



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 5, 2012 **REPORT NO:** 12-110

ATTENTION: Honorable Council President Tony Young and Council Members

SUBJECT: Preliminary Statement of Work for Storm Water Operations and Maintenance

REFERENCE: Report to Council 12-099: 'Preliminary Statement of Work for Storm Water Operations and Maintenance'

Adopted Managed Competition Guide

REQUESTED ACTION:

Approve a Preliminary Statement of Work for Storm Water Operations and Maintenance. Waive Council Policy 300-07, to permit consultant services requiring professional licensure to be included and evaluated on the basis of costs and other factors.

STAFF RECOMMENDATION:

Approve a Preliminary Statement of Work for Storm Water Operations and Maintenance. Waive Council Policy 300-07, to permit consultant services requiring professional licensure to be included and evaluated on the basis of costs and other factors.

SUMMARY:

Managed Competition

The City of San Diego is committed to delivering quality services to taxpayers, residents, and visitors in the most economical and efficient means possible. This commitment can also be expressed as delivering services through "competitive government," defined as government with processes in place to validate that service quality and costs are comparable to those offered by any legitimate available provider.

Managed competition provides a structured, transparent process that allows an open and fair comparison of public sector employees and independent contractors in their ability to deliver services to our citizens. This strategy recognizes the high quality and potential of public sector employees and seeks to tap their creativity, experience and resourcefulness by giving them the opportunity to structure organizations and processes in ways similar to best practices in competitive businesses.

Preliminary Statement of Work (PSOW)

The Preliminary Statement of Work documents current service levels for the functions subject to the competition and is presented to the City Council for consideration and public comment to assure all parties that no degradation of service levels will occur as a result of the competition. Once approved, the Preliminary Statement of Work forms the foundation for the complete Statement of Work which will be included in the solicitation. Attachment (A) provides the Preliminary Statement of Work for the Storm Water Operations and Maintenance function for consideration by the City Council.

Performance Measurement and Budget Data

In the reports entitled, ‘‘Managed Competition Process Improvements’’ (#12-01 and #12-01 REV), the Office of the Independent Budget Analyst requested that the following be provided:

1. A three-year history, *as reasonably available*, for all performance measures specified in the PSOW’s; (#12-01 REV)
2. A three-year budget history, *as reasonably available*, for the managed competition function under consideration; (#12-01 REV)
3. A corresponding service level for each service area described in the PSOW; (#12-01)
4. An evaluation of any anomalies that could be causing current service levels to be below budgeted expectations; (#12-01)
5. All performance measures specified in the PSOW/RFP and data for the prior year, current year, and next year’s targets and include them in the proposed and final budget documents. (#12-01)

These recommendations were made to enhance the information being provided to the City Council for their review of the Managed Competition Preliminary Statements of Work. These new IBA/Council requirements are ones that the Business Office has committed to meeting for every Managed Competition effort.

The above-listed requirements for the PSOW have been met for the Storm Water Operations and Maintenance function. All reasonably available performance data has been included. Because of its procurement-sensitive nature, all reasonably available budgetary information has been provided confidentially to the IBA for their review. The budget information is considered procurement-sensitive, as disclosure before or during a procurement process could give an independent contractor an unfair advantage, as they would know the level of resources currently available to the City employees to perform the work. Current service levels have been evaluated for anomalies and have been described in the document. As with previous functions that have undergone Managed Competition, the Storm Water Operations and Maintenance performance measures and corresponding data will be included in its department’s (Transportation & Storm Water) budget narrative for both the proposed and final budget documents.

Regulatory Requirements

Municipal Storm Water Permit. The municipal storm water National Pollutant Discharge Elimination System (NPDES) Permit, issued to the City of San Diego by the San Diego Regional Water Quality Control Board, requires the implementation of programs to reduce pollutants in storm water and urban runoff.

The Department anticipates receiving the five year Permit in Spring 2013 pending approval by the Regional Water Quality Control Board.

Master Permit. At the 3/7/2012 California Coastal Commission meeting, the Commission instructed its staff to work with the City and the environmental groups to develop conditions that would be acceptable to all parties. Since then, City staff has met with the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, as well as various environmental groups. City staff is currently waiting for a response from the environmental groups that will detail the conditions they want in the Coastal Permit. Direction from the regulators indicated that they would only issue a five-year permit, and that all mitigation for work in the Coastal Zone must be identified before a Coastal Permit is issued from the California Coastal Commission.

At this time, City staff anticipates returning to the California Coastal Commission on October 2012. If approved at that time, the City would be allowed to move forward with requesting permits; however, regulatory staff has indicated that they would not be able to issue these permits until 2013. Because of the endangered species regulations, these permits would not allow proactive dredging until September 2013. Any dredging that would occur before that time would have to be done under emergency permits.

Affected Service Levels. Because of the current status of the permits described above, future service levels cannot be specifically quantified. However, it is anticipated that the permits' requirements (both new and existing) will impact the following performance measures:

1. Lineal feet of storm drain pipes cleaned annually
2. Percent of storm drain structures cleaned annually
3. Percent of storm water permit required monitoring and reporting activities completed annually
4. Number of storm drain structures cleaned
5. Number of storm drain structures inspected
6. Number of permanent BMPs inspected and maintained
7. Number of headwalls cleaned
8. Channels cleaned(in square feet)
9. Amount of channel material removed (in cubic yards)
10. Number of industrial inspections done
11. Number of commercial inspections done
12. Number of Treatment Control BMP (TCBMP) inspections done

13. Number of Treatment Control BMP (TCBMP) follow-up inspections done
14. Number of annual inventories of industrial and commercial facilities performed
15. Number of Treatment Control BMP maintenance verifications done
16. Perform routine channel maintenance work as described in the adopted Storm Water System Master Maintenance Program and as permitted by the appropriate regulatory agencies
17. Perform emergency channel maintenance work as needed and permitted by the appropriate regulatory agencies
18. Provide engineering support and/or management services as required for all Storm Water-related maintenance and capital projects (Pollution Prevention and Operations & Maintenance work), development review efforts, drainage systems, and construction processes
19. Establish and maintain effective coordination of permitting processes involving all City departments and regulatory agencies with roles in storm water management or maintenance projects
20. Ensure compliance with all permits including all mitigation, monitoring, and reporting requirements
21. Perform all collection, management, and records production functions for data related to work performed under the agreement
22. Comply with all safety, hazardous materials management, and related requirements throughout the duration of the agreement

Council would be informed of any changes to service levels resulting from the receipt or denial of all permits and other regulatory activity.

To address this issue, the PSOW portrays all current services and standards for the Storm Water Operations and Maintenance function. The performance standards that may be potentially impacted by changing permit requirements have been identified in the attached PSOW.

As noted in the legal issues, Council Policy 300-07 requires that consultant contracts requiring professional licensure must be awarded to the “highest qualified” consultant, without regard to costs. That process conflicts with the managed competition process, which considers costs as well as other factors such as efficiency, service quality, and the public interest, in determining “best value”. For that reason, we are requesting Council to waive Council Policy 300-07 for this function, to permit consultant services requiring professional licensure to be included in this competition, and for the costs of those services to be considered in the evaluation.

It is important to note that language is always included in the SOW and RFP that holds the proposers to all applicable laws/regulations as they now exist or as they may change during the terms of the agreement. In the final Statement of Work (SOW) and Request for Proposal (RFP), all changes in service expectations will be described in detail. If changes that occur during the term of the agreement are substantial enough, any changes in resources/costs would be negotiated with the selected provider.

FISCAL CONSIDERATIONS:

None

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Rules Committee reviewed the Preliminary Statement of Work on August 1, 2012. A motion was made by Council President Pro Tem Faulconer, second by Councilmember Zapf, to forward to full Council to consider approval of the Preliminary Statement of Work and whether to waive Council Policy 300-07 to permit consultant services requiring professional licensure to be included and evaluated on the basis of costs and other factors.

All changes made to the Preliminary Statement of Work since the 8/1/12 Rules Committee meeting have been highlighted in yellow with underlined text (EXAMPLE) to denote additions and crossed-out text (~~EXAMPLE~~) for deletions.

ENVIRONMENTAL REVIEW

Consistent with CEQA Guidelines section 15004, authorization of the Preliminary Statement of Work (PSOW) is not the appropriate time to conduct environmental review. The authorization of the PSOW is not a “project” under CEQA. See CEQA Guidelines, §§ 15060(c)(2) and (3); 15378(a), (b)(4) and (b)(5). Only upon receipt of a qualifying proposal can the City begin analyzing potential impacts to the existing physical conditions (i.e., the “baseline”), which incorporates the services that the City is presently providing and also the manner in which the City is presently providing the services. Until the proposals are received, there is no static, defined “project” to analyze.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The managed competition program was initiated with the citizens of the City voting to approve Proposition C in November 2006. Staff has spent considerable time working with the labor unions (AFSCME Local 127 and MEA) to receive input on program plans. In addition, we have established a Labor/Management Committee to facilitate continued work with the unions.

With the passage of Proposition C and the amendment/addition of sub-section (c) to City Charter section 117, the Managed Competition Independent Review Board was established to advise the Mayor on whether the proposal of City employees or that of an independent contractor will provide services more economically and efficiently while maintaining service quality and protecting the public interest.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Given that the competition has yet to take place, it is premature to speculate on precise impacts. However, key stakeholders in this process are City employees, the City’s recognized labor unions, non-governmental organizations, and the residents and visitors of the City of San Diego.

Wally Hill
Assistant Chief Operating Officer

COUNCIL POLICY

CURRENT

SUBJECT: CONSULTANT SERVICES SELECTION
POLICY NO.: 300-07
EFFECTIVE DATE: August 10,2004

BACKGROUND:

The City requires services of a recurring nature or for a specific one-time project which cannot be routinely provided by City staff, either because of the expertise required or the ongoing work load. Consultants may be employed where City staff is unable to accommodate this requirement. The procedure to evaluate the need for and selection of consultants should be standardized to insure the product or service is of the highest quality in relation to available funding.

Consultant services may be performed by individuals licensed by the State of California (such as, Architects, Civil, Mechanical or Electrical Engineers, Engineering Geologists, etc.) or by individuals for which such licensing is not a requirement. Because of this variation, two separate procedures have been formulated for the selection and hiring of consultants.

PURPOSE:

To provide a uniform policy to evaluate the need for and process for selecting consultants.

POLICY:

It is the policy of the City that selection of consultants be made from as broad a base of applicants as possible and the choice be based on demonstrated capabilities or specific expertise. The type and scope of the required service or product must be clearly defined by the City Manager to determine whether it can be most efficiently provided by City staff or by a consultant, and where a consultant is chosen, whether licensed or non-licensed services are necessary. A licensed consultant will be selected where the significant portion of the service or product requires such skills and will be chosen using a nomination process with a negotiated contract. In those cases where the significant portion of the service or product does not require licensed skills, the selection process must be open and competitive involving comparison of cost statements and work effort.

The following criteria shall be applied in the consultant selection process:

A. General Procedure for All Consultants:

1. The affected department shall outline its objectives and the extent of the services that are required. This will be delineated in the form of a written document to be presented to prospective consultants.
2. Notice of the intent to seek consulting services and requests for submission of qualification statements shall be published in the City's official newspaper for every service in excess of \$3,000, except that for licensed consultants (design engineers or architects) preparing construction contract plans, this limit shall be \$25,000.

3. A minimum of three qualified consultants should be considered for selection except in those cases where unique expertise is required and can be provided only by a limited number of available consultants.

In particular instances it may be desirable to use a “sole source” consultant. This decision must be based on circumstances where competition is not feasible and such selection must be adequately justified. Such justification must contain substantive reasons as to why only one firm was selected and must reference specific items such as time constraints, cost savings and unavailability of similar expertise.

A consultant for providing real estate appraisals may be selected from an authorized listing, approved by Council, of qualified consultants who have responded to an advertisement soliciting their services. The listing is to be approved by Council each three years or sooner if needed.

4. Consultants’ presentations should be uniformly evaluated on a weighted basis of qualifications such as expertise, experience, understanding and approach to the problem, financial responsibility, capability of personnel and subcontractors on the project, conformity with the City’s Affirmative Action Program and the ability to complete the project within the required time frame and budget.

References submitted by consultant shall be contacted. All evaluation and selection records shall be maintained as permanent project records.

5. The consultant shall not perform any work prior to approval by the City Council of a contract to perform the work. The City shall not be liable for any work performed prior to such Council approval.

B. Procedure for Consultants Performing Work Requiring Professional Licensing:

1. The consultant contract shall be negotiated with the highest qualified person or firm at a compensation determined to be fair and reasonable to the City. The fee structure determined will take into consideration the estimated value of services, the scope, complexity and need for professional expertise and judgment. Should it not be possible to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations would be terminated and subsequently undertaken with the next most qualified person or firm.

C. Procedure for Consultants Performing Work Which Does Not Require Professional Licensing:

1. The contract shall be awarded to the highest qualified consultant using a selection criteria which will include comparison of cost statements and work effort. The fee to be paid consultants shall be considered but shall not be the sole basis for selection.
2. Where the services required are of a recurring nature but of a type that can be described with precision, pre-qualification of consultants may be utilized as the initial phase of the selection process. Each consultant on a pre-qualified list for a particular type of service will then be invited to submit a competitive proposal whenever such services are needed. This selection

method is most applicable to work that is concerned primarily with the application of established technical procedures where minimal professional judgement is involved.

AUTHORIZATION:

Once the selection of the consultant has been made by the responsible department and where Council approval is required, the following information shall be presented to the Council. It should be presented in the form of a report at the time authorization to execute the agreement is being considered.

1. Identification of project by complete title;
2. Justification for use of consultant services, including whether licensed or non-licensed services are necessary;
3. Date(s) and medium of advertisement for consultant services and project title used in advertisement;
4. Number of consultants responding for consideration in the selection process;
5. Method used in selection of consultants;
6. Basis for selection of consultants;
7. Name of prime consultant, description of responsibilities, and dollar amount of prime-contract award; and
8. For consultant contracts, the name(s) of all sub-consultant(s), description of duties of sub-consultant(s), and dollar amount(s) of sub-consultant(s) fee, or percent of prime-consultant fee awarded to sub-consultant(s).

HISTORY:

Adopted by Resolution R-210194 03/21/1974
Amended by Resolution R-212530 01/30/1975
Amended by Resolution R-215714 04/07/1976
Amended by Resolution R-218315 05/04/1977
Amended by Resolution R-222061 10/17/1978
Amended by Resolution R-222924 02/27/1979
Amended by Resolution R-266263 07/21/1986
Amended by Resolution R-299566 08/10/2004