition process. This is similar to the County's process. In addition, the proposal requires the City to use differential costs in the activity-based cost analysis, as recommended by the Government Finance Officers Association (GFOA).

Amend the San Diego Municipal Code Sec. 22.3713 as follows:

(a) (4) ... In reviewing this factor, the Board will utilize a cost analysis, the purpose of which is to calculate the costs that are saved and the costs that are generated by contracting the service. The cost analysis will be approved by the Auditor and shall utilize differential costs to show how each bid will change the government's current cost. This analysis shall include transition costs, monitoring and enforcement costs, and shall ensure that all unavoidable costs associated with an activity are captured.

(4) WORKER PROTECTION FOR DISPLACED EMPLOYEES

The current "Service Worker Retention" ordinance was not designed to address unemployment of city workers as a result of privatization. It refers to "service workers" working for a "contractor", and excludes persons required to possess an occupational license or certificate.

Therefore, the following changes will need to be made to Chapter 2 Article 2 Division 28:

(i) All references to "service workers" including the chapter title and definition of "service workers" need to be changed to include all city employees.

(ii) All references to "contractor" need to be changed to "service provider".

(iii) Adding the following clause to Municipal Code:

Section 22.2807 The impact of contracting on City employees will be minimized by:

(a) Requiring Contractors, to the extent permitted by law and the particular circumstances of the service, to give first preference in hiring to displaced City employees.

(b) Departments' use of attrition where contracting is anticipated by holding positions vacant or filling them with temporary employees until a function can be contracted.

(c) Departments' use of transfers or reassignment within the department or to another department.

(5) RETAINING CORE CAPACITY

Increased reliance on a contractor may create a private monopoly. The inability of the public sector to be able to bid on future projects thwarts healthy competition, and endangers the ability of the city to maintain service quality in the case of contractor default, changed circumstances or changing market conditions.

Amend the San Diego Municipal Code Sec. 22.3702 to add the following:

(e) As part of the Pre-Competition Assessment, the City Manager shall consider the level of core capacities, if any, which should be maintained within the City to enable the City to compete for service delivery in the future or to provide the service in the event of a contractor default, changed circumstances, or future non-competitive proposals. Measures to maintain core capacities may include retaining a portion of the service in-house and/or maintaining comparable skills in other units of the City. Where City funds are invested in equipment, real property or other capital assets, the City shall identify appropriate measures to ensure the ability to resume operations in the case of default, changed circumstances or future non-competitive proposals.

(6) MOST EFFICIENT ORGANIZATION

The Most Efficient Organization means an organization whose performance exceeds that of comparable providers, both public and private. Implementation may involve structural changes such as employee training, capital investment, organizational mission development, and operational systems and take time to institutionalize, to realize long-term savings. These steps should be undertaken with full commitment from both the employees and the effected stakeholders. The Secretary of Defense grants additional five years to organizations completing successful BPRs in order to achieve projected and planned efficiency savings. (FY2004 National Defense Authorization – Public Law 108-136 SEC. 337)

Add the following clause to the BPR Ordinance (O-19523)

Functions and departments commencing implementation of BPRs shall be granted five years in which to achieve projected efficiencies and improve the level of services. During this duration, the function or department covered by the BPR shall not be required to undergo any Pre-Competition Assessment or public-private competition.

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**RESPONSE TO CPI ISSUES
APRIL 15, 2008**

Below, you will find a table that shows five issues and concerns relating to managed competition that were raised by the Center for Policy Initiatives (CPI) at the March 26, 2008 meeting of the City of San Diego's Committee on Budget & Finance, together with the City's response to these issues and concerns.

CPI RECOMMENDATIONS	CITY RESPONSE
To prevent an unfair bidding advantage, differences in the employer contribution to employee health coverage should be excluded from bid comparisons.	Removing health care costs is consistent with the use of COMPARE (or a tailored version of COMPARE, creating a similar software), as proposed by the City.
To make sure we get what we pay for, specific service outcomes and performance measures must be described and publicly debated before contracts go to bid.	We believe that we should ensure that the City Council and the public have an appreciation for—and the opportunity to comment on—the specific services that will be procured through managed competition and the service standards for those services. The FY2009 proposed budget includes performance measures and workload data for each Department within the City. In addition, we have proposed to delineate service specifications for Council review and comment.
The City's auditor should review the cost comparison data of bids being considered under managed competition.	Agreed. The City Auditor will lead the cost evaluation board.
Before the decision is made to put a city function to bid, whether and how the city can retain the core capacity to do the work should be evaluated.	This evaluation is part of the pre-competition assessments.
Workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first rights to the job.	<p>To commit to a 90-day transition period after employees are alerted to their positions being eliminated is not a significant change from the current practice. We have committed to using the City's RIF procedures to execute any lay-offs that occur as a result of managed competition. The RIF proceedings must be done in a disciplined manner and are not an overnight exercise. These procedures allow City workers to move into vacant positions and provide City workers with tenure bumping rights. It is City practice to hold vacancies open when a RIF is expected to allow employees to positions for transfers.</p> <p>Although we will commit that employees have up to 90 days to find a position within the City or with another employer should the need arise, if we execute RIF proceedings and we are able to place employees in alternate positions, we may want to do this in fewer than 90 days. In no circumstance should a transition of up to 90 days result in employees receiving salaries for two jobs simultaneously.</p>

Managed Competition Do It Right.

Healthcare -- Protect families. Level the playing field.

To prevent an unfair bidding advantage, differences in the employer contribution to employee health coverage should be excluded from bid comparisons. This method is used in federal law.

Private contractors shouldn't win the right to take over city functions simply because they deny workers and their families healthcare coverage. The Managed Competition process is required to protect the public interest, and it cannot do so by stripping jobs of health coverage, thereby transferring the cost of health insurance from the employer to the taxpayers.

Service levels -- Protect quality services.

To ensure that current service levels are maintained, specific service outcomes and performance measures must be described and publicly disclosed before contracts go to bid.

Past experience makes clear that contractors will do only what the contract specifically states. Before a Request for Proposals or any bidding documents are published, the City Council should approve, in a public hearing, a "Statement of Work" defining service levels for the function being bid. This process is used by the San Diego County Board of Supervisors.

Independent auditor approval -- Protect taxpayers.

The City's independent auditor should review the cost comparison data of bids being considered under managed competition, including administrative costs such as enforcement and monitoring.

The City must ensure that the managed competition process actually saves taxpayers money, as required in the Charter. Currently, there is no costing guide and no way to validate cost savings. The review should use methodology recommended by the Government Finance Officers Association.

Retain core capacity -- Protect healthy competition.

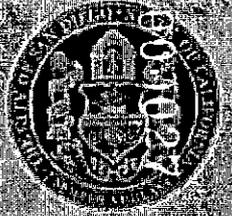
Before the decision is made to put a city function out to bid, the City should evaluate whether and how it can retain the core capacity to do the work.

Turning over a service to a contractor could destroy the City's ability to perform city functions, to bid on future work, or to maintain services in case of contractor default or changing market conditions.

Worker retention -- Protect our workers. Protect service efficiency.

In the interest of service continuity as well as fairness, workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first refusal rights to the job.

The 90-day retention is provided now when a City contract changes hands between private contractors.



Update on Managed Competition Issues

Budget and Finance Committee

June 18, 2008

Independent Budget Analyst, Report 08-65

Update on Managed Competition Issues

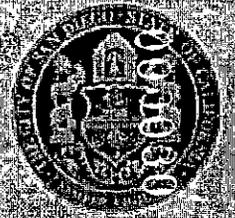


- Stakeholders
 - Office of the Independent Budget Analyst
 - Mayor's Office
 - Councilmember Atkins' Office
 - Labor Organizations
 - Center on Policy Initiatives

Key Issues Discussed



1. Clarification of IRB's Role Early in the Process
2. Discussion of Accelerated Step for Identifying which Functions Proceed to Competitive Procurement
3. Proposed Council and IRB Review and Approval of Preliminary Statement of Work
4. Status of CPI Issues
5. Discussion of Pre-screening Proposals for 10% Savings Requirement
6. Status of Pending BPR Ordinance Revisions



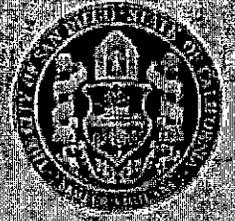
1. Clarification of IRB's Role Early in the Process

- Municipal Code states that the pre-competition assessment will be transmitted to the Managed Competition Independent Review Board (IRB) “for its consideration”.
 - Role of IRB needs to be clearly defined

2. Discussion of Accelerated Step for Identifying which Functions Proceed to Competitive Procurement



- New step in flow chart has been proposed that would decide earlier in process which functions would proceed to the PCA
- Discussion on treating this similar to an environmental review
 - Documentation of this step needs to occur
 - Communication of the results of the pre-screening and PCA needs to happen as soon as they are announced.



3. Proposed Council and IRB Review and Approval of Preliminary Statement of Work

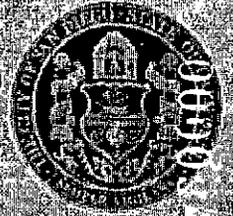
- Previous Committee action on review and approval of the Statement of Work (SOW)
- Municipal Code states that when a service is selected for pre-competition, a preliminary written SOW will be prepared which will outline "service specifications" to be included in the SOW.
 - Mayor's Office plans to implement this requirement and is proposing IRB and Council review and approval of the Preliminary SOW
 - Preliminary SOW needs to be defined

4. Status of CPI Issues



- CPI's Five Issues
 - Healthcare
 - Service Levels
 - Independent Auditor Approval
 - Retain Core Capacity
 - Worker Retention
- Additional discussion on how to incorporate changes

5. Discussion of Pre-screening Proposals for 10% Savings Requirement



- Current process for review of proposals involves a technical evaluation before review of costs.
- Discussed an initial screening of proposals received to determine if the bids meet or exceed the cost savings of 10%

6. Status of Pending BPR Ordinance Revisions



- Discussed impact of possible revisions to the Proposed Amendments to the BPR Ordinance as presented in IBA Report 08-25 and approved by the Budget and Finance Committee on March 26, 2008.
- Issues raised:
 - Specific time period for meet and confer should not be identified
 - Completion of PCA in time period may not be necessary

Upcoming



- Development of recommendations by IBA and Mayor's Office on these issues, including changes to the Guide and/or Ordinances.
- Identification of impact on 10 Proposed Amendments to BPR Ordinance as developed by the IBA and approved by the Budget and Finance Committee.
- Additional discussion at future Budget and Finance Committee and/or City Council.

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY) 07/28

TO: CITY ATTORNEY
2. FROM (ORIGINATING DEPARTMENT): Independent Budget Analyst
3. DATE: 7/16/2008

4. SUBJECT: Amendments to the Managed Competition and Business Process Reengineering Ordinances

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Lisa Celaya, 619-236-5917, MS 3A
6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): Judy Stone, 619-236-6555, MS 3A
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>		8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>[Signature]</i>	7/17/08
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/16/08
5					DOCKET COORD:	COUNCIL LIAISON:	
6				<input checked="" type="checkbox"/>	COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO:	COUNCIL DATE: 7/28	

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

- Accept IBA Report 08-77, *Action Items for Managed Competition and Business Process Reengineering*; and
- Amend the Managed Competition Ordinance (O-19565) to identify that the Preliminary Statement of Work will be transmitted to the Independent Review Board for informational purposes; that City Council must approve the Preliminary Statement of Work; and that the Mayor's Office must certify that the Statement of Work in the bid solicitation does not deviate from the Preliminary Statement of Work.
- Amend the Business Process Reengineering Ordinance (O-19523) to require timely implementation of BPRs that demonstrate cost savings, efficiencies or service level enhancements with no budgetary increases and streamlined docketing of completed BPRs for City Council review and approval.

11A. STAFF RECOMMENDATIONS:
Introduce the Ordinances.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: This activity is not a project and exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

HOUSING IMPACT: N/A

OTHER ISSUES: N/A

000038

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)TO:
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):
Independent Budget Analyst3. DATE:
7/16/20084. SUBJECT:
Amendments to the Managed Competition and Business Process Reengineering Ordinances5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Lisa Celaya, 619-236-5917, MS 3A6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Judy Stone, 619-236-6555, MS 3A7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED **8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
1	ORIGINATING DEPARTMENT	<i>Andrew Teck</i>		8	DEPUTY CHIEF			
2				9	COO			
3				10	CITY ATTORNEY			
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT	<i>Andrew Teck</i>	7/16/08	
5					DOCKET COORD: _____	COUNCIL LIAISON: _____		
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT	<input type="checkbox"/> SPOB	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> ADOPTION
7					<i>MS</i>	<input type="checkbox"/> REFER TO: _____	COUNCIL DATE: 7/28/08	

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

- Accept IBA Report 08-77, *Action Items for Managed Competition and Business Process Reengineering*; and
- Amend the Managed Competition Ordinance (O-19565) to identify that the Preliminary Statement of Work will be transmitted to the Independent Review Board for informational purposes; that City Council must approve the Preliminary Statement of Work; and that the Mayor's Office must certify that the Statement of Work in the bid solicitation does not deviate from the Preliminary Statement of Work.
- Amend the Business Process Reengineering Ordinance (O-19523) to require timely implementation of BPRs that demonstrate cost savings, efficiencies or service level enhancements with no budgetary increases and streamlined docketing of completed BPRs for City Council review and approval.

11A. STAFF RECOMMENDATIONS:

Introduce the Ordinances.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: This activity is not a project and exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

HOUSING IMPACT: N/A

OTHER ISSUES: N/A

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: REPORT NO:
 ATTENTION: City Council
 ORIGINATING DEPARTMENT: Independent Budget Analyst
 SUBJECT: Amendments to the Business Process Reengineering and
 Managed Competition Ordinances
 COUNCIL DISTRICT(S): ALL
 CONTACT/PHONE NUMBER: Lisa Celaya/619-236-5917

REQUESTED ACTION: 1) Accept IBA Report 08-77, *Action Items for Managed Competition and Business Process Reengineering*; 2) Amend the Managed Competition Ordinance (O-19565) to identify that the Preliminary Statement of Work will be transmitted to the Independent Review Board for informational purposes; that City Council must approve the Preliminary Statement of Work; and that the Mayor's Office must certify that the Statement of Work in the bid solicitation does not deviate from the Preliminary Statement of Work; 3) Amend the Business Process Reengineering Ordinance (O-19523) to require timely implementation of BPRs that demonstrate cost savings, efficiencies or service level enhancements with no budgetary increases and streamlined docketing of completed BPRs for City Council review and approval.

STAFF RECOMMENDATION: Introduce the Ordinances.

EXECUTIVE SUMMARY: The Office of the Independent Budget Analyst has facilitated dual discussions on the City's Business Process Reengineering and Managed Competition processes. Our goal has been and continues to be to clarify issues and preserve Council's policy role in both processes. IBA Report 08-77 summarizes these discussions and identifies action items for Council Consideration on the following topics:

- Clarification of the Managed Competition Independent Review Board (MCIRB) Role Early in the Process.
- An Accelerated Step of Identifying which Functions Proceed to Competitive Procurement.
- The Review and Approval of Preliminary Statement of Works by the City Council.
- Center for Policy Initiatives (CPI) proposals on Healthcare, Service Levels, Independent Auditor Approval, Retaining Core Capacity, and Worker Retention.
- Timely Implementation of BPRs.

FISCAL CONSIDERATIONS: None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On March 26, 2008, the Budget & Finance Committee voted unanimously to adopt and support the IBA's recommendations to amend the BPR Ordinance as identified in IBA Report 08-25 and refer to the full City Council.

On June 18, 2008, the Budget & Finance Committee voted unanimously to support and forward IBA Report 08-65 which provided an earlier update on our discussions to the full City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Discussions with stakeholders included representatives from the Mayor's Office, Councilmember Atkins' office, City Attorney's Office, labor, Center for Policy Initiatives (CPI), the Managed Competition Independent Review Board (MCIRB) and the Office of the Independent Budget Analyst.



Lisa Celaya
Fiscal & Policy Analyst



Andrea Tevlin
Independent Budget Analyst

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CITY CLERKS OFFICE
SAN DIEGO, CA



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: July 16, 2008

IBA Report Number: 08-77

Action Items for Managed Competition and Business Process Reengineering

OVERVIEW

The Office of the Independent Budget Analyst has facilitated dual discussions on the City's Business Process Reengineering and Managed Competition processes. Our goal has been and continues to be to clarify issues and preserve Council's policy role in both processes.

In IBA Report 08-25, *Recommendations for Timely Implementation of Business Process Reengineering (BPR) and Provision of BPR Service Level Information to City Council*, our office recommended three revisions to the BPR Ordinance. On March 26, 2008, the Budget and Finance Committee voted to adopt and support the recommendations and refer this item to the full City Council.

Also, at the March 26, 2008 Budget and Finance Committee meeting, the Center for Policy Initiatives (CPI) proposed five recommendations in their report *Managed Competition Do It Right*. The recommendations covered the following:

- Healthcare
- Service Levels
- Independent Auditor Approval
- Retain Core Capacity
- Worker Retention

To address concerns regarding the proposed revisions to the BPR Ordinance, the issues/recommendations raised by CPI, and other questions on managed competition, our office facilitated meetings with various stakeholders, including representatives from the Mayor's Office, Councilmember Atkins' office, City Attorney's Office, Labor, CPI, and the Managed Competition Independent Review Board (MCIRB). Our initial progress on



Office of Independent Budget Analyst

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these discussions was summarized to the Budget and Finance Committee on June 18, 2008, in IBA Report 08-65 (Attachment A).

As directed by the Budget and Finance Committee, this report expands on our previous report by providing specific action items for Council consideration and discussing other issues that we recommend be addressed administratively.

FISCAL/POLICY DISCUSSION

Clarification of MCIRB's Role Early in the Process

Municipal Code Section 22.3702 states the following:

If the City Manager intends to submit a City service to Managed Competition, the City Manager will then prepare a preliminary written Statement of Work for that particular City service, and will prepare a report setting forth the rationale for putting a City service into Managed Competition. This report will be transmitted to the Managed Competition Independent Review Board for its consideration.

It was discovered that stakeholders held varying viewpoints of what "for its consideration" meant and what the role of the Managed Competition Independent Review Board (MCIRB) is at this point in the process. It is the consensus view that the core role of the MCIRB is to make recommendations to the Mayor on whether a service should be awarded to city employees or an independent contractor. If the role of the MCIRB was expanded to include consideration of the preliminary Statement of Work (i.e. reviewing and approving) there is concern about the need for additional expertise and time involvement by the MCIRB.

To address this issue and to reflect what is believed to have been the original intent, the stakeholders reached consensus that the meaning of "for its consideration" is "for informational purposes." It is our recommendation that the Municipal Code be edited to reflect this. Also, it is further recommended that the Managed Competition Guide (Guide) be updated to include this clarification.

Review and Approval of the Preliminary Statement of Work by Council

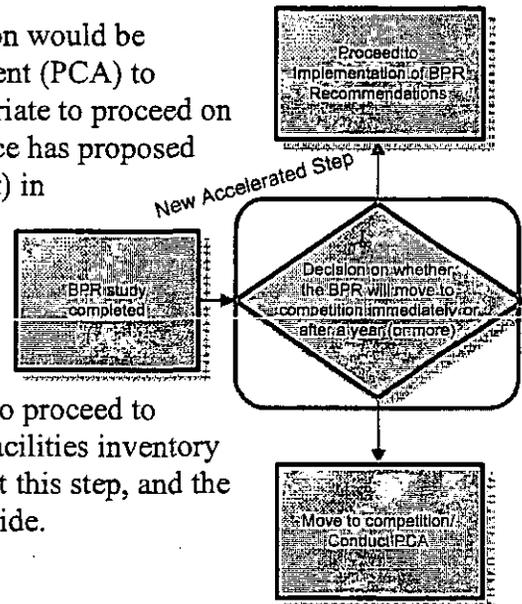
The Budget and Finance Committee had previously discussed and taken action on the review and approval of the Statement of Work (SOW) by Council. The Municipal Code states that when a service is selected for pre-competition, a preliminary written SOW will be prepared which will outline "service specifications" to be included in the SOW. To implement this requirement, the option of having the MCIRB review and approve the preliminary SOW was considered. However, as discussed above, it is now proposed that the preliminary SOW will be given to the MCIRB for informational purposes only. It is further proposed that the Council review and approve the preliminary Statement of Works, consistent with their policy role. The preliminary SOW will define service levels and serve as the foundation for the Request for Proposal's Statement of Work. In order

for Council to be assured that there are no changes in the service specifications, we recommend that the Mayor's Office certify that the SOW as detailed in the Request for Proposal (RFP) is consistent with the preliminary SOW as approved by Council. It is our recommendation that Council review and approval of the preliminary Statement of Work be codified into Municipal Code Section 22.3702 and that the Guide be updated to clearly define the content of the Preliminary SOW.

It is anticipated that in the near future, preliminary SOWs for Dead Animal Removal, Container Services, and Street Sweeping will be docketed for Council review and approval, consistent with this proposal.

Accelerated Step for Identifying which Functions Proceed to Competitive Procurement

Previously, upon completion of its BPR, a function would be evaluated through a full pre-competition assessment (PCA) to determine if the function was eligible and appropriate to proceed on to a competitive procurement. The Mayor's Office has proposed and initiated a pre-PCA step (depicted to the right) in which a decision can be made expeditiously on whether or not to proceed immediately to competition. This was exemplified in the handling of the Facilities Maintenance BPR. It was determined, prior to performing a full pre-competition assessment, that it was not practical to proceed to competition due to the lack of a comprehensive facilities inventory and condition assessment. It is recommended that this step, and the criteria for the decision, be documented in the Guide.



Center for Policy Initiatives (CPI) Proposals

As mentioned earlier in this report, at the March 26, 2008 Budget and Finance Committee CPI raised the following five issues relative to Managed Competition:

- Healthcare: "To prevent an unfair bidding advantage, differences in the employer contribution to employee health covered should be excluded from bid comparison."

There is agreement by all parties that health care costs will be excluded from consideration. It is recommended that this be specified in the Guide.

- Service Levels: "To make sure we get what we pay for, specific service outcomes and performance measures must be described and publicly debated before contracts go to bid."

As described in the previous section, it is proposed that the City Council approve the preliminary SOW that includes information on service specifications. These specifications will serve as the foundation for the RFP Statement of Work.

- Independent Auditor Approval: “The City Auditor should review the accuracy of cost comparison data of bids being considered under managed competition.”

The City Auditor agrees that this is an appropriate step in the process but has indicated he does not have sufficient resources available to fully address this activity. He has indicated for FY 2009 that he will be able to conduct the cost accuracy review for the Solid Waste Collection Services bid proposals only and will be proposing this be incorporated into his FY 2009 Audit Work Plan. Solid Waste Collections is the most significant procurement process that will take place next year. Cost accuracy reviews associated with the procurement processes for street sweeping, container services, Miramar greenery operations, and dead animal removal will need to be conducted by Financial Management or the IBA. For procurements planned for in FY 2010, it is recommended that the Auditor identify the resources necessary to address this work based on his experience with Solid Waste Collections and consider incorporating it into this FY 2010 work plan.

Also, the cost methodology that will be used to evaluate bids needs to be fully detailed and documented. It is our understanding that the cost methodology guide is currently in process and we recommend, upon its completion, that the guide be reviewed at a future Budget and Finance Committee meeting.

- Retaining Core Capacity: “Before the decision is made to put a city function to bid, whether and how the City can retain the core capacity to do the work should be evaluated.”

This is already included in the managed competition ordinance and is being implemented. It is recommended that examples of how the City will address core capacity be included in the Guide.

- Worker Retention: “Workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first refusal rights to the job.”

The Mayor’s Office has committed to utilizing the City’s Reduction-in-Force (RIF) procedures to execute any lay-offs as a result of managed competition; this includes transferring impacted positions to other vacant positions in the City. However, they have not yet committed to requiring first rights of refusal.

In comparison, the County Board of Supervisors has adopted a policy to minimize the impact of contracting on County employees by "requiring contractors, to the extent permitted by law and the particular circumstances of the service, to give first preference in hiring to displaced County employees." The Mayor's Office proposes to encourage vendors to give City employees the right of first refusal.

The Council could consider adopting a similar policy or language that could be added in the RFP/contract enabling City employees the first right of refusal. In an example from the City of Phoenix, the following language is included in the contract addressing displaced City employees:

"The Contractor recognizes that as a direct result of this Agreement, certain City employees job positions may be eliminated. Therefore, as partial consideration to the City for entering into this Agreement with the Contractor, the Contractor agrees to offer employment to such displaced employees to fill any comparable position that becomes available as a result of this Agreement. It is understood that such displaced City employees would be required to meet the Contractor's minimum qualification requirements which are normally specified by the Contractor in order for such displaced City employees to be offered a position."

Proposed Amendments to the Business Process Reengineering Ordinance

On March 26, 2008, the Budget and Finance Committee approved the IBA proposed recommendations to amend the Business Process Reengineering Ordinance (O-19523) to require A) timely implementation of BPRs that demonstrate cost savings, efficiencies or service level enhancements with no budgetary increases; B) timely reporting to the City Council of service levels identified in BPR studies involved in an active management competition procurement process; and C) streamlined docketing of completed BPRs for City Council review and approval (detailed in IBA Report 08-25, see Attachment B).

Based on discussions with stakeholders and recommendations summarized in this report, revisions to the proposed amendments for the BPR Ordinance are necessary:

- The original proposal for timely implementation (Recommendation A) included the identification of a six-month time period to complete meet and confer on a function's BPR recommendations. It is a violation of collective bargaining to identify a specific time frame.
- The original proposal for timely implementation (Recommendation A) also identified the requirement that the pre-competition assessment (PCA) be completed in that same six-month period. However, with the addition of the accelerated step for identifying which functions proceed to competitive procurement (previously outlined), this requirement is not necessary.
- The IBA originally proposed the timely reporting of service levels identified in BPR studies to City Council (Recommendation B); however, given the new/clarified steps in the process (accelerated step for identifying which functions proceed to competitive procurement and the review and approval of the preliminary SOW by City Council) and improved communications, including the

distribution of summary reports and updates by the Mayor's Office, the IBA now proposes to delete Recommendation B.

The IBA recommends adoption of the proposed revised amendments (identified above) to the BPR Ordinance as detailed in IBA Report 08-25 and summarized below:

- Completed BPR studies that show cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion or completion of meet and confer, whichever is longer.
- BPR studies be docketed for Council approval directly, reflecting the current process.

Use of Consultants in the Managed Competition Process

In conjunction with the discussions on managed competition and BPR as summarized above, the IBA was also requested to do additional research on the use of consultants by other municipalities who are involved in managed competition. In our research, the use of consultants varies by municipality. In Indianapolis, a consultant was utilized to develop an activity-based costing model that compared the costs of in-house services to those provided by private firm. In Charlotte, a consultant was hired to perform in two capacities, a) one section helped develop the bid for the employees and assisted in the evaluation of the costs to perform the service and b) the other helped write the City's Request for Proposal (RFP) and conducted the scope of work. In the early years of managed competition in Phoenix, assistance was needed in cost accounting, however much of the expertise has now been cultivated within departments. The need for consultants can be triggered by a municipality's lack of experience in cost analysis and cost accounting, the inability for the municipality to be totally acquainted with new technologies or state-of-the art service delivery strategies, or the complexity of the function being considered for competitive procurement.

CONCLUSION

These discussions enabled multiple stakeholders in the managed competition process to discuss outstanding issues and understand the various viewpoints of concern as they relate to the process. The IBA would like to thank all stakeholders for their participation and assistance.

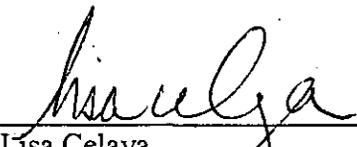
The following table summarizes the action items that are outlined in this report:

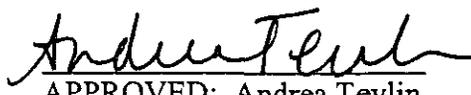
Summary of Action Items	Amend Code/ Ordinance	Update M.C. Guide	Other
Clarification of MCIRB's Role Early in the Process	X	X	

Summary of Action Items	Amend Code/ Ordinance	Update M.C. Guide	Other
Accelerated Step of Identifying which Functions Proceed to Competitive Procurement		X	
Review/Approval of Preliminary SOW by Council	X	X	
CPI Proposals:			
Healthcare		X	
Service Levels	X	X	
Independent Auditor Approval		X	X ¹
Retaining Core Capacity		X	
Worker Retention			X ²
Timely Implementation of BPRs	X		

¹ Incorporate into Audit Work Plan

² Possible Council Policy


 Lisa Celaya
 Fiscal & Policy Analyst


 APPROVED: Andrea Tevlin
 Independent Budget Analyst

- Attachment A: IBA Report 08-65, *Update on Managed Competition Issues*
- Attachment B: IBA Report 08-25, *Recommendations for Timely Implementation of Business Process Reengineering (BPR) and Provision of BPR Service Level Information to City Council*

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: June 12, 2008

IBA Report Number: 08-65

Budget and Finance Committee Date: June 18, 2008

Item Number: 3

Update on Managed Competition Issues

OVERVIEW

On May 28, 2008, representatives from the Mayor's Office, the Office of the Independent Budget Analyst, Councilmember Atkins' office, the labor organizations, and the Center for Policy Initiatives (CPI) met to discuss outstanding issues and concerns related to the managed competition process.

FISCAL/POLICY DISCUSSION

The following highlights the key issues discussed.

Issue #1: Clarification of IRB's Role Early in the Process

The Municipal Code states that the pre-competition assessment will be transmitted to the Managed Competition Independent Review Board (IRB) "for its consideration". The role of the IRB, as it relates to "for its consideration" needs to be clearly defined.

Issue #2: Discussion of Accelerated Step for Identifying which Functions Proceed to Competitive Procurement

A new step in the flow chart (that illustrates the managed competition process) has been proposed that would decide earlier in the process which functions would proceed to the pre-competition assessment (PCA). Discussion occurred on treating this similar to an environmental review, in which there is an initial screening to consider the factors listed in the Municipal Code, to determine whether to implement the BPR or proceed to PCA. More in depth study would occur at the PCA if determined appropriate. Documentation on this step needs to occur. Also, the communication of the results from the pre-screening and PCA process needs to happen as soon as they are announced.

Issue #3: Proposed Council and IRB Review and Approval of Preliminary Statement of Work

The committee has previously discussed and taken action on the review and approval of the Statement of Work (SOW) by Council. The Municipal Code states that when a service is selected for pre-competition, a preliminary written SOW will be prepared which will outline "service specifications" to be included in the SOW. The Mayor's Office plans to implement this requirement and is proposing IRB and Council review and approval of the Preliminary SOW. The preliminary SOW needs to be defined and included in the Guide.

Issue #4: Status of CPI Issues

CPI raised five issues (See Attachment 1 for proposals) at the Budget and Finance Committee on March 26, 2008 relative to Managed Competition. In response, on April 15, 2008, the Mayor's Office essentially agreed with four of the five CPI proposals (see attachment 2). Additional discussion is still ongoing on incorporating these changes as part of the implementation ordinance and/or revisions to the Managed Competition Guide.

Issue #5: Discussion of Pre-screening Proposals for 10% Savings Requirement

Discussed the desirability of including an initial screening step by the Purchasing Director on bids received to determine if the bids meet or exceed the cost savings of 10%.

Issue #6: Status of Pending BPR Ordinance Revisions

Discussed impact of possible revisions to the Proposed Amendments to the BPR Ordinance as presented by the IBA (Report No. 08-25) and approved by the Budget and Finance Committee on March 26, 2008. The Proposed Amendment for BPR Implementation states "(c)ompleted BPR studies which show that cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases; must be docketed for Council review to initiate implementation within six months of study completion. Meet and confer requirements, pre-competition assessments and Council approval must be completed within this six month time period. A function that is involved in an active managed competition procurement process is exempt from this requirement." Issues that have been raised:

- A specific time period for meet and confer to be completed should not be identified.
- Completion of Pre-competition Assessment (PCA) in six-month period may not be necessary with new accelerated decision step.

CONCLUSION

The meeting on May 28th enabled multiple stakeholders in the managed competition process to discuss outstanding issues and understand the various viewpoints of concern as they relate to the process.

Additional work is needed to finalize outstanding issues and the following steps have been identified to occur in the next 4-6 weeks.

- Development of recommendations by IBA and Mayor's Office on the issues summarized above including changes to the Guide and/or Ordinances.
- Identification of impact on Proposed Amendments to BPR Ordinance as developed by IBA and approved by the Budget and Finance Committee.
- Additional discussion of this topic at Budget and Finance Committee and/or City Council.

[SIGNED]

Lisa Celaya
Fiscal & Policy Analyst

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment 1: CPI's Proposals for Managed Competition
Attachment 2: Mayor's Response to CPI Issues

Managed Competition

Do It Right.

Healthcare -- Protect families. Level the playing field.

To prevent an unfair bidding advantage, differences in the employer contribution to employee health coverage should be excluded from bid comparisons. This method is used in federal law.

Private contractors shouldn't win the right to take over city functions simply because they deny workers and their families healthcare coverage. The Managed Competition process is required to protect the public interest, and it cannot do so by stripping jobs of health coverage, thereby transferring the cost of health insurance from the employer to the taxpayers.

Service levels -- Protect quality services.

To ensure that current service levels are maintained, specific service outcomes and performance measures must be described and publicly disclosed before contracts go to bid.

Past experience makes clear that contractors will do only what the contract specifically states. Before a Request for Proposals or any bidding documents are published, the City Council should approve, in a public hearing, a "Statement of Work" defining service levels for the function being bid. This process is used by the San Diego County Board of Supervisors.

Independent auditor approval -- Protect taxpayers.

The City's independent auditor should review the cost comparison data of bids being considered under managed competition, including administrative costs such as enforcement and monitoring.

The City must ensure that the managed competition process actually saves taxpayers money, as required in the Charter. Currently, there is no costing guide and no way to validate cost savings. The review should use methodology recommended by the Government Finance Officers Association.

Retain core capacity -- Protect healthy competition.

Before the decision is made to put a city function out to bid, the City should evaluate whether and how it can retain the core capacity to do the work.

Turning over a service to a contractor could destroy the City's ability to perform city functions, to bid on future work, or to maintain services in case of contractor default or changing market conditions.

Worker retention -- Protect our workers. Protect service efficiency.

In the interest of service continuity as well as fairness, workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first refusal rights to the job.

The 90-day retention is provided now when a City contract changes hands between private contractors.

**RESPONSE TO CPI ISSUES
APRIL 15, 2008**

Below, you will find a table that shows five issues and concerns relating to managed competition that were raised by the Center for Policy Initiatives (CPI) at the March 26, 2008 meeting of the City of San Diego's Committee on Budget & Finance, together with the City's response to these issues and concerns.

CPI RECOMMENDATIONS	CITY RESPONSE
To prevent an unfair bidding advantage, differences in the employer contribution to employee health coverage should be excluded from bid comparisons.	Removing health care costs is consistent with the use of COMPARE (or a tailored version of COMPARE, creating a similar software), as proposed by the City.
To make sure we get what we pay for, specific service outcomes and performance measures must be described and publicly debated before contracts go to bid.	We believe that we should ensure that the City Council and the public have an appreciation for—and the opportunity to comment on—the specific services that will be procured through managed competition and the service standards for those services. The FY2009 proposed budget includes performance measures and workload data for each Department within the City. In addition, we have proposed to delineate service specifications for Council review and comment.
The City's auditor should review the cost comparison data of bids being considered under managed competition.	Agreed. The City Auditor will lead the cost evaluation board.
Before the decision is made to put a city function to bid, whether and how the city can retain the core capacity to do the work should be evaluated.	This evaluation is part of the pre-competition assessments.
Workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first rights to the job.	<p>To commit to a 90-day transition period after employees are alerted to their positions being eliminated is not a significant change from the current practice. We have committed to using the City's RIF procedures to execute any lay-offs that occur as a result of managed competition. The RIF proceedings must be done in a disciplined manner and are not an overnight exercise. These procedures allow City workers to move into vacant positions and provide City workers with tenure bumping rights. It is City practice to hold vacancies open when a RIF is expected to allow employees to positions for transfers.</p> <p>Although we will commit that employees have up to 90 days to find a position within the City or with another employer should the need arise, if we execute RIF proceedings and we are able to place employees in alternate positions, we may want to do this in fewer than 90 days. In no circumstance should a transition of up to 90 days result in employees receiving salaries for two jobs simultaneously.</p>

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 18, 2008

IBA Report Number: 08-25

Budget and Finance Committee Agenda Date: March 26, 2008

Item Number: 3

Recommendations for Timely Implementation of Business Process Reengineering (BPR) and Provision of BPR Service Level Information to City Council

OVERVIEW

Implementation of BPR studies that have been completed over the past year are caught in a morass of process issues related to managed competition, including pre-competition assessments and concerns about procurement sensitive information, as well as the meet and confer processes. City Council review of BPR results has also been significantly delayed pending resolution of one or more of these issues. This report proposes recommendations that address the following:

- Timely implementation of BPR findings that demonstrate cost savings, efficiencies or service level enhancements can be achieved with no budgetary increases.
- Timely reporting to Council of service levels identified in BPR studies for functions involved in an active managed competition procurement process.
- Streamlined docketing of completed BPR's for Council review and approval.

POLICY/FISCAL DISCUSSION

Of the 26 BPR studies that have been completed over the past two years, seven studies have been fully implemented. All seven BPR's were completed early on in the program and the functions were not considered for managed competition. All items were docketed timely and the City Council approved all seven BPR's for implementation. No BPR's have been brought forward to Council since last July although 17 new studies have been completed. Delays in the BPR process started occurring last year when the BPR process and the managed competition process were linked together.

Rather than docketing completed BPR studies for Council review and implementation, the majority were announced for pre-competition assessment – the process which determines what activities will go on to managed competition. Sixteen were announced on November 16, 2007 and an additional ten were announced on February 5, 2008. The assessment is taking longer than envisioned and months have passed between study completion and assessment results.

BPR implementation has not taken place for the following functions due to pre-competition assessment, meet and confer schedules or both:

Department/Function	Date Study Completed
Facilities	November 06
Environmental Services- Collections	January 07
GSD- Streets	March 07
GSD- Publishing Services	May 07
Development Services	May 07
Libraries	November 07
Custodial Services	February 08
Park Maintenance	February 08
Reservoir Recreation	February 08

Police and Fire-Rescue BPR's, whose activities are exempt from managed competition, were also completed in February 2008 but have not yet been docketed for Council review or implemented.

Since BPR studies can demonstrate that cost savings, efficiencies and/or service level enhancements can be achieved with no budgetary increases, timely implementation is key. These improvements are often found to be possible through streamlining of existing processes, restructuring the organization and/or eliminating duplication in the organization. It can take several months to fully implement these changes and achieve cost savings and improvements, so implementation needs to occur as soon as possible. Knowing that cost savings, efficiencies and/or service enhancements can be achieved

Knowing that cost savings, efficiencies and/or service enhancements can be achieved makes timely implementation of BPR's particularly important given the fiscal challenges facing the City.

makes timely implementation of BPR's particularly important given the fiscal challenges facing the City. While there is an informal policy that all BPR results will move to implementation no later than one year from the date of completion of the study, this has not been adhered to in order to allow for meet and confer and pre-competition assessments to take place.

Timely reporting to Council of service levels in BPR reports, for functions involved in the managed competition procurement process, is an issue as well. If BPR studies show that service level enhancements are possible, the Council should be apprised of this upon completion of the study. Currently, this information is being withheld as procurement sensitive to safeguard the City employee bid. We believe that service level information, not typically considered procurement sensitive, can be carved out for Council and public information without impairing the City employee bid.

In addition to providing insight for budget deliberations and decisions, this service level information is needed by the Council to fulfill their obligation under Proposition C (Managed Competition) to ensure that service quality is maintained. The service levels identified in the BPR's will form the basis of the Statement of Work in the Request for Proposal in managed competition. Without this information Council will not be able to fulfill its oversight role per Proposition C. Furthermore, if the City employee bid "wins" the managed competition, Council will not have seen the BPR and the assumed service levels until the very last step of the managed competition process when they either approve or disapprove the recommended service provider. This effectively diminishes the Council's oversight role in the BPR ordinance to review all BPR's prior to their implementation.

RECOMMENDATIONS

To address these issues, the following proposed amendments to the BPR Ordinance are presented for Committee consideration:

A. BPR Implementation

Proposed Amendment:

"Completed Business Process Reengineering studies which show that cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion. Meet and confer requirements, pre-competition assessments and Council approval must be completed within this six month time period. A function that is involved in an active managed competition procurement process is exempt from this requirement."

B. Reporting of BPR Service Level Information to Council

Proposed Amendment:

“For BPR studies that are completed and the function(s) has been chosen for pre-competition assessment, it is recognized that BPR’s may contain procurement sensitive information in a managed competition process. In these cases, prior to beginning the pre-competition assessment and the meet and confer process, the Mayor will provide to the Council the following information from the completed BPR report(s) that is not considered procurement sensitive:

- Discussion of the BPR process that was undertaken, including the study’s goals and objectives;
- Summary of the function’s current process and identification of pre and post-BPR service levels/performance measures;
- Proposed enhancements in service levels including quality and timeliness; efficiencies; outputs and outcomes; cycle time; customer satisfaction goals; performance indicators; performance expectation as identified in the City Management Program (CMP);
- Discussion of core and non-core service if addressed; and
- External data comparison (e.g. benchmarking information, identification of industry best practices).

At the conclusion of the pre-competition assessment process, if the function(s) has not been chosen for managed competition, the Mayor will submit the complete BPR report to the Council including costing information and other procurement sensitive information that was withheld pending the outcome of the assessment process.

For BPR activities that are exempt from the pre-competition assessment, the complete report will be submitted to Council prior to implementation as indicated in Section 4 of this ordinance.”

C. Streamlining the BPR Docket Process

Finally, we recommend that the BPR Ordinance be revised to provide for “direct docketing” of BPR studies to reflect the current practice. This would eliminate the 60-day posting period prior to BPR implementation and the related requirement that four Council members send a memo to the Council President requesting that the BPR be docketed. The Council President has waived this requirement in the past to respond to Council interest in the matter and to facilitate timely implementation of BPR’s.

[SIGNED]

Andrea Tevlin
Independent Budget Analyst

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING ORDINANCE NO. O-19523
(NEW SERIES) ENTITLED "AN ORDINANCE
ESTABLISHING THE POLICY OF THE CITY OF SAN DIEGO
TO REORGANIZE THE DEPARTMENTS OF THE CITY IN
ORDER TO IMPROVE THE LEVEL OF SERVICES TO THE
CITIZENS OF THE CITY AND REDUCE THE COST OF
PROVIDING SUCH SERVICES" TO IMPROVE THE PROCESS
UNDER WHICH BUSINESS PROCESS REENGINEERING
REPORTS ARE PRESENTED TO THE CITY COUNCIL

WHEREAS, on November 2, 2004 the citizens of San Diego approved Proposition F,
which amended the City Charter to add Article XV to test the implementation of a new form of
government commonly referred to as a Strong Mayor form of government; and

WHEREAS, on January 1, 2006, the Mayor assumed all executive power and
responsibilities conferred upon the City Manager under Articles V, VII, and IX of the City
Charter as the Chief Executive Officer of the City; and

WHEREAS, the duties assumed by the Mayor include the responsibility for planning the
activities for the City government and for adjusting such activities to the finances available; and

WHEREAS, the Mayor has the right to issue administrative regulations that give
controlling direction to the administrative service of the City; and

WHEREAS, the Mayor may recommend to the Council such measures and ordinances he
deems necessary or expedient concerning the affairs of the City; and

WHEREAS, the City is facing numerous fiscal challenges including but not limited to the funding of its retirement system, post-employment medical benefits, deferred maintenance, and enterprise fund capital needs; and

WHEREAS, in order to provide more efficient and effective services to the citizens of the City the Mayor has began a Business Process Reengineering [BPR] which is designed to change practices and procedures in City departments to streamline operations in order to more efficiently and cost effectively deliver services to the citizens of the City; and

WHEREAS, the Mayor has submitted a report entitled "Business Process Reengineering Report" [Report] which report sets forth the criteria and parameters pursuant to which the BPR will be undertaken, and a copy of said report is on file with the City Clerk as document no _____; and

WHEREAS, on August 10, 2006, the City Council adopted Ordinance No. O-19523 to provide a process by which BPR studies would be presented to the City Council for consideration; and

WHEREAS, in November 2006, the citizens of San Diego approved Proposition C, which amended the City Charter to add section 117(c) to permit the City to bid the provision of City services to private contracts; and

WHEREAS, on January 17, 2007, the City Council adopted Ordinance O-19565 to amend the Municipal Code to add Article 2, Division 37, "Managed Competition" to provide appropriate policies and procedures to implement Charter section 117(c); and

WHEREAS, information developed when a City department is subjected to BPR may be procurement sensitive if related City services are considered for Managed Competition; and

WHEREAS, the City needs to clarify the relationship between BPR and Managed Competition; and

WHEREAS, Section 26 of the City Charter requires approval by the Council to change, abolish, combine or rearrange the existing departments, divisions and boards of the City; and

WHEREAS, Section 73 of the City Charter requires the approval of the Council to transfer appropriations between departments or offices of the City; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Report of the Mayor relating to Business Process Reengineering is hereby accepted.

Section 2. That the Auditor and Comptroller is authorized, upon the direction of the Chief Financial Officer or Financial Management Director, to transfer appropriations between departments within the same Fund in order to accommodate any reorganizations that improve services and/or reduce the cost of providing services; provided that the Auditor and Comptroller shall provide a report (which report may be submitted in conjunction with the report of the Mayor to be submitted in accordance with Section 5 below) no less than twice per fiscal year to the Council regarding any such transfer.

Section 3. That any projected or actual savings from any reorganization will be placed in the Unappropriated Reserved Account within the respective Fund. These funds shall not be

expended for any purpose other than as originally intended without the recommendation of the Mayor and the approval of the City Council.

Section 4. That, prior to implementation, the Mayor shall provide to the Council a report on proposed changes to any department, division or board of the City as a result of BPR, including changes required to the Administrative Code and changes necessary to the Appropriations Ordinance; such report to be filed with the City Clerk, who shall place notice of such report on the next available Council docket following receipt of the report, and provided to the President and Members of the City Council.

Section 5. Completed BPR studies which show that cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion or upon completion of meet and confer if this occurs more than six months after study completion. Services or functions that have begun the Managed Competition procurement process are exempt from the requirements of this section.

Section 6. Notwithstanding the foregoing, under no circumstances shall any transfer of funds or positions result in an increase to the overall appropriations of the City or of any Fund within the City.

Section 7. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Brant C. White
Deputy City Attorney

MDB:jdf
04/09/08
07/17/08.COR.Copy
Or.Dept:IBA
O-2008-137

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

(B)

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 37, SECTION 22.3701 ET. SEQ., TO PROVIDE FOR GREATER CITY COUNCIL OVERSIGHT OF MANAGED COMPETITION.

WHEREAS, a ballot proposition was submitted to the qualified voters of the City of San Diego on November 7, 2006, as to a proposed amendment to the City Charter section 117, regarding the use of managed competition; and

WHEREAS, this ballot proposition amended Section 117 by adding subsection (c), which allows the City of San Diego to employ an independent contractor when it is determined that services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest; and

WHEREAS, on January 17, 2007, the City Council adopted Ordinance No. 0-19565 in order to implement the amendments to Charter section 117; and

WHEREAS, on June 18, 2008, the Budget and Finance Committee considered Independent Budget Analyst Report No. 08-65, which contained recommendations, including amendments to the Municipal Code, on approving the Managed Competition process, and referred said recommendations to the full City Council for consideration; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 37, Section 22.3701, et. seq., is hereby amended to read as follows:

§ 22.3701 Purpose

- (a) The City of San Diego is committed to delivering quality services to taxpayers, residents and visitors in the most economical and efficient ways possible. Under Charter section 117(c), Managed Competition is the process for determining whether City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest. Nothing in this Division shall limit or restrict the City from contracting services under any other provision of law.
- (b) This Division is intended to set forth policies and procedures to implement Charter section 117, subsection (c). The City Manager will also provide for additional policies, procedures and/or regulations consistent with this Division and Charter section 117(c) which shall be set for in the Managed Competition Guide.

§ 22.3702 Pre-Competition Assessment

- (a) If the City Manager determines as part of a pre-competition assessment that a City service may be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest, the City Manager may select appropriate services for Managed Competition. If the City Manager intends to submit a City service to Managed Competition, the City Manager will then prepare a preliminary

written Statement of Work for that particular City service, and will prepare a report setting forth the rationale for putting a City service into Managed Competition. This report will be transmitted to the Managed Competition Independent Review Board as an informational item; no action will be required of the Independent Review Board.

- (b) The City Manager will transmit the preliminary Statement of Work and the accompanying report to the City Council at the same time that it is submitted to the Independent Review Board. The City Council must approve the preliminary Statement of Work by resolution before a City service may be put to Managed Competition and the preliminary Statement of Work, including any and all service specifications therein, will serve as the basis for the final Statement of Work.
- (c) In determining whether a City service is appropriate for Managed Competition, the City Manager will consider such factors as the type of service provided, the abilities of the current and projected competitive market, potential efficiencies that could be achieved, the capacity of the City to deliver essential services in the event of contractor default, and the overall welfare of the public. The City Manager will not recommend for Managed Competition, inherently governmental services, or those services so intimately related to the exercise of the public interest as to mandate their performance by City employees. Police Officers, Fire Fighters and Lifeguards who participate in the Safety Retirement System will not be subject to Managed Competition.

- (d) A request for qualifications process may be used prior to the solicitation for services in appropriate cases.
- (e) Nothing in this Division shall confer any right to any potential or current independent contractor to bid on a City service for which a solicitation has not been issued.

§ 22.3703 Minimum Contract Standards and Contractor Qualifications

- (a) The City Manager shall require that any independent contractor providing services to the City meet minimum contract standards to be contained in the solicitation for services. The minimum contract standards shall include the following:
 - (1) that the independent contractor provide proof that it maintains an adequate level of liability insurance consistent with City of San Diego risk management requirements;
 - (2) that the independent contractor has a policy of equal employment opportunity;
 - (3) that the independent contractor has committed to complying with the City of San Diego Living Wage Ordinance, San Diego Municipal Code Chapter 2, Article 2, Division 42, sections 22.4201 through 22.4245, if required by the terms of that ordinance;
 - (4) that the independent contractor has appropriate safety policies and procedures in place to protect the public and its employees in providing the service;

- (5) that the independent contractor will comply with all applicable employment and labor laws;
- (6) performance standards and consequences for non-performance, up to and including termination of the contract;
- (7) that the independent contractor designate appropriate personnel to monitor contract compliance;
- (8) that the independent contractor's employees must maintain the same certifications as will be required of City employees performing the same service;
- (9) that if background checks will be required of City employees performing a particular service, the independent contractor will perform background checks on employees performing those same services;
- (10) the same regulations and requirements of service delivery necessary to maintain service quality that will apply to a City department shall also apply to any independent contractor;
- (11) that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a member of the Independent Review Board during the term of the contract with the City; and
- (12) that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a former member of the Independent Review Board

during the term of the contract with the City, if that former Board member participated in the selection process for that contract.

- (b) In addition, in appropriate cases, as determined in the discretion of the City Manager, the City may require:
- (1) that the independent contractor has provided this service satisfactorily for other comparably-sized cities, counties, districts, agencies or private entities for a sufficient time period, and thereby has demonstrated its ability and expertise to provide the service;
 - (2) that the independent contractor maintain a customer service and customer complaint resolution plan;
 - (3) that the independent contractor have adequate financial resources in order to provide the requested services; and
 - (4) that the independent contractor's employees have the necessary technical qualifications to provide the services.

§ 22.3704 Resources for City Employees Involved in Managed Competition

City employees involved in Managed Competition will be provided with resources, such as information, technical assistance and staff support, to develop strategies for optimized efficiency, economy and effectiveness, in order to respond to a solicitation. In addition, in the City Manager's sole discretion, the City Manager may grant a department reasonable time and resources to improve its operations before being subject to Managed Competition.

§ 22.3705 City Bid for Non-City Services

In areas where City workers are consistently productive and cost efficient, a City department can propose to the City Manager that City workers provide a service to other entities, provided that this would be of benefit to the City and its taxpayers, and when such work can increase the City's overall efficiency and effectiveness, while maintaining service quality and protecting the public interest.

§ 22.3706 Managed Competition Independent Review Board Established

A Managed Competition Independent Review Board is established pursuant to San Diego Charter section 117(c) to advise whether the proposal of City employees or that of an independent contractor will provide the services to the City more economically and efficiently while maintaining service quality and protecting the public interest.

§ 22.3707 Appointment of Members of the Independent Review Board

The Board shall consist of

- (a) Seven (7) members appointed by the City Manager;
- (b) Three (3) Board members shall be City staff, including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee; and
- (c) Four (4) Board members shall be private citizens whose appointment shall be subject to City Council confirmation, and who shall serve without compensation.

§ 22.3708 Terms of Members of the Independent Review Board

To promote continuity and organizational knowledge, the terms of the initial appointees to the Independent Review Board shall be staggered as follows: Two private citizens shall serve an initial three year term, and the other two private citizens shall serve two year terms. All subsequent terms by private citizens shall be two years. A member who has served two complete terms shall be ineligible for reappointment for two years after leaving the Board. The three City staff Board members shall not be subject to the above term limits.

§ 22.3709 Qualifications of Independent Review Board Members

Each member of the Board shall comply with the following qualifications during his or her tenure on the Board:

- (a) No member of the Board shall make a financial contribution to, or publicly support or oppose, a candidate for or incumbent in City office;
- (b) No member of the Board is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of this Code;
- (c) Board members shall not have any personal or financial interests that would create conflict of interests with the duties of a Board member;
- (d) Members of the Board shall be prohibited from entering into a contract with or accepting employment from an independent contractor that secures a City contract through Managed Competition for the duration of the contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and immediately

terminate the contract if the independent contractor enters into a contract with or employs a member of the Board during the term of the contract with the City; and

- (e) Former members of the Board shall not enter into a contract with or accept employment with an independent contractor that secures a City contract through Managed Competition for the duration of that contract after leaving the Board, if that Board member participated in the selection process for that contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and *immediately terminate* the contract if the independent contractor enters into a contract with or employs a former member of the Board during the term of the contract with the City, if that former Board member participated in the selection process for that contract.

§ 22.3710 Removal of Member of the Independent Review Board

A Board member subject to City Council confirmation may be removed for cause by a vote of the majority of the members of the Council. Before the Council may remove a member of the Board, written charges shall be made against the Board member and an opportunity afforded for public hearing before the Council acts upon such charges. While charges are pending before the Council, the Council may suspend a Board member's participation on the Board.

§ 22.3711 Confidentiality and Conflict of Interest

- (a) The potential for abuse from knowingly or unknowingly causing or *gaining unfair advantage from access to information*, or the ability to

affect the selection process for personal gain must be understood and avoided by all levels of personnel involved. The City will assist departments to understand, train personnel, and implement safeguards and procedures to avoid the potential for ethical conflicts and abuses. No elected official or City employee shall provide procurement sensitive information to any potential contractor.

- (b) A conflict of interest code shall be adopted by the City Council for all members of the Managed Competition Independent Review Board. All members of the Managed Competition Independent Review Board shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.
- (c) In the event a service is awarded to an independent contractor through Managed Competition, impacted employees in the Classified Service will not be precluded or hindered from accepting employment with the independent contractor.

§ 22.3712 Solicitation of Proposals and Support for the Independent Review Board

- (a) When it is determined, as a result of the pre-competition assessment, that a Managed Competition process would benefit the City, appropriate acquisition actions, such as development and advertising of the solicitation of proposals for the service, will be prepared by City staff.
- (b) Any solicitation of proposals for service must conform with the Managed Competition Guide and the preliminary Statement of Work approved by the City Council. The City Manager must certify that the solicitation of

proposals for service conforms with the Managed Competition Guide or, if there is any deviation from the Managed Competition Guide, the City Manager will explain, in writing, how the solicitation for proposals deviates from the Managed Competition Guide and why such deviation was necessary. In no case may the solicitation of proposals deviate from the preliminary Statement of Work approved by the City Council.

- (c) City staff will provide support to the Independent Review Board in its consideration of proposals.

§ 22.3713 Consideration of Proposals by Independent Review Board

- (a) *In determining whether a proposal of an independent contractor or City Department will provide a service to the City most economically and efficiently while maintaining service quality and protecting the public interest, the Independent Review Board will consider the following factors:*
 - (1) the Independent Review Board should not recommend awarding a contract to an independent contractor unless there have been at least two bids by independent contractors for the service subject to Managed Competition;
 - (2) whether the bids by the City Department and the independent contractors are responsive to the solicitation and responsible;
 - (3) whether there is reliable information demonstrating that any of the independent contractors bidding on the work have engaged in

unethical business practices that would warrant the rejection of their bid;

- (4) unless the bid of an independent contractor is more than ten (10) percent lower than the bid of a City Department currently providing the service for the proposed term of the contract, the Independent Review Board should not recommend awarding the service in question to the independent contractor. This minimum cost differential is meant to discourage the City from implementing a significant change in service delivery on the basis of marginal estimated savings, and to account for such difficult to estimate factors as the potential costs of reduced productivity and service disruption during transition. In reviewing this factor, the Board will utilize a cost analysis, the purpose of which is to calculate the costs that are saved and the costs that are generated by contracting the service; and
- (5) which independent contractor or City Department can provide the best overall value to the City. The Independent Review Board will not necessarily recommend the low bidder, as the low bidder may not be the party that is presenting the most responsible and responsive bid, i.e., the low bidder may not always be the party that can provide the best and most reliable service to the City, perhaps because the low bidder has less experience or lacks the

proven track record of a City Department or an independent contractor with a higher bid.

- (b) If the Board determines that an independent contractor meets the minimum contract standards and provides the best overall value to the City according to the factors set forth above, the Independent Review Board shall recommend to the City Manager that the contract be awarded to that independent contractor. The Independent Review Board's recommendation to the City Manager shall include a written explanation providing the rationale for its recommendation.

§ 22.3714 City Manager and City Council Consideration of Decision of Independent Review Board

Upon receipt of a recommendation from the Independent Review Board that a City service should be awarded to an independent contractor, the City Manager shall either accept or reject that recommendation in its entirety. If the City Manager accepts the recommendation, then the City Manager shall forward that recommendation to the City Council. That recommendation shall include the written recommendation of the Independent Review Board, and a transition strategy that addresses contract monitoring, service interruption and affected employee procedures, as well as a proposed agreement with the independent contractor. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager. In order to accept the recommendation to award a service to an independent contractor, the City Council must determine that this City service can be provided more economically and efficiently by an independent contractor than

by persons employed in the Classified Service, while maintaining service quality and protecting the public interest.

§ 22.3715 Notice to Affected Labor Organization and Affected Employee Procedures

- (a) Before the City Manager recommends to the City Council that it approve a proposed agreement with an independent contractor to perform work for the City which is currently being provided by a City Department, the City Manager will notify all labor organizations whose members would be affected by such an agreement, as well as the City Personnel and Labor Relations Departments, and shall provide the number of City positions by job classification, that may be displaced if the contract is awarded to the independent contractor.
- (b) City employees who will be laid off as a result of Managed Competition shall be entitled to utilize the layoff procedures set forth in Section L-5A of the Personnel Regulations of the City of San Diego, entitled "Layoff, other than Police or Fire Units", as well as Rule V of the Civil Service Rules, entitled "Layoff and Reemployment."

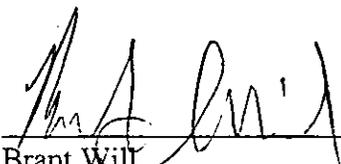
§ 22.3716 Monitoring Performance of Independent Contractors

The City Manager shall have the sole responsibility for administering and monitoring any agreements with independent contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By  _____
Brant Will
Deputy City Attorney

BCW: jdf
7/15/08
Or.Dept: IBA
O-2009-11

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING ORDINANCE NO. O-19523
(NEW SERIES) ENTITLED "AN ORDINANCE
ESTABLISHING THE POLICY OF THE CITY OF SAN DIEGO
TO REORGANIZE THE DEPARTMENTS OF THE CITY IN
ORDER TO IMPROVE THE LEVEL OF SERVICES TO THE
CITIZENS OF THE CITY AND REDUCE THE COST OF
PROVIDING SUCH SERVICES" TO IMPROVE THE PROCESS
UNDER WHICH BUSINESS PROCESS REENGINEERING
REPORTS ARE PRESENTED TO THE CITY COUNCIL

WHEREAS, on November 2, 2004 the citizens of San Diego approved Proposition F,
which amended the City Charter to add Article XV to test the implementation of a new form of
government commonly referred to as a Strong Mayor form of government; and

WHEREAS, on January 1, 2006, the Mayor assumed all executive power and
responsibilities conferred upon the City Manager under Articles V, VII, and IX of the City
Charter as the Chief Executive Officer of the City; and

WHEREAS, the duties assumed by the Mayor include the responsibility for planning the
activities for the City government and for adjusting such activities to the finances available; and

WHEREAS, the Mayor has the right to issue administrative regulations that give
controlling direction to the administrative service of the City; and

WHEREAS, the Mayor may recommend to the Council such measures and ordinances he
deems necessary or expedient concerning the affairs of the City; and

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WHEREAS, the City is facing numerous fiscal challenges including but not limited to the funding of its retirement system, post-employment medical benefits, deferred maintenance, and enterprise fund capital needs; and

WHEREAS, in order to provide more efficient and effective services to the citizens of the City the Mayor has began a Business Process Reengineering [BPR] which is designed to change practices and procedures in City departments to streamline operations in order to more efficiently and cost effectively deliver services to the citizens of the City; and

WHEREAS, the Mayor has submitted a report entitled "Business Process Reengineering Report" [Report] which report sets forth the criteria and parameters pursuant to which the BPR will be undertaken, and a copy of said report is on file with the City Clerk as document no _____; and

WHEREAS, on August 10, 2006, the City Council adopted Ordinance No. O-19523 to provide a process by which BPR studies would be presented to the City Council for consideration; and

WHEREAS, in November 2006, the citizens of San Diego approved Proposition C, which amended the City Charter to add section 117(c) to permit the City to bid the provision of City services to private contracts; and

WHEREAS, on January 17, 2007, the City Council adopted Ordinance O-19565 to amend the Municipal Code to add Article 2, Division 37, "Managed Competition" to provide appropriate policies and procedures to implement Charter section 117(c); and

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WHEREAS, information developed when a City department is subjected to BPR may be procurement sensitive if related City services are considered for Managed Competition; and

WHEREAS, the City needs to clarify the relationship between BPR and Managed Competition; and

WHEREAS, Section 26 of the City Charter requires approval by the Council to change, abolish, combine or rearrange the existing departments, divisions and boards of the City; and

WHEREAS, Section 73 of the City Charter requires the approval of the Council to transfer appropriations between departments or offices of the City; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Report of the Mayor relating to Business Process Reengineering is hereby accepted.

Section 2. That the Auditor and Comptroller is authorized, upon the direction of the Chief Financial Officer or Financial Management Director, to transfer appropriations between departments within the same Fund in order to accommodate any reorganizations that improve services and/or reduce the cost of providing services; provided that the Auditor and Comptroller shall provide a report (which report may be submitted in conjunction with the report of the Mayor to be submitted in accordance with Section 5 below) no less than twice per fiscal year to the Council regarding any such transfer.

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Section 3. That any projected or actual savings from any reorganization will be placed in the Unappropriated Reserved Account within the respective Fund. These funds shall not be expended for any purpose other than as originally intended without the recommendation of the Mayor and the approval of the City Council.

Section 4. That, prior to implementation, the Mayor shall provide to the Council a report on proposed changes to any department, division or board of the City as a result of BPR, including changes required to the Administrative Code and changes necessary to the Appropriations Ordinance; such report to be filed with the City Clerk, who shall place notice of such report on the next available Council docket following receipt of the report, and provided to the President and Members of the City Council.

Section 5. Completed BPR studies which show that cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion. ~~Pre-competition assessments, meet and confer, and any other Managed Competition requirements must be completed and Council approval of the BPR study must be sought within this six month time period~~ or upon completion of meet and confer if this occurs more than six months after study completion. Services or functions that have begun the Managed Competition procurement process are exempt from the requirements of this section.

Section 6. ~~Where a BPR study has been completed and related services or functions have been selected for pre-competition assessment pursuant to Managed Competition, the Mayor will~~

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determine if there is procurement sensitive information in the BPR study. If there is procurement sensitive information in the BPR study, prior to beginning the pre-competition assessment and the meet and confer process, the Mayor will provide to the Council a general description of the procurement sensitive information and the following non-procurement sensitive information from the BPR study: discussion of the BPR process that was undertaken, including the study's goals and objectives; summary of the function's current process and identification of the pre and post-BPR service levels/performance measures; proposed enhancements in service levels including quality and timeliness, efficiencies, outputs and outcomes, cycle times, customer satisfaction goals, performance indicators, performance expectation as identified in the City Management Program; discussion of core and non-core service, if addressed; and external data comparison (e.g., benchmarking information, identification of industry best practices). At the conclusion of the pre-competition assessment process, if a function or service is not selected for Managed Competition, the Mayor will submit the entire BPR report to the Council including costing information and other procurement sensitive information withheld pending the outcome of the pre-competition assessment. For BPR studies that are categorically exempt from Managed Competition, the entire BPR report will be submitted to the Council prior to implementation as provided in section 4 of this ordinance. Section 7. Notwithstanding the foregoing, under no circumstances shall any transfer of funds or positions result in an increase to the overall appropriations of the City or of any Fund within the City.

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Section ~~8~~7. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section ~~9~~8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 37, SECTION 22.3701 ET. SEQ., TO PROVIDE FOR GREATER CITY COUNCIL OVERSIGHT OF MANAGED COMPETITION.

Article 2: Administrative Code**Division 37: Managed Competition****§ 22.3701 Purpose**

- (a) The City of San Diego is committed to delivering quality services to taxpayers, residents and visitors in the most economical and efficient ways possible. Under Charter section 117(c), Managed Competition is the process for determining whether City services can be provided more *economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest.* Nothing in this Division shall limit or restrict the City from contracting services under any other provision of law.
- (b) This Division is intended to set forth policies and procedures to implement Charter section 117, subsection (c). The City Manager ~~may~~will also provide for additional policies, procedures and/or regulations consistent with this Division and Charter section 117(c) which shall be set for in the Managed Competition Guide.

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- ~~(b)~~ The City Manager will transmit the preliminary Statement of Work and the accompanying report to the City Council at the same time that it is submitted to the Independent Review Board. The City Council must approve the preliminary Statement of Work by resolution before a City service may be put to Managed Competition and the preliminary Statement of Work, including any and all service specifications therein, will serve as the basis for the final Statement of Work.
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market, potential efficiencies that could be achieved, the capacity of the City to deliver essential services in the event of contractor default, and the overall welfare of the public. The City Manager will not recommend for Managed Competition, inherently governmental services, or those services so intimately related to the exercise of the public interest as to mandate their performance by City employees. Police Officers, Fire Fighters and Lifeguards who participate in the Safety Retirement System will not be subject to Managed Competition.

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 - (12) that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a former member of the Independent Review Board during the term of the contract with the City, if that former Board member participated in the selection process for that contract.
- (b) In addition, in appropriate cases, as determined in the discretion of the City Manager, the City may require:
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- (c) Four (4) Board members shall be private citizens whose appointment shall be subject to City Council confirmation, and who shall serve without compensation.

§ 22.3708 Terms of Members of the Independent Review Board

To promote continuity and organizational knowledge, the terms of the initial appointees to the Independent Review Board shall be staggered as follows: Two private citizens shall serve an initial three year term, and the other two private citizens shall serve two year terms. All subsequent terms by private citizens shall be two years. A member who has served two complete terms shall be ineligible for reappointment for two years after leaving the Board. The three City staff Board members shall not be subject to the above term limits.

§ 22.3709 Qualifications of Independent Review Board Members

Each member of the Board shall comply with the following qualifications during his or her tenure on the Board:

- (a) No member of the Board shall make a financial contribution to, or publicly support or oppose, a candidate for or incumbent in City office;
- (b) No member of the Board is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of this Code;

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- (c) Board members shall not have any personal or financial interests that would create conflict of interests with the duties of a Board member;
- (d) Members of the Board shall be prohibited from entering into a contract with or accepting employment from an independent contractor that secures a City contract through Managed Competition for the duration of the contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a member of the Board during the term of the contract with the City; and
- (e) Former members of the Board shall not enter into a contract with or accept employment with an independent contractor that secures a City contract through Managed Competition for the duration of that contract after leaving the Board, if that Board member participated in the selection process for that contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a former member of the Board during the term of the contract with the City, if that former Board member participated in the selection process for that contract.

§ 22.3710 Removal of Member of the Independent Review Board

A Board member subject to City Council confirmation may be removed for cause by a vote of the majority of the members of the Council. Before the Council may

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remove a member of the Board, written charges shall be made against the Board member and an opportunity afforded for public hearing before the Council acts upon such charges. While charges are pending before the Council, the Council may suspend a Board member's participation on the Board.

§ 22.3711 Confidentiality and Conflict of Interest

- (a) The potential for abuse from knowingly or unknowingly causing or gaining unfair advantage from access to information, or the ability to affect the selection process for personal gain must be understood and avoided by all levels of personnel involved. The City will assist departments to understand, train personnel, and implement safeguards and procedures to avoid the potential for ethical conflicts and abuses. No elected official or City employee shall provide procurement sensitive information to any potential contractor.
- (b) A conflict of interest code shall be adopted by the City Council for all members of the Managed Competition Independent Review Board. All members of the Managed Competition Independent Review Board shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.
- (c) In the event a service is awarded to an independent contractor through Managed Competition, impacted employees in the Classified Service will not be precluded or hindered from accepting employment with the independent contractor.

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§ 22.3712 Solicitation of Proposals and Support for the Independent Review Board

- (a) When it is determined, as a result of the pre-competition assessment, that a Managed Competition process would benefit the City, appropriate acquisition actions, such as development and advertising of the solicitation of proposals for the service, will be prepared by City staff.
- (b) Any solicitation of proposals for service must conform with the Managed Competition Guide and the preliminary Statement of Work approved by the City Council. The City Manager must certify that the solicitation of proposals for service conforms with the Managed Competition Guide or, if there is any deviation from the Managed Competition Guide, the City Manager will explain, in writing, how the solicitation for proposals deviates from the Managed Competition Guide and why such deviation was necessary. In no case may the solicitation of proposals deviate from the preliminary Statement of Work approved by the City Council.
- (c) City staff will provide support to the Independent Review Board in its consideration of proposals.

§ 22.3713 Consideration of Proposals by Independent Review Board

- (a) In determining whether a proposal of an independent contractor or City Department will provide a service to the City most economically and efficiently while maintaining service quality and protecting the public interest, the Independent Review Board will consider the following factors:

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- (1) the Independent Review Board should not recommend awarding a contract to an independent contractor unless there have been at least two bids by independent contractors for the service subject to Managed Competition;
- (2) whether the bids by the City Department and the independent contractors are responsive to the solicitation and responsible;
- (3) whether there is reliable information demonstrating that any of the independent contractors bidding on the work have engaged in unethical business practices that would warrant the rejection of their bid;
- (4) unless the bid of an independent contractor is more than ten (10) percent lower than the bid of a City Department currently providing the service for the proposed term of the contract, the Independent Review Board should not recommend awarding the service in question to the independent contractor. This minimum cost differential is meant to discourage the City from implementing a significant change in service delivery on the basis of marginal estimated savings, and to account for such difficult to estimate factors as the potential costs of reduced productivity and service disruption during transition. In reviewing this factor, the Board will utilize a cost analysis, the purpose of which is to calculate the costs that are saved and the costs that are generated by contracting the service; and

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(5) which independent contractor or City Department can provide the best overall value to the City. The Independent Review Board will not necessarily recommend the low bidder, as the low bidder may not be the party that is presenting the most responsible and responsive bid, i.e., the low bidder may not always be the party that can provide the best and most reliable service to the City, perhaps because the low bidder has less experience or lacks the proven track record of a City Department or an independent contractor with a higher bid.

(b) If the Board determines that an independent contractor meets the minimum contract standards and provides the best overall value to the City according to the factors set forth above, the Independent Review Board shall recommend to the City Manager that the contract be awarded to that independent contractor. The Independent Review Board's recommendation to the City Manager shall include a written explanation providing the rationale for its recommendation.

§ 22.3714 City Manager and City Council Consideration of Decision of Independent Review Board

Upon receipt of a recommendation from the Independent Review Board that a City service should be awarded to an independent contractor, the City Manager shall either accept or reject that recommendation in its entirety. If the City Manager accepts the recommendation, then the City Manager shall forward that recommendation to the City Council. That recommendation shall include the

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written recommendation of the Independent Review Board, and a transition strategy that addresses contract monitoring, service interruption and affected employee procedures, as well as a proposed agreement with the independent contractor. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager. In order to accept the recommendation to award a service to an independent contractor, the City Council must determine that this City service can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest.

§ 22.3715 Notice to Affected Labor Organization and Affected Employee Procedures

- (a) Before the City Manager recommends to the City Council that it approve a proposed agreement with an independent contractor to perform work for the City which is currently being provided by a City Department, the City Manager will notify all labor organizations whose members would be affected by such an agreement, as well as the City Personnel and Labor Relations Departments, and shall provide the number of City positions by job classification, that may be displaced if the contract is awarded to the independent contractor.
- (b) City employees who will be laid off as a result of Managed Competition shall be entitled to utilize the layoff procedures set forth in Section L-5A of the Personnel Regulations of the City of San Diego, entitled "Layoff,

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other than Police or Fire Units”, as well as Rule V of the Civil Service Rules, entitled “Layoff and Reemployment.”

§ 22.3716 Monitoring Performance of Independent Contractors

The City Manager shall have the sole responsibility for administering and monitoring any agreements with independent contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City’s experience and performance audits.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.