

REPORT OF COMMITTEE

AUDIT REPORT of CONSULTANT CONTRACTING PROCEDURES in the Departments of CITY LIGHT, ADMINISTRATIVE SERVICES, SEATTLE CENTER, ENGINEERING AND PARKS; prepared by the Audit Division of the City Comptroller

Honorable President:

Your

to which was referred the within _____
would respectfully report that we have considered the same and respectfully recommend that

Filed Dec 21 1982

Howard Brooks, City Comptroller

By Thomas Dunbar

Deputy

ACTION OF THE COUNCIL

Referred	To
Referred	To
Referred	To
Reported	Disposition
Re-referred	To
Reported	Disposition

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CITY OF SEATTLE
OFFICE OF THE COMPTROLLER
AUDIT DIVISION
CONSULTANT CONTRACT DEPARTMENTAL REVIEW

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City of Seattle

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Norward J. Brooks, Comptroller

MEMORANDUM

Date: October 8, 1987
To: Various Department Heads and City Managers
From: Norward J. Brooks, City Comptroller *NJB*
Subject: Consultant Contract Departmental Review
Final Audit Report

The attached final audit report represents the results of the recent Audit Division's review of consultant contracting procedures in five major City departments.

The Audit Division has held exit conferences with the five departments to discuss the results of fieldwork and recommendations directed specifically to the departments.

Auditee responses have been included as appendices. Various wording changes were made in the final report in response to these comments.

We appreciate the cooperation during this audit of the five departments, the Board of Public Works, the Human Rights Department and the City Clerk.

Please call Laura Kennedy, Supervising Auditor, at 684-8312 if you have questions regarding the final audit report.

Attachments

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Final report distributed to:

Department of Administrative Services:

George Pernsteiner, Director
Dale Lynd, Accounting Operations
Mike Nagan, Operations Analyst, Planning Div.
Ken Nakatsu, Dir., Finance and Administration
Bob Snyder, City Architect

Engineering Department

Gary Zarker, Director
Ed Engel, Mgr., Project Management
Mona Jarman-Hirsch, Mgr., Financial Mgmt.
Don Tucker, Supervisor, Legislation and Contracts

City Light

Randall W. Hardy, Superintendent
Carole Coe-Hauskins, Dir., Admin. Services
Bill Freitas, Civil Engineer Mgr.
Tom Rockey, Chief Engineer
John Saven, Dept. Supt. for Finance and Administration
Rich Stockinger, Admin. Asst., Admin. Services

Parks and Recreation Department

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Human Rights Department

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#3, 10/5/87

CONSULTANT CONTRACT DEPARTMENTAL REVIEW

Table of Contents

Narrative Report	1
Summary of Recommendations	3
Acronyms	7
Findings:	
1. Sole Source/Emergency	8
2. Start and End Dates	11
3. Amendments	14
4. Procedure Manuals	18
5. Consultant Reference File	21
6. Insurance	24
7. Architecture & Engineer Compensation	28
8. HRD Regulations	29
Appendices -- Auditee Responses	
A. BPW Response	34
B. City Clerk Response	39
C. Seattle Center Response	42
D. DAS Response	43
E. City Light Response	45
F. HRD Response	54
G. Parks Response	55
H. SED Response	58

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CONSULTANT CONTRACT DEPARTMENTAL REVIEW

Background: The City Comptroller has various audit responsibilities under the Consultant Selection Ordinance (SMC 3.114.130), among them to verify that "...procedures prescribed in this chapter were followed...". Audit staff identified various audit concerns in the consultant selection process and developed recommendations to address these concerns through fieldwork in five major contracting departments.

Objectives: The objectives of this audit were to:

- Verify that the five major contracting departments were in compliance with consultant procurement regulations and related criteria, and to
- Solicit and make recommendations for greater economy and efficiency in the consultant selection process.

Scope: Departmental reviews were conducted in the five major contracting departments: City Light, Department of Administrative Services, Seattle Center, Engineering, and Parks. In 1986 these five departments comprised 84 percent (by dollar amount) of all consultant contracts. The universe for our testing was limited to 1986 contracts through July 31, 1986, for Board-approved contracts and through October 31, 1986, for non-Board-approved contracts.

Criteria: Departmental procedures regarding consultant selection were tested against these criteria:

- Consultant Selection Ordinance (SMC* 3.114)
- W/MBE Ordinance (SMC 20.46)
- AA/EEO Ordinance (SMC 20.44)
- Related BPW and HRD regulations

Procedures: Our audit steps consisted of identifying departmental procedures through discussions with contract managers and reviewing written procedures and contract "boilerplate". These were evaluated for compliance with the Consultant Contract, W/MBE, and EEO Ordinances. We also tested a sample of contracts for compliance with the ordinances and evaluated amendments and sole source contracts for reasonableness.

*See Page 7 for acronyms.

Conclusions: In our opinion, the departments we reviewed were in compliance with the Consultant Contract, W/MBE, and EEO Ordinances, with the exceptions of the matters discussed in Findings #1 to #8. In addition, specific contract exceptions have been discussed with each department.

In particular, we found significant risks from the City's lack of compliance with contract dates, as discussed in Findings #2 and #3, and the present weak criteria and lack of visibility for sole source/emergency contracts, as discussed in Finding #1. We also believe that significant time savings could be achieved by the recommendations regarding insurance in Finding #6 and Human Rights Department regulations in Finding #8.

Recommendations: Our recommendations and the parties they are addressed to are summarized on pages 3 to 6.

#3, 7/17/87

CONSULTANT CONTRACT DEPARTMENTAL REVIEW

SUMMARY OF RECOMMENDATIONS

Recommendations addressed to

	BPW (as rule-making agency)	Depts.	Other
<u>#1 -- Sole source/emergency</u>			
1) The Board of Public Works should draft revisions to the Consultant Contracting Ordinance for the City Council's consideration that would clarify sole source and emergency definitions.	X		City Council
2) Departments should establish policies for sole source/emergency contracts.		X	
3) Departments should file justifications on a timely basis with BPW for <u>all</u> sole source/emergency contracts over \$20,000.		X	
4) Sole source and emergency contracts should be made more visible by being clearly identified on intra-departmental approval routings and transmittals to the BPW and City Clerk.		X	
5) The BPW and City Clerk should identify sole source and emergency contracts on their contract listings.	X		City Clerk
<u>#2 -- Start and end dates</u>			
1) Recommendations regarding start and end date language in departments' standard contracts have been discussed with individual departments.		X	
2) Department management should remind those writing contracts of the need to include in contracts specific start, end and deliverable dates.		X	
3) Department management should remind project managers that work performed by a consultant before a contract has been signed or after it has expired is not legally authorized.		X	

	BPW (as rule-making agency)	Depts.	Other
<u>#3 -- Amendments</u>			
1) Department management should emphasize to project managers that after-the-fact amendments should be avoided.		X	
2) Departments should institute procedures to accelerate issuance of amendments.		X	
3) A multi-departmental task force should be convened to discuss ways of speeding up amendments and draft ordinance revisions as needed.	X	X	
<u>#4 -- Procedure manuals</u>			
1) BPW is encouraged to incorporate suggestions from project managers in its next revision of its rules and to offer an annual training class on consultant contracting rules.	X		
2) All departments should write or revise internal policies and procedures for consultant contracting.		X	
3) These internal policies and procedures should be filed with BPW to comply with BPW 6.30.050.		X	
<u>#5 -- Consultant Reference File</u>			
1) Contracting departments should review the consultant reference file prior to award of contracts over \$20,000.		X	
2) Contracting departments should file with BPW consultant evaluation committee reports for all consultant contracts over \$20,000 and consultant performance reviews for all consultants.		X	
3) BPW should assure that departments file performance evaluations and consultant selection committee reports as required.	X		

Recommendations addressed to

#6 -- Insurance

- 1) The BPW should eliminate the requirement which deletes standard wording on the "ACORD" certificate.
- 2) BPW should emphasize in its insurance regulations that the City's being named as an additional insured only applies to general liability policies, not professional liability policies.
- 3) New standard wording written by the Risk Manager and Law Department for construction contracts providing options to add the City as an insured should be adopted as standard wording for consultant contracts.
- 4) A new indemnification clause used in City construction contracts should be adopted by BPW for consultant contracts.
- 5) The Risk Manager should verify that the "rules of thumb" used by contracting officers to screen contracts for his review are reasonable.
- 6) The risk management area should be adequately staffed to review the insurance requirements of all major consultant contracts.
- 7) Project managers should be reminded by department management that they are responsible for assuring the consultant's compliance with contract terms, including insurance.

BPW (as rule-making agency)	Depts.	Other
X		
X		
X		
X		
		Risk Manager
		OMB
	X	

#7 -- Arch. & Eng. Compensation

- 1) Departments and BPW should require for its contracts that all architecture and engineering contract solicitations adopt the sealed envelope method currently used by the Water Department.

Recommendations addressed to

#8 -- HRD regulation

1. a) The City Council should evaluate whether the concerns of W/MBE consultants outweigh the increased confusion and inefficiency of two minimums (W/MBE and Consultant Ordinance).
- b) HRD and BPW should clarify in the BPW Rules procedures for contracts in the \$15,000 to \$20,000 range.
2. City Council approval of HRD's proposed revisions to the W/MBE Ordinance would provide greater opportunities to W/MBE consultants and increased flexibility to HRD and department project managers.
3. HRD could expand its outreach to the W/MBE community by using project managers as an additional information source.
4. a) The City Council should adopt HRD's proposed revision to the W/MBE Ordinance.
- b) HRD should propose a revision to the EEO Ordinance to address emergency contracts and amendments.
5. HRD should evaluate its requirements for consultants to submit "Contractor Work Force Reports" and "Equal Employment Opportunity Reports".
6. HRD should provide instructions and sample documents for all required documentation to BPW for inclusion in the BPW Rules.

BPW (as rule-making agency)	Depts.	Other
		City Council
X		HRD
		City Council
		HRD
		City Council
		HRD/City Council
		HRD
		HRD

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ACRONYMS

AA/EEO -- Affirmative Action/Equal Employment Opportunity

W/MBE -- Women-Owned/Minority-Owned Business Enterprises

HRD -- Human Rights Department

SHRR -- Seattle Human Rights Regulations

Board, BPW -- Board of Public Works (When used with citation, refers to BPW Rules prepared by BPW)

SMC -- Seattle Municipal Code

CL -- City Light

DAS -- Department of Administrative Services

SED -- Seattle Engineering Department

SC -- Seattle Center

Parks -- Department of Parks and Recreation

FINDING #1

Control over sole source/emergency contracts should be tightened.

Of the 170 contracts in our contract universe, 27 (16 percent) were identified by departments or audit staff as sole source or emergency contracts. These contracts as amended amounted to \$1,068,072 or 10 percent of the total contract dollar amount of \$10,547,008. When one large \$3 million supplement is removed from the contract universe, sole source contracts come to 14 percent of the total dollar amount.

We judged one-third of these contracts, amounting to \$628,456 to have unreasonable sole source/emergency justifications. These contracts constituted 6 percent of the total dollar amount in the contract universe, or 8 percent when the \$3 million supplement is removed.

Examples of these unacceptable justifications include:

--A contract for a service which the City has procured from a number of vendors was deemed sole source primarily on the basis of the vendor having been a former Office of Management and Budget Director for the City.

--A vendor won a sole source contract on the basis of her previous experience with the department, but her initial contract had been extended four times resulting in costs two times higher and contract duration three times higher than the original estimate. This same vendor was awarded another sole source contract, this one without written justification.

--A sole source justification for a W/MBE waiver listed three other vendors. The contract amount was just \$60 under the \$20,000 minimum for a formal selection process; the project manager admitted to Audit staff that he chose to award the contract on a sole source basis in order to avoid the time involved in a selection process.

--A sole source justification was based on a justification for a contract to the same vendor awarded two years earlier. Despite the size of the latter contract (\$50,000 amended to \$150,000), Audit staff was provided no evidence that the project manager made a reasonable effort to verify that the vendor was still the sole provider of the service.

--A major architectural contract for \$200,000 was justified as sole source due to the architect's expertise in staging design competitions. However, the scope of work had nothing to do with design competitions. Also, other vendors were informally contacted. The contract initially had no termination date and was amended to \$367,000 within a year.

--Various contracts were deemed sole source on the basis of the vendor being "best qualified" or "uniquely qualified", rather than the only vendor qualified.

Quantifying the extent of sole source/emergency contracts is difficult because the only ways to identify such a contract are to come upon a sole source/emergency justification in a contract file or consult individual project managers. The Board of Public Works is supposed to receive sole source/emergency justifications for contracts over \$20,000, but reports that it rarely gets these for non-BPW contracts. Sole source/emergency contracts of which the BPW is aware are not identified on its overall contract listing. Of the 27 sole source/emergency contracts we reviewed, nine required justifications to be filed with BPW. One of the nine, a non-BPW-approved contract, did not have a justification on file at BPW or the originating department.

Existing criteria is vague as to when a sole source or emergency contract is allowed. The Consultant Contract Ordinance allows the selection process to be waived in the event of:

--an emergency "as determined by the head of the department desiring consultant services or because of a particular aspect of the services to be provided or the need therefore that would be compromised by compliance with such provisions..." (SMC 3.114.110 A) or

--a sole source, defined as "whenever it can be established to the satisfaction of the department head contracting for consultant services that only one consultant is available with the expertise required to provide the services desired..." (SMC 3.114.110 B).

When the City makes excessive and unnecessary reliance on sole source/emergency contracts, a competitive consultant selection process is circumvented. Not awarding contracts on a competitive basis limits the pool of consultants the City chooses from, may increase contract costs, and could raise charges of favoritism for certain vendors.

Recommendations:

1. The Board of Public Works, as the rule-making agency for consultant contracts, should draft revisions to the Consultant Contracting Ordinance for the City Council's consideration that would clarify sole source and emergency definitions.

We recommend that emergencies be limited to

- a. situations threatening public health, safety, or property or
- b. situations in which delay was caused by external circumstances and would result in excessive cost to the City or
- c. the situations described in the existing ordinance (e.g., surprise security reviews) in which security would be compromised by a public selection process.

Delays due to lack of planning or management by City staff would not be an acceptable rationale for an emergency.

We also recommend that the sole source definition require the contracting department to make a reasonable effort to verify that the vendor is in fact a sole source and to document such effort.

2. As noted in Finding #4, most departments have little or no written policies regarding approvals within the department for sole source/emergency contracts, particularly when the contract is under \$20,000. Departments should establish these policies. Project managers would be aided by examples of acceptable and unacceptable sole source/emergency justifications in department contracting manuals. We encourage departments to include in their policies requirement of written justifications for sole source/emergency contracts under \$20,000. Although such justifications are not required by the Consultant Contract Ordinance for contracts under \$20,000, they make sole source/emergency contracts more visible to department management.

3. Departments should comply with requirements to file justifications on a timely basis with BPW for all sole source/emergency contracts over \$20,000, whether or not the contract is approved by BPW.

4. Sole source and emergency contracts should be made more visible by being clearly identified on approval routings within the department and transmittals to the BPW and City Clerk.

5. The BPW and the City Clerk should identify sole source and emergency contracts on their contract listings. The City Clerk has adopted a plan to do so as discussed in its response in Appendix B.

FINDING #2

Start, completion, and deliverable dates should be specific enough to define timely performance and billing authorization by consultants.

The City's control over authorization of expenditures and timely consultant performance has been weakened by a widespread lack of specific contract dates:

--SED contracts and supplements typically do not have a fixed start date, but rather language like "start upon written notice to proceed." In fact, we found the notice to proceed (NTP) was not always written and sometimes predated the contract award date, with the potential of causing confusion as to when the City was legally authorized to pay. Out of 79 amendments and supplements reviewed, 14 had no written NTP, 11 were awarded after the NTP, and 6 were signed after the termination date.

SED contracts typically have two ending dates without indication as to which takes precedence: a fixed calendar date and contingent language stating, "The Consultant's work shall be considered complete when the City acknowledges in writing the receipt of all (required) documents...".

A time-related problem we found in other departments but primarily at SED was the award of supplements or amendments after the contract and previous amendments and supplements had expired. Of the 79 amendments and supplements reviewed, 16 were in this category.

SED contracts we reviewed often showed more specific deliverable dates than we found in other departments' contracts. However, these dates were usually contained in a project timetable provided by the consultant and attached to the contract as an exhibit. The body of the contract made no reference to this exhibit, and SED staff told Audit staff they did not consider these dates binding on the consultant.

--Parks contracts usually have a fixed start and end date but the date of the contract signing is generally not indicated. The date on an attached signature routing slip (not part of the contract) indicates that the contract is frequently signed after the contract start date. This could cause confusion as to when the City is legally required to pay on the contract, especially since standard contracts also include a phrase that contracts are not binding until executed.

Out of 26 contracts reviewed, 10 were signed after the start date. In one case, the contract start date was three months before the contract was actually signed; examination of billings indicated that half of the contract had been expended before the contract was signed. In another case, the contract's start date was the same as the signature date, but the contract was later amended to push the start date back.

--Standard language for City Light non-Board approved contracts defines the termination date as "(calendar date) or when the maximum amount of this contract is reached, whichever occurs first." Time extensions for various contracts were reviewed and found to be reasonable. Nevertheless, this language gives the incentive to the consultant to ask for time extensions until the maximum amount of the contract is reached.

--Of the six contracts examined at DAS, two had no deliverable or termination dates. A third contract had deliverable and termination dates, but these were ignored; the contract was not extended until seven months after the original contract had expired and was not actually completed until two months after the extension had expired.

--Architecture contracts at Parks, DAS, and Seattle Center typically have ending dates contingent upon the completion of construction in lieu of a fixed calendar date. We considered this to provide acceptable control over the consultant's timely performance if interim deliverables leading up to construction had due dates.

SMC 3.114.080 of the Consultant Contract Ordinance requires that contracts include "the dates the agreement is effective and is to expire". The same section also requires contracts to include "a specific and detailed description of the scope of work or services to be provided by the consultant(s) and the products of any sort to be delivered to the City". Prudent contract management would dictate that such a description would include dates of deliverables.

Lack of start, end or interim deliverable dates weakens the City's control over expenditures and causes confusion as to when an expenditure has been authorized. Increased confusion between the City and the consultant as to start and end dates could increase the City's exposure to a lawsuit and decrease the project manager's ability to enforce timely performance by the consultant.

Recommendations:

1. Recommendations regarding start and end date language in departments' standard contracts have been discussed with individual departments.
2. Department management should remind project managers and others writing contracts of the need to include in contracts start, end, and deliverable dates specific enough to comply with the Consultant Contracting Ordinance, measure timely performance by the consultant, and define the period of time the consultant can bill for.
3. Department management should remind project managers that work performed by a consultant before a contract has been signed or after it has expired is not legally authorized by a City contract.

#8, 8/7/87

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FINDING #3

The Consultant Contracting Ordinance and procedures should be revised to allow flexibility for capital projects.

The present Consultant Contract Ordinance and current procedures do not give the City the flexibility to use alternative methods of authorizing additional work on capital projects. Such flexibility is needed to balance adequate control over contract expenditures with timely completion of capital projects.

We found widespread disregard for contract dates when additional work was authorized. Out of 162 amendments we reviewed, nearly a quarter (39) had been awarded after the actual start or termination date, or the start date was undocumented. Another 28 amendments had been signed after the contract and previous amendments had expired, including one signed 26 months after expiration.

These after-the-fact amendments related to both capital and non-capital projects. In our opinion, we saw no valid rationale for authorizing additional work in advance of a formal amendment for non-capital projects and, in most cases, capital projects. However, we recognized that a delay in authorizing consultant work related to a capital project could result in delayed construction, causing excessive costs to the City.

Capital project managers reported to us that they often felt compelled to informally authorize work prior to a formal amendment because the time to issue an amendment would cause costly delays to a capital project. "Informal authorization" usually took the form of a telephone call or a letter to the consultant in which scope of work, compensation, and term was often not established.

Project managers cited several reasons for delay in getting an amendment approved: writing of additional scope, negotiation of compensation, intradepartmental approvals, HRD approval, BPW approval, and obtaining and approval of insurance.

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Informal verbal or written authorization of additional work prior to a formal written authorization is a poor contract practice which increases financial and legal exposure for the City. The practice also violates most City contracts, which contain a standard clause that extra work must be authorized in writing, and violates the Consultant Contract Ordinance. SMC 3.114.080 reads in part, "Every contract, retainer, change order, amendment, and any other form of agreement between...the City and (a)...consultant shall be in writing and signed by at least one authorized representative of each contract party." This same section also requires every contract and amendment to contain various elements, in particular, scope of work, compensation, and term.

Various methods were suggested in discussions with capital project managers to accommodate timely authorization of additional work:

- 1) An expedited routing slip is used to accelerate departmental, consultant, HRD, and BPW approvals.
- 2) The contract is awarded on an "on-call" basis in which specific tasks are authorized by a written work authorization approved by the project manager and appropriate supervisor. The method, timing and total amount of compensation is authorized by the initial contract; the amount for each work authorization is negotiated by the project manager and specified in the authorization. HRD approves each work authorization over \$1000. This method has been used in situations where an ongoing service is needed quickly, but the specific tasks cannot be determined in advance.
- 3) The contract ceiling includes compensation for all required work items and a supplemental amount for additional work items. The supplemental amount is calculated by negotiating a unit cost with the consultant for each potential additional work item (e.g., additional meetings, additional core samples) and taking a percentage of the total cost of additional work items. Additional work is authorized in writing by the project manager; HRD approval is obtained when required. This method has been used on very large contracts in which potential additional work items can be identified and costed.

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4) "Field" change orders are confirmed after the fact by a formal amendment. This method has precedent in construction contracts; for instance, SED construction contracts typically give the project manager authority to issue change orders with increasing supervisory approvals at increasing dollar amounts. Were this method to be used in a consultant contract, the initial contract would need to include appropriate safeguards: change order no more than a specified dollar ceiling, approved by the project manager and appropriate supervisor(s), change order in writing, scope, term and compensation specified, and change order only allowed where delay would cause an emergency or added expense.

The first method does not require any changes in the present ordinance, only a procedure and routing slip agreed upon by the parties which need to approve an amendment. This method is not presently used. Methods #2 and #3 have been formally incorporated in some consultant contracts. The fourth method has, to our knowledge, never been written into a consultant contract. However, the instances we found of project managers authorizing extra work before a formal amendment are the *de facto* equivalent of this method, albeit without the controls described. This method, even with proper controls, does not comply with the present Consultant Contracting Ordinance.

City capital project managers' primary responsibility is to get a project completed within budget and on time. Because project managers have perceived that amendments take a long time to issue, they have been more likely to authorize work informally (that is, out of compliance with the contract) without adequate controls: supervisory approvals and establishment of scope, compensation, and term.

Recommendations:

1. Department management should emphasize to project managers that after-the-fact amendments weaken control over contract costs, cause the City unnecessary legal and financial exposure, violate the Consultant Contract Ordinance, and should be avoided.
2. Departments should institute procedures to accelerate issuance of amendments. Procedures might include standardized routing slips, highlighting of urgent amendments, use of standardized scopes, etc.

3. A multi-departmental task force of capital project managers should be convened to discuss ways of speeding up amendments and draft ordinance revisions as needed. As the agency responsible for awarding capital contracts and issuing consultant rules, BPW is the logical agency to convene this task force.

#4, 8/7/87

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FINDING #4

Departments and BPW should issue or revise consultant contract manuals to facilitate contracting.

BPW has issued rules to implement the Consultant Contracting Ordinance under its authority in SMC 3.114.120:

"...the contracting with any consultant for work to be performed or services to be provided shall be subject to rules and regulations adopted by the Board of Public Works not inconsistent with this chapter."

In our opinion, the BPW rules are adequate to carry out the Consultant Contracting Ordinance, although we received a number of suggestions from project managers which BPW staff has agreed to consider in the BPW rules' next revision. (Suggestions are listed in the recommendations.)

The two Human Rights ordinances (W/MBE and EEO) which impact consultant contracts are covered to some degree in the BPW rules, but not adequately due to the lack of rules from HRD. BPW staff has agreed to consider including rules from HRD as an appendix to the BPW rules' next revision. Our recommendation to HRD to provide these rules is discussed in Finding #8.

The BPW rules alone are not sufficient to provide guidance to a project manager, since the Consultant Contract Ordinance leaves much discretion to the department in such areas as approvals, compensation method, and sole source and emergency criteria. The Ordinance also does not cover contracts under \$20,000. In 1986, 78 percent (by number) of all consultant contracts and amendments were under \$20,000.

None of the five departments we reviewed had adequate written policies and procedures; only City Light and Seattle Center complied with BPW 6.30.050 requiring departments to file contracting policies and procedures with BPW.

--City Light's manual was only used for non-Board approved contracts. In the manual available to audit staff, the sole source/emergency section had been largely crossed out and was being revised; there was no criteria as to what City Light considered acceptable sole source or emergency justification.

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--Parks had the most complete manual of the departments we reviewed. However, it applied only to non-Board approved contracts.

--Seattle Center policies and procedures contained information on state and HRD requirements for contracts under \$20,000, but nothing on Seattle Center's own procurement policy for these contracts. The procedures also had no criteria as to what Seattle Center considered acceptable sole source or emergency justification.

--Administrative Services and Engineering had no written policies and procedures in use at all. Engineering had drafted procedures in 1984, but these omitted most HRD and filing requirements, the engineering roster, and criteria for sole source and emergency contracts.

Not having adequate internal policies and procedures increases the risks of these adverse consequences:

--The Consultant and HRD Ordinances will not be complied with. Most of the compliance exceptions we found in sampled contracts were due to project managers' lack of knowledge about the ordinances.

--Different contracts within the same department will be treated inconsistently.

--Project managers will have to spend extra time learning (or relearning) the contracting process because there is no single written source of departmental information. We observed that project managers often only handle one or two consultant contracts each year, so contracting regulations and procedures have to be relearned each time.

--Contracts under \$20,000 will not be awarded competitively or in the most cost-beneficial manner.

--Inappropriate sole source or emergency contracts will be awarded in the absence of departmental policy.

Recommendations:

1. BPW is encouraged to incorporate these suggestions from project managers in its next revision of its rules and to offer an annual training class on consultant contracting rules:

--Sample wording for different methods of compensation (cost plus fixed fee, lump sum, hourly rate, etc.).

--A definition of a contract supplement (that is, a planned new phase) versus a contract amendment (an unplanned change in the scope of services).

--A requirement that solicitations for services in a multi-phase project make clear that the contract is for the initial phase and may be continued to future phases.

--Sample insurance forms and endorsements showing City-required modifications.

--Contract attachments to be filed with BPW, City Clerk, and kept in department files.

--Training on consultant contracting requirements.

2. All departments should write or revise internal policies and procedures for consultant contracting to cover such areas as departmental approvals, departmental accounting procedures, sole source/emergency criteria, amendments, and contracts under \$20,000.

3. These internal policies and procedures should be filed with BPW to comply with BPW 6.30.050.

#5, 10/5/87

FINDING #5

The Consultant Reference File should be used more effectively.

Section 3.114.020 of the Consultant Contracting Ordinance calls for the creation of a consultant reference file and requires departments to review the file as part of the selection process. The Council's intent* in creating this file is not specified in the Ordinance but two purposes can be implied:

1) For departments to inform potential consultants of available City work. SMC 3.114.020.C. says in part, "The department shall review the consultant reference file...and shall specifically inform every consultant that has expressed an interest in or has documented qualifications..of such department's...need for such consultant services..."

2) To provide departments information on consultants' performance on past City contracts. SMC 3.114.100 requires that a copy of the consultant's performance review and evaluation report (written at the end of a contract) be filed with BPW in the consultant reference file.

We found general compliance with the first purpose. BPW compiles computerized mailing labels of consultants awarded City Contracts or submitting annual statements of interest and qualifications. We found the mailing labels were routinely used by project managers during the solicitation process.

*Determining Council intent on past legislation is difficult due to the City's lack of complete written and accessible minutes for Council and committee meetings. The City's compliance with state and local laws regarding minutes will be reviewed in a future audit.

Some light is cast on the purposes of the consultant reference file by a 1978 Municipal League report which was the impetus for the Consultant Contract Ordinance. In recommending creation of a central consultant services file at the BPW, the report noted, "Departments have no repository of information to draw upon when seeking consultant services. Consultants have no central location they can approach to register their interest in working for the City. A centralized consultant services file would provide evaluative and financial data accessible by all City departments as well as the public."

However, we did not find departments using the reference file as an information source. BPW informed audit staff that few, if any, project managers reviewed the consultant reference file to assist in solicitation, contract negotiation, or for any other purpose.

BPW told audit staff that it almost never gets the performance review or the consultant evaluation committee report for non-Board-approved contracts. (The latter document is not specified by the ordinance to be part of the consultant reference file, but does serve the purpose of providing consultant information.)

Non-compliance with these filing requirements was also indicated by the results in our contract sample. We did not find performance evaluations on file at BPW for four out of four BPW-approved completed contracts and ten out of ten non-BPW-approved completed contracts. Consultant evaluation committee reports were not filed with BPW for six out of seven non-BPW-approved contracts over \$20,000, but were for all 17 BPW-approved contracts.

BPW does not obtain these missing documents for non-BPW-approved contracts, because it believes it does not have the authority to do so on non-Board approved contracts. The Law Department has told Audit staff that BPW may exercise its authority to require these documents on all consultant contracts in its role of maintaining the Consultant Reference File.

When departments do not review the consultant reference file for past performance or submit consultant performance evaluations, this increases the risk that the City will contract with a consultant who has performed poorly on a previous City contract. The lack of performance evaluations diminishes the value of the reference file as an information source.

Recommendations:

1. Contracting departments should comply with the Consultant Contracting Ordinance by reviewing the consultant reference file prior to award of contracts over \$20,000.
2. Contracting departments should comply with the Consultant Contracting Ordinance by filing with BPW consultant evaluation committee reports for all consultant contracts over \$20,000 and consultant performance reviews for all consultant contracts. Specific contract exceptions have been discussed with individual departments.

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

3. BPW is to be commended for keeping the reference file up to date as required by the Ordinance. However, the accuracy and completeness of these files would be improved if BPW exercised its authority to assure that departments filed with BPW performance evaluations and consultant selection committee reports as required.

#7, 8/7/87

FINDING #6

Insurance requirements should be revised to reduce delays.
Insurance monitoring should be improved to maintain adequate insurance protection.

In our review of sample consultant contracts and our interviews with project managers and contract specialists, we found these conditions which could weaken the City's insurance protection, increase cost and inefficiency of the selection process, or do both.

Condition:

Capital project managers in all five departments reviewed reported a major cause of delay in awarding contracts was consultants' obtaining of professional and general liability insurance. Delays of one to three months due to insurance negotiations were reported; one contract was delayed five months. Another contract was awarded on an emergency basis contingent on the consultant obtaining insurance. Five months later, the work has been completed but the consultant has been unable to obtain insurance at the terms the City requires, so the contract cannot yet be encumbered and disbursed.

One reason for this delay has been consultants' inability to find affordable professional and general liability insurance that meets the City's coverage requirements. This reflects the insurance industry's tight market conditions over which the City has no control.

Another reason for delay has been negotiations between the City and the consultant's insurance carrier as to wording (on the contract and insurance certificate) which both parties find acceptable. Project managers have reported that some insurance carriers have balked at the City's required wording.

SMC 3.114.080 of the Consultant Contracting Ordinance states that all consultant contracts over \$20,000 "shall be subject to the review by the City Attorney of...liability, insurance indemnification and bonding clauses." When the City Attorney (or Risk Manager) advise contracting departments to require insurance, BPW 5.30.070 and BPW 6.80.030 require specific changes:

--The following wording in the industry's standard "ACORD" insurance certificate is to be deleted for general liability insurance: "This certificate is issued as a matter of information only and confers no rights upon the certificate holder."

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

The City's risk manager and insurance broker report that this modification has been difficult to obtain for a general liability policy, given tight market conditions.

This deletion provides some minimal additional protection to the City. However, the City's protection stems primarily from its being named as an additional insured.

--The City is to be named as an additional insured.

The City's contract wording only requires this for general liability policies, not professional liability policies, since the latter insures a professional. Although delays in obtaining this modification appear to be due primarily to time involved in getting a special endorsement, some delay may have also resulted from confusion with professional liability policies.

--The indemnification clause in the standard consultant contract says, "The City shall not be obligated or liable to the Consultant or to any other party for any claim whatsoever arising in connection with this Agreement except for negligence that is solely and entirely the fault of the City." (Emphasis added.) Consultants and their insurance carriers have objected to the emphasized phrase because it could leave the consultant totally liable for negligence that is partially (or even chiefly) the fault of the City. The language also does not comply with the state's new Tort Reform Act.

--Other insurance requirements of the City have not been controversial.

Recommendations:

1. After consultation with the City Attorney and Risk Manager, BPW should eliminate the requirement that standard wording on the ACORD certificate be deleted. ("This certificate is issued as a matter of information only and confers no rights upon the certificate holder.") Reinstatement of this requirement should be reviewed when market conditions in the insurance industry improve.
2. BPW should emphasize in its insurance regulations that the City's being named as an additional insured only applies to general liability policies, not professional liability policies.

3. New standard wording written by the Risk Manager and Law Department for construction contracts gives the contractor's insurance broker four options to add the City as an insured on a contractor's general liability policy. We recommend that the BPW adopt this language as standard wording for consultant contracts.

4. A new indemnification clause for construction contracts which complies with the Tort Reform Act and eliminates the "solely and entirely" phrase is currently being reviewed by the Law Department. After the Law Department has completed its review, we recommend that the BPW and departments adopt this language as standard wording for consultant contracts.

Condition:

Although the Consultant Ordinance requires that every consultant contract over \$20,000 be subject to the review of the City Attorney for insurance requirements, the City has only one person in its risk management area.

The Risk Manager told Audit staff that he only had time to review perhaps 200 contracts a year in all categories, not just consultant contracts. He said he relied on the experience of departmental contracting officers to screen for unusual contracts to bring to his attention. While the Risk Manager said that the extremely variable nature of consultant services precluded establishing standards for when and how much insurance was required, the contracting officers interviewed tended to use informal standards such as amount of contract and type of service.

Most contracting officers interviewed by Audit staff said they still checked with the Risk Manager on all major consultant contracts, no matter what their level of experience.

Recommendations:

5. The Risk Manager should verify that the "rules of thumb" used by contracting officers to screen contracts on which his insurance advice is needed are reasonable. He should continue to educate contracting officers on general guidelines as to when insurance is required.

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

6. The Risk Manager has too high a workload to assure that he has reviewed the insurance requirements of all major consultant contracts in compliance with the Consultant Contracting Ordinance and good risk management practice. We recommend the risk management area be adequately staffed to provide this assurance.

Condition:

In our review of 29 contracts in which insurance was required, we found 18 contracts with 36 insurance exceptions. Exceptions were the following: insurance was not obtained, coverage was below amount required by contract, coverage had expired, or required insurance modifications had not been made.

Specific insurance exceptions were discussed with individual departments. One reason given for insurance expiration was that project managers did not have time to monitor consultants' insurance policies.

Recommendation:

7. Project managers should be reminded by department management that they are responsible for assuring the consultant's compliance with contract terms, including insurance. Project managers should also be reminded that adequate and current insurance coverage by consultants is particularly crucial in reducing the City's financial and legal exposure since the City is self-insured.

#10, 10/5/87

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

FINDING #7

Capital project managers should obtain price information to assist in architectural and engineering contract negotiations.

State law prohibits municipalities from using cost as a basis of selection for architecture and engineering contracts. RCW 39.80.050 says in part, "The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency."

Most City departments have complied with this state law by obtaining no price information at all during the solicitation and negotiation process. However, the Water Department has used for several years a method by which the consultant submits a sealed cost estimate to BPW; the estimate is not opened until after the consultant is selected. Because the consultant estimates costs prior to selection, the department has added assurance of an equitable price in a non-competitive environment and obtains cost information on which to base negotiations. Since the estimate is not opened until after selection, this method complies with state law.

The size of the City's investment in architecture and engineering contracts mandates the need to have as much cost information as is legally allowable in order to be in a strong negotiating position. In 1986 BPW awarded \$19.6 million in consultant contracts (virtually all architecture and engineering contracts), representing 76 percent of all consultant contracts awarded in 1986 (by dollar amount).

Recommendation:

1. Departments and BPW should require that all architecture and engineering contract solicitations adopt the sealed envelope method currently used by the Water Department.

#3, 8/6/87

FINDING #8

HRD should revise procedures and requirements to increase efficiency and compliance in the consultant contracting process.

The Human Rights Department (HRD) plays a significant role in the consultant contracting process due to its responsibility to enforce consultant contract requirements in the Equal Employment Opportunity (EEO) Ordinance (SMC 20.44) and the Women-Owned and Minority-Owned Business Enterprise (W/MBE) Ordinance (SMC 20.46).

In our review of sample consultant contracts and our interviews with project managers and contract specialists, we found these conditions which could weaken the City's compliance with its EEO/W/MBE goals, increase cost and inefficiency of the selection process, or do both.

Condition:

When the Consultant Contract Ordinance was passed in 1981, the minimum amount at which a formal selection process was required was \$15,000. The ordinance also allowed adjustment for inflation, and on January 1, 1986, the minimum was raised to \$20,000.

The W/MBE Ordinance's minimum of \$15,000 for W/MBE subcontracting requirements was not increased nor does the ordinance contain an inflation adjustment clause similar to the clause in the Consultant Contract Ordinance. Project managers we interviewed in all five departments uniformly found working with two minimums confusing and suggested that the W/MBE minimum move concurrently with the consultant selection minimum.

HRD elected not to raise its minimum in tandem with the consultant selection minimum in response to concerns from the W/MBE consultant community. Because a higher minimum would mean the subcontracted segments would be larger, these consultants were concerned that there would be fewer small subcontracts for W/MBE firms (predominantly small businesses).

IF IS DUE TO THE QUALITY OF THE DOCUMENT.

Recommendation:

1. a. The City Council should evaluate whether the concerns of W/MBE consultants outweigh the increased confusion and inefficiency of two minimums. If the Council judges the latter, the W/MBE Ordinance should be revised so that its minimum changes in tandem with the consultant selection minimum.

b. HRD should provide clarification of procedures for contracts in the \$15,000 to \$20,000 range. This clarification could be efficiently distributed via inclusion in the BPW Rules, since they are widely used by contract managers.

Condition:

A frequent suggestion among department staff we interviewed, especially capital project managers, was greater flexibility in meeting the City's W/MBE goals. They suggested that tasks could be more feasibly subcontracted and W/MBE subconsultants could obtain larger and more meaningful work experience if HRD had the option of applying minimum percentages to the overall project. Most large City projects have a "package" of consultant contracts and/or a contract with planned supplements for later phases.

The W/MBE ordinance prevents HRD from this flexibility. HRD is compelled to apply W/MBE subcontracting percentages to each individual contract and amendment by SMC 20.46.080 (B)(5) which says, "Whenever contract supplements, amendments or change orders are made which increase the total dollar value of the contract by more than ten percent of the dollar value of the original contract, the contractor shall comply with those provisions of this chapter which applied to the original contract with respect to the supplement, amendment or change order..." (emphasis added).

Even though applying the percentages to individual amendments could result in impracticably small segments (a segment could be as small as \$105: the WBE minimum of 7 percent times 10 percent of \$15,000), HRD cannot waive the W/MBE requirement for individual amendments. SMC 20.46.090 (B)(2) allows waiving of W/MBE requirements only when the contract awarding authority requests to the HRD Director "prior to solicitation of...proposals" (emphasis added).

HRD has proposed a revision to the W/MBE Ordinance which would give it greater flexibility in implementing the W/MBE Ordinance. The revision would allow HRD the options of applying minimum subcontracting percentages to "a planned series of related contracts, contract supplements, amendments or change orders" and would permit the HRD Director to waive the subcontracting requirement for individual amendments.

Recommendation:

2. City Council approval of HRD's proposed revisions to the W/MBE Ordinance would provide greater opportunities to W/MBE consultants and increased flexibility to HRD and department project managers.

Condition:

We observed that project managers are in an ideal position to promote the City's W/MBE goals in the consultant community. They are the City's liaison to consultants and subconsultants, and are most immediately involved with enforcement of contract terms (including W/MBE compliance).

Recommendation:

3. HRD could expand its outreach to the W/MBE community by using project managers as an additional information source. We recommend that HRD circulate to project managers and/or insert in BPW's Rules information sheets for primes and subs about W/MBE subcontracting and certification.

Condition:

The W/MBE and EEO Ordinances presently do not realistically accommodate emergency contracts and amendments. The EEO Ordinance does not address emergencies at all. The W/MBE Ordinance allows after-the-fact approval by the HRD Director in emergency situations except for W/MBE subconsultant percentages. Realistically, a prime consultant would not have time to negotiate agreements with subconsultants in an emergency. The W/MBE revision proposed by HRD does allow an after-the-fact waiver in an emergency for W/MBE set-asides.

Recommendation:

4. a. The City Council should adopt HRD's proposed revision to the W/MBE Ordinance.

b. HRD should propose a revision to the EEO Ordinance to address emergency contracts and amendments.

Condition:

For the purpose of monitoring a consultant's compliance with affirmative action goals, HRD requires the consultant on all contracts over \$1000 to fill out a "Contractor Work Force Report" at the beginning of the contract. The report shows the size and ethnic composition of the consultant's work force. The consultant is required by HRD regulation SHRR 80-010 (4a) to update this information each month by submitting to HRD an "Equal Employment Opportunity Report."

We did not complete compliance testing on the latter report because HRD staff informed us that they merely filed these reports and only occasionally used them for spot checks. HRD staff said their main compliance focus was on large construction contracts.

We observed that many consultant contracts had small labor forces; one-person firms were common. We considered it reasonable to assume that these small firms would be relatively static, and monthly updates of labor force composition would be redundant.

Recommendation:

5. HRD should evaluate its requirements for consultants to submit "Contractor Work Force Reports" and "Equal Employment Opportunity Reports" in light of the generally small workforce of most consultants. We believe HRD could greatly reduce its paperwork without weakening promotion of affirmative action goals by limiting these reports to a) contracts over \$20,000, b) consultant workforces over 15 employees, and c) submittal only at the commencement of the contract (and annually thereafter for multi-year contracts).

Condition:

HRD has not provided clear directions to project managers and contract specialists as to required documentation. Various contracting officers we interviewed said they found HRD instructions confusing and requested a consolidation of HRD and BPW instructions.

HRD relies for its directions on the description of W/MBE and EEO requirements in the BPW Rules. However, the Rules leave out various documents because BPW believes it does not have the authority on non-BPW-approved contracts to write directions for documents not specified in the W/MBE or EEO Ordinances. BPW staff has agreed to consider incorporating regulations written by HRD in the BPW Rules.

The authority and instructions for HRD documents are as follows:

<u>Document</u>	<u>Legislative Authority</u>	<u>In BPW Rules</u>
"Sworn Stmt. for Compliance with SMC 20.44	SMC 20.44.070	Yes
"Contractor Work-Force Report"	Mentioned in "Sworn Stmt."	Form only, No instructions
HRD Approval Form	None, used as an admin. convenience.	Discussed for BPW contracts. (Used by HRD on all contracts.)
"EEO Report"	SHRR 80-010 (4a), Mentioned in "Sworn Stmt."	No
"W/MBE Utilization Form"	SMC 20.46.090 (D)	Yes

Recommendation:

6. HRD should provide instructions and sample documents for all required documentation to BPW for inclusion in the BPW Rules.

#6, 10/5/87

City of
Seattle
Board of Public Works

Barbara K. Taber, Executive Director
Charles Royer, Mayor



MEMORANDUM

Date: September 1, 1987
To: Norward J. Brooks, City Comptroller
From: Barbara K. Taber, Executive Director
 Board of Public Works
Barbara K. Taber
Subject: Draft Consultant Contract Audit Report

We have reviewed the draft consultant contract audit report dated August 13, 1987 and have the following comments. Generally, the draft audit report is disappointing in its lack of specificity in identifying violations of the Consultant Contracting Ordinance by departments. While examples to support given findings are provided, they do not identify the responsible department nor specific contract. Thus, it is difficult for departments to adequately respond to the audit and correct practices in the future. As an agency which awards numerous consultant contracts, the BPW is interested in knowing of any violations which may have occurred on contracts which it awarded. The audit report contains only conclusions without presenting the facts and data which led to formulating the conclusions and recommendations.

The Consultant Reference File Should Be Used More Effectively.

The draft audit report states: "BPW does not obtain those missing documents [performance evaluations and consultant evaluation committee reports] from other departments, because it believes it does not have the authority to do so on non-BPW approved contracts." The BPW believes that it has the authority to require those documents as evidenced by BPW Rules Chapter 6.30.040 and 6.30.060. However, the BPW has no authority to enforce compliance with these requirements. According to SMC 3.114.130, it is the responsibility of the City Comptroller to audit consultant contracts to verify that the procedures outlined in the Consultant Contracting Ordinance were followed. Even if the BPW had the authority to enforce compliance, the BPW department is not staffed to fulfill this function.

The Consultant Reference File Should be Used More Effectively. (continued)

The first recommendation states that "Contracting departments should comply with the Consultant Contracting Ordinance by reviewing the consultant reference file prior to award of contracts over \$20,000." This may be a good suggestion, but the recommendation is phrased in such a way as to imply that departments are violating the Consultant Contracting Ordinance by failing to review performance evaluations prior to award. According to the draft audit, departments are complying with the requirement to notify consultants on the reference file of contracting opportunities. It is inappropriate to assert that departments are not complying with an ordinance requirement to review performance evaluations prior to award when the ordinance does not in fact require such a review.

We have already addressed the third recommendation earlier. The BPW does not have enforcement authority for the submittal of documents. The Board requires submittal through its rules. It is the responsibility of an audit to identify specific violations and make findings based on the violations.

Capital Project Managers Should Obtain Price Information to Assist in Architectural and Engineering Contract Negotiations.

The Board has discussed in the past the recommendation that departments contracting for architectural and engineering services adopt the sealed estimate method employed by the Water Department. The Board decided to leave to the discretion of each individual department the adoption of this method. The Director of Engineering commented in a 1985 memorandum that "until we sit down with the selected consultant to discuss and negotiate the Scope of Work, an estimate would only represent the consultant's best guess at what we really want. Any estimate made before scope clarification would be useless to us and costly to the consultants."

Departments and BPW Should Issue and Revise Consultant Contract Manuals to Facilitate Contracting.

The draft audit should be corrected to refer to BPW rules, not a BPW consultant contract manual. The rules were never intended to serve as a comprehensive manual for project managers, but were issued to implement the requirements of the consultant contracting ordinance.

The draft audit states that "The BPW rules alone are not sufficient to provide guidance to a project manager, since the Consultant Contract Ordinance leaves much discretion to the department in such areas as approvals, compensation method, and sole source and emergency criteria." The Board rules do not address many of these issues because, as the draft audit indicates, the Consultant Contracting Ordinance leaves many issues to the discretion of the contracting department head. It is the responsibility of the department head to provide appropriate guidance to project managers. The BPW staff will evaluate the suggested BPW rule additions made in the audit report in the future.

Insurance Requirements Should be Revised to Reduce Delays; Insurance Monitoring Should be Improved to Maintain Adequate Insurance Protection

Recommendations # 1 and #3 in the draft audit report are confusing and appear to be contradictory. Recommendation #3 calls for adopting language for consultant contracts which outlines various options for certificates of insurance modifications. However, recommendation # 1 calls for eliminating the modification requirements.

HRD Should Revise Procedures and Requirements to Increase Efficiency and Compliance in the Consultant Contracting Process.

The draft audit report does not make it sufficiently clear in the first condition that the Human Rights Department does not possess the necessary ordinance authority to increase to \$20,000 the limit at which the WMBE set-aside would apply on consultant contracts. HRD has not increased the limit to \$20,000 because the WMBE Ordinance does not provide for it as the Consultant Contracting Ordinance does.

The draft audit report suggests that "HRD and BPW should clarify in the BPW Rules procedures for contracts in the \$15,000 to \$20,000 range." We have two comments on this recommendation. First, the Board's rules already address WMBE requirements for all consultant contracts over \$15,000 (BPW Rules 6.90.040) and consultant selection procedures which apply for all consultant contracts over \$20,000 (BPW Rules 6.50). In other words, consultant contracts under \$20,000 are not required to comply with the consultant selection process outlined in the Consultant Contracting Ordinance and consultant contracts under \$15,000 are not required to have WMBE set-asides.

Second, it should be noted that the Board's rules for consultant contracting are rules for which the BPW has responsibility. Thus, the draft audit report recommendation that "HRD and BPW should clarify in the BPW Rules procedures for contracts in the \$15,000 to \$20,000 range" is inappropriate. HRD has responsibility for adopting rules regarding WMBE and other matters, while the BPW has authority for adopting rules regarding consultant contracting. While the BPW may in fact seek the advice of the Human Rights Department and others in formulating and revising its rules, it should be clarified in the draft audit report that it is the BPW which would make any revisions to its consultant contracting rules which it felt necessary, and not HRD and BPW together.

The draft audit states "We observed that project managers are in an ideal position to promote the City's W/MBE goals in the consultant community. They are the City's liaison to consultants and subconsultants, and are responsible for enforcement of contract terms (including W/MBE compliance)." The draft audit should be clarified to reflect the fact that it is the department head, and not the project manager, who is responsible for enforcement of contract terms. Additionally, SMC 20.46.130 places the responsibility for monitoring compliance with the WMBE provisions with the Director of the Human Rights Department and not with the project manager.

HRD Should Revise Procedures and Requirements to Increase Efficiency and Compliance in the Consultant Contracting Process. (continued)

The sixth condition states that "BPW staff has agreed to consider incorporating regulations written by HRD in the BPW Rules." It should be noted that some HRD rules have been incorporated as an appendix to the BPW's Consultant Contracting rules since 1984. Any future inclusions of HRD's rules into the BPW's rules would also be as an appendix.

The draft audit report lists various HRD documents and notes whether they are included in BPW's Rules. The draft audit report indicates that the HRD Approval Form is used "only for BPW contracts". It is an inaccurate statement as HRD uses its Approval/Disapproval Form with all City departments.

Control Over Sole Source/Emergency Contracts Should be Tightened

The draft audit report states: "Quantifying the extent of sole source/emergency contracts is difficult because the only way to identify such a contract is to come upon a sole source/emergency justification in a contract file or consult individual project managers. The Board of Public Works is supposed to receive sole source/emergency justifications but reports that it rarely does for non-BPW contracts." It would be more appropriate for the Comptroller's staff to rely upon audits conducted of contract files to determine the number of sole source/emergency justifications filed with the Board for non-BPW approved contracts rather than rely upon the memory of BPW staff. Additionally, it should be noted that in 1986, 91% of the non-BPW approved consultant contracts filed with the BPW were for less than \$20,000, and thus no sole source or emergency justification is required under the terms of the Consultant Contracting Ordinance.

The draft audit suggests that the BPW should prepare legislation to send to the City Council which would define sole source and emergency contracts. We are hesitant to propose such legislation. The clear intent of the City Council in passing the Consultant Contracting Ordinance was to place the criteria and definitions for sole source and emergency contracts with the responsible department head. It is the department head who is to be held responsible. The draft audit report should be more specific in identifying contracts which do not appear to be sole source or emergency contracts. The Council did not intend for the BPW to be a centralized controlling agency for consultant contracts. Instead, the model seems to be one of decentralization.

Recommendation two encourages departments to include in their policies the requirement for "written justifications for sole source/emergency contracts under \$20,000." It should be made clear to departments in the audit report that this is not a legal requirement and that departments have the option of selecting the consultant who will best meet their needs without any type of justification.

Control Over Sole Source/Emergency Contracts Should be Tightened (continued)

The draft audit report does not clearly articulate that only consultant contracts over \$20,000 require a sole source or emergency justification to be filed with the BPW in order to comply with the consultant contracting ordinance. The draft audit report indicated that there were 27 sole source or emergency contracts. However, as the draft audit report appears to indicate, only nine of these were for over \$20,000 (i.e. requiring justifications to be filed with the BPW). The remaining 18 contracts, therefore, do not appear to be appropriately identified as sole source or emergency contracts as only those contracts over \$20,000 are required to have sole source or emergency justifications on file with the BPW if the consultant selection process has not been followed.

The draft audit report states that "excessive and unnecessary reliance on sole source/emergency contracts circumvents the consultant selection process." It should be noted, however, that such a statement should only be used for discussing consultant contracts over \$20,000. Consultant contracts under \$20,000 are not required to comply with any legislatively mandated selection process.

Office of the Comptroller
City of Seattle



Norward J. Brooks, Comptroller

To: Laura E. Kennedy, Supervising Auditor

From: Michael S. Saunders, Assistant City Clerk *MS*

Date: September 3, 1987

Subject: Consultant Contract Audit Finding on Processing of Sole Source
and Emergency Contracts

In response to the concerns raised in an earlier memorandum from your office and the finding on the processing of consultant contracts presented in the preliminary draft of your audit report, the City Clerk Section will implement the following changes in its procedures for processing consultant contracts.

1. The Consultant Contract Transmittal Form (Attachment 1) will include an entry box for the designation of sole source and emergency contracts.
2. The number entered for each such contract in the Consultant Contract Log will be marked with an asterisk.
3. The Input/Inquiry Screen for contracts in the City Clerk's proposed automated indexing and retrieval system (Attachment 2) will also include a field for designating sole source and emergency contracts. The system will be able to reference this field to produce integrated or department-level listings of such contracts.

These measures should provide effective means for identifying sole source and emergency contracts. They will be implemented within two weeks.

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

CITY OF SEATTLE
CONSULTANT CONTRACT TRANSMITTAL FORM

		CONSULTANT CONTRACT NUMBER (To be assigned by City Clerk)
Contracting Department	Date	EMERGENCY/SOLE SOURCE <input type="checkbox"/>
Consultant	Period of Service From: Through:	
Services Provided		
<input type="checkbox"/> New Contract <input type="checkbox"/> Contract Amendment No. _____		
Amount of This Contract or Amendment	Contract Award-To-Date	Total Encumbered Amount-to-Date
Ordinance Number Authorizing contract (if applicable)		
<p>Are the above services related to the acquisition and control of data processing hardware or related data processing services as defined by SOP 100-17?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If <u>yes</u>, you must attach a signed copy of DAS Form #100, Request for Data Processing Services.</p>		
Contact Person	Phone Number	

Forward this form, in duplicate, along with:

1) Original signature copy of contract or contract amendment
 And, if applicable:

- | | | |
|--|--|---|
| 2) Request for Encumbrance Form (T/C 70)
or Encumbrance Adjustment (T/C 71) | <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Not applicable |
| 3) Evidence of insurance [] to follow | <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Not applicable |
| 4) Original HRD Approval Form | <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Not applicable |
| 5) Original DAS Form #100 (optional) | <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Not applicable |
| 6) Vendor File Maintenance Form | <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Not applicable |

To: City Clerk's Office
 Room 101 Seattle Municipal Building
 01-01-01

Please note assigned Consultant Contract Number on copy of transmittal letter returned to you. Reference this number when submitting contract amendments, additions, performance evaluations, etc.

(M) c. Date:
Six 8-character date fields.

(M) d. Amount:
Six 10-character fields.

(M) 10. Final Completion:
8 character date field.

(M) 11. Evaluation:
8 character date field.

(M) 12. Description:
90 character field.

5.2.4.3 Screen Format

(D) Contract Input/Inquiry

Contract Number: 999999 Contract Type: XX XXXXXXXXXXXXXXXXXXXX
Department: XX XX

Vendor: XX XX Emergency/Sole Source: X

Commencement Date: 99/99/99 Completion Date: 99/99/99 Amount: 9999999.99

Amendments:	No.	Type	Date	Amount
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99
	99	XX XXXXXXXXXXXXXXXXXXXX	99/99/99	9999999.99

Final Completion: 99/99/99 Evaluation: 99/99/99

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Your
Seattle
Center



MEMORANDUM

September 8, 1987

To: Norward J. Brooks, City Comptroller

From: Ewen C. Dingwall *E. Dingwall*

Subject: **CONSULTANT CONTRACT DRAFT AUDIT REPORT**

We are in general agreement with the findings of your audit and the recommendations for improving the City's contract process. Your staff is to be congratulated, especially for its even handed, balanced approach to the very complex issues involved in the area of consultant contracts. The audit addresses a variety of issues and offers some very constructive suggestions for improvement.

We are in the process of redrafting the Seattle Center's procedure manual on consultant contracts. Be assured that we will address many of the issues raised in your audit in our revised manual, of which you will receive a copy.

ECD:c1

cc: Kathy Scanlan
Terry McLaughlin

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**Your
Seattle**
Department of Administrative Services



George Pernsterer, Director
Charles Royer, Mayor

September 14, 1987

Honorable Norward J. Brooks,
City Comptroller
Comptroller's Department
City of Seattle

Dear Mr. Brooks:

SUBJECT: Consultant Contracting Draft Audit Report

We have reviewed the Consultant Contract Departmental Review draft audit report and have discussed the audit findings and recommendations with your staff. We generally concur with many of your findings and are or will be implementing those which are applicable to the Department of Administrative Services.

There is one area of the report where we take exception, however, and that involves the discussion of sole source and emergency contracts, and the need to establish more stringent policies for them. The report generally divides consultant contracts into two groups - those which are the result of a competitive selection process mandated by ordinance, and those which are sole source or emergency contracts.

The Consultant Contracting Ordinance (S.M.C. 3.114) is not quite so simple. It defines competitive selection procedures for contracts of \$20,000 or more, and provides for sole source and emergency contracting at \$20,000 or more when certain conditions are met. The Ordinance procedures for competitive selection explicitly do not apply to contracts of less than \$20,000, and the sole source and emergency contracting provisions are moot for these contracts. In other words, the Ordinance provides for three classes of contracts: 1) competitively awarded contracts for \$20,000 or more; 2) sole source and emergency contracts for \$20,000 or more; and 3) contracts for less than \$20,000. The manner in which consultants are selected for contracts under \$20,000 is generally left to the departments, who are the contracting authorities. (There are other state and local statutes which may apply, of course, such as the Women's and Minority Business Enterprise Utilization Ordinance.)

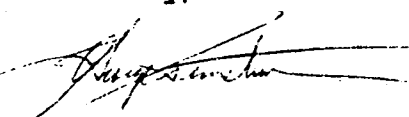
Honorable Norward J. Brooks
Consultant Contracting Draft
Audit Report
September 14, 1987
Page 2

The draft audit report's misunderstanding of the Ordinance distinctions leads to the general implication that contracts of less than \$20,000 which were not awarded in the manner prescribed by the Ordinance for contracts of \$20,000 or more, must be sole source or emergency. And, since actual examination of some such contracts reveals that they are not truly sole source or emergency, there is something wrong and procedures must be more stringent. This is clearly not so. A contract can be neither sole source nor emergency, and not the result of the ordinance-mandated selection process for contracts of \$20,000 or more, and still be an acceptable and proper contract.

The Ordinance is very explicit in applying stringent competitive requirements only to contracts of \$20,000 or more. That is because compliance with these requirements is costly, and in many instances could approach or exceed the value of a contract which is less than \$20,000. In adopting the Ordinance, the Council deliberately and appropriately left the selection process in such cases to the discretion of the awarding authority.

Having noted this exception, I will reiterate our commitment to implementing those findings and recommendations which are applicable to DAS. If we can be of any further assistance, please let me know.

Sincerely,



George Pernsteiner
Director

GP:mn:aat

Memorandum



DATE: September 24, 1987
TO: Norward J. Brooks, City Comptroller
FROM: Randall W. Hardy, Superintendent *RWH*
SUBJECT: Consultant Contract Departmental Review
Draft Audit Report

We have reviewed the draft report, and our response is as follows:

FINDING #1 - Control over sole source/emergency contracts should be tightened.

- (1) "The Board of Public Works should draft revisions to the Consultant Contracting Ordinance for the City Council's consideration that would clarify sole source and emergency definitions."

Seattle Municipal Code (SMC) 3.114.110, "Requirements inapplicable under certain conditions," defines vaguely the circumstances under which the advertising and selection processes and other requirements may be waived, and defines these conditions loosely as, A. "emergency" and B. "sole source." With each definition, the discretion is: A. "as determined by the head of the department," and B., "whenever it can be established to the satisfaction of the department head contracting for services," and the circumstances for such requests are somewhat loosely described.

A clarification would be helpful.

- (2) "Departments should establish policies for sole source/emergency contracts."

City Light has ~~adopted~~ policies for sole source/emergency contracts, however, no provisions or procedures exist for emergencies requiring "after the fact" contracts necessitated by a bona fide emergency.

In the City Light Consultant Contract Manual, (CL-CCM) the gap in advertising and selection requirements (good faith effort) between the \$5,000 and \$15,000 contracts has been bridged by administratively lowering the

threshold of advertising and selection, from \$20K (BPW requirement) or \$15K (HRD) to \$5,000.00. Contracts at or above this level would normally be subject to an advertising and selection process as stipulated in Section One of the manual, including cc's of ad to WMBE firms and BPW reference file consultants. As a practical matter, many contracts under \$5,000 also follow the above process.

There is a reference in CL contracting manual to the guidelines for inapplicability of advertising and selection rules in Section One, page 6 for contracts under \$15K, para. 2. The advertising and selection procedures inapplicability process ordinance requirements are referenced in Section Three, page 15, for contracts over \$15K.

Contracts at or above \$5K, but less than \$15K require written justification for waiver of the above requirements, under the present City Light Internal procedures. In nearly all cases of this type the authority level for approval of these contracts is a Deputy Superintendent. All contracts over \$15K are authorized by the Superintendent, except R&D consultant contracts which are authorized by the head of the R&D Committee.

The above sole source or emergency contracts follow a standard approval process which includes an initial review and approval of the consultant selection process and contract specifications. Those that do not appear to meet the criteria for sole source or emergency are returned to the project manager to go through the standard process. "Expediency" or situations that have gotten critical due to procrastination are not acceptable emergency justifications.

Amendments to contracts which were initially sole source, are required to follow the BPW rules and ordinance (SMC 3.114) requirements, described in Section 1, para. 13, page 6, of the CL-CCM.

- (3) "Departments should file justifications on a timely basis with BPW for all sole source/emergency contracts over \$20,000."

The filing of justifications for all sole source/emergency contracts over \$20,000 is covered in CL-CCM, page 15, para 2

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and 3, and every effort is made to ensure that timely filing is made to BPW.

- (4) "Sole source and emergency contracts should be made more visible by being clearly identified on intradepartmental approval routings and transmittals to the BPW and City Clerk."

This has never been a specific requirement that we are aware of, except for notification and is not now covered in our processing intradepartmental routing and transmittals. It can be done if BPW and/or Comptroller will outline how the information should be shown on the transmittal.

- (5) "The BPW and City Clerk should identify sole source and emergency contracts on their contract listings."

The above requirement is a reasonable criteria provided Departments are given guidelines to comply with the requirement outlined in para. 4, above.

FINDING #2 - Start, completion, and deliverable dates should be specific enough to define timely performance and billing authorization by consultants

- (1) "Recommendation regarding start and end date language in department's standard contracts have been discussed with individual departments."

City Light boilerplate, which has been approved by the Law Department, contains language as follows: The term of this contract shall commence upon the date of execution by the Superintendent of City Light, or his designee, and will terminate on _____, or when the maximum amount of this contract is reached, whichever occurs first."

We have not encountered problems with this language and would like clarification if this type of stipulation is perceived to be a problem.

- (2) "Department Management should remind those writing contracts of the need to include in contracts specific start, end and deliverable dates."

City Light contracting procedures do include such provisions and boilerplate includes appropriate blank space for these

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dates. The start date is always the date signed by the executing authority and ending dates are identified in specific boilerplate language.

- (3) "Department management should remind project managers that work performed by a consultant before a contract has been signed or after it has expired is not legally authorized."

Reminders of these prohibitions are made periodically. In nearly all cases where work is performed prior to contract execution there is some perceived legitimate emergency situation which prompts it. Also, there has been an infrequent amendment signed after the normal expiration of the contract, but these are rare, and are exceptions, rather than the rule.

The Consultant Contract Process review course taught by City Light covers this aspect of the contracting process, but there is no guarantee that every person dealing with contracts in the utility receives this training.

FINDING #3 - The Consultant Contracting Ordinance and Procedures should be revised to allow Flexibility for Capital Projects

- (1) "Department management should emphasize to project managers that after-the-fact amendments should be avoided."

See our response to Finding #2, part 3.

- (2) "Departments should institute procedures to accelerate issuance of amendments."
Our "normal" consultant contract processing time is estimated to be between twelve to thirteen weeks. The processing of an amendment takes significantly less time, sometimes as short as two to three weeks especially for emergency situations.

FINDING #4 - Departments and BPW should issue or revise consultant contract manuals to facilitate contracting

The report stated that "City Light's manual was only used for non-board approved contracts. The sole-source emergency criteria had been largely crossed out; there was no criteria as to what City Light considered acceptable sole-source or emergency justification."

In response, the manual was written as a guide for consultant contracting, and is used as a general guide by contract monitors or

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project managers for BPW contracts, although not to a great extent, since the Board contracts, both consultant and construction, go through a different internal process than non-Board contracts.

The sole-source, emergency criteria is not "largely crossed out" in the manual. The reference is found on page 6, item 13, relative to contracts under \$15,000 that later require amendment. This reference is to guidelines for inapplicability of the advertising and selection process, "sole source."

Page 7, section two, item 2 makes reference to inapplicability rules for contracts over \$15,000.00

The reference on page 15, Section Three, item one, refers to Ordinance 108762, emergency, confidentiality, and/or sole source considerations.

- (1) "BPW is encouraged to incorporate suggestions from project managers in its next revision of its rules and to offer an annual training class on consultant contracting rules."

City Light has already started giving its own course (4 classroom hours, 2 days) covering all aspects of the consultant contracting process in-house. So far, forty-one employees have received the training and an additional twenty will follow before year-end. The course will be given three times annually.

City Light would welcome BPW's contribution of a course, and the mutual sharing of information for the benefit of all contract monitors/project managers.

- (2) "All departments should write or revise policies and procedures for consultant contracting."

The revision of our consultant contracting manual is about two-thirds completed and will have a high priority until it is completed.

The out-of-date DPP is also being updated concurrently.

- (3) "These internal policies and procedures should be filed with BPW to comply with BPW 6.30.050."

Once the revisions are completed they will be filed with BPW.

Finding #5 - "The Consultant Reference file should be used more effectively."

- (1) "Contracting departments should review the consultant reference file prior to award of contracts over \$20,000."

City Light Consultant Contracting Manual specifies the above requirement and requires notification via copy of the ad to those listed. The reference file requirement is also part of the process review.

- (2) "Contracting departments should file with BPW consultant evaluation committee reports for all consultant contracts over \$20,000 and consultant performance reviews for all consultants."

While the Department's manual and process requires the above, it has been difficult to obtain absolute conformance. We are working on the development of a mechanism to automatically flag all contracts 30 days prior to expiration to remind contract monitors or project managers of the impending expiration of contracts. Flagged contracts would then result in the initiation of a "reminder memo," to prompt either extension of time, as required, or Performance Review and Evaluation (PRE) as appropriate. We believe this feature can be incorporated into the data base system within 60 days, subject to other conflicting priorities, and this should improve the ratio of completion of PRE's.

- (3) "BPW should assure that departments file performance evaluation and consultant selection committee reports as required."

We have no objection to receiving BPW reminders of this type, but it would undoubtedly increase the BPW workload considerably.

Finding #6 - Insurance requirements should be revised to reduce delays. Insurance monitoring should be improved to maintain adequate insurance protection."

- (1) "The BPW should eliminate the requirements which deletes standard wording on the "ACORD" certificate."

We have experienced a great deal of difficulty with carriers regarding the specific insurance wording, but our boilerplate for consultant contracts does not include the "ACORD" statement deletion phrase. We would be in favor of standard language which would be acceptable to carriers, and yet would cover the City's interests.

- (2) "BPW should emphasize in its insurance regulations that the City's being named as an additional insured only applies to general liability policies, not professional liability policies."

This has not been a problem for City Light.

- (3) "New standard wording written by the Risk Manager and Law Department for construction contracts providing options to add the City as an insured should be adopted as standard wording for consultant contracts."

Having the above options to the present boilerplate language could make the insurance questions easier to deal with.

- (4) "A new indemnification clause used in City construction contracts should be adopted by BPW for consultant contracts."

We agree with the above, as we have encountered many consultant requests to revise or amend the boilerplate which we have recognized is not in accordance with the states' new Tort Reform Act. In most of these cases we have amended the language in response to the specific request.

- (5) "The Risk Manager should verify that the "rules of thumb" used by contracting officers to screen contracts for his review are reasonable."

The contracts in which the insurance requirements require screening and the Risk Manager's approval of an exception are primarily those where the potential risk to the City of errors or omissions, or general liability appears to be excessive relative to the amount of the contract, but the potential risk to the City exceeds the price of the contract as well.

Finding #7 - "Capital Project managers should obtain price information to assist in architectural and engineering contract negotiations"

- (1) "Departments and BPW should require for its contracts that all architecture and engineering contract solicitations adopt the sealed envelope method currently used by Water Department".

The finding is one that makes a great deal of sense. The method used by the Water Department would help to ensure

that bids be more competitive being submitted prior to the selection of a contractor but not opened until after the selection process, and before the negotiations begin.

Finding #8 - "HRD should revise procedures and requirements to increase efficiency and compliance in the consultant contracting process."

- (1) "(a) The City Council should evaluate whether the concerns of W/MBE consultants outweigh the increased confusion and inefficiency of two minimums (W/MBE and BPW Consultant Ordinance).

"(b) HRD and BPW should clarify in the BPW Rules procedures for contracts in the \$15,000 to \$20,000 range."

We agree that there is confusion in the present situation, with HRD and BPW rules having different minimum levels, and we would be interested in some resolution in a way that would not result in a loss of contract \$ to W/MBE/DB firms.

- (2) "City Council approval of HRD's proposed revisions to the W/MBE ordinance would provide greater opportunities to W/MBE consultants and increased flexibility to HRD and department project managers."

The proposed revision to the W/MBE ordinance appears to provide greater flexibility, which would be advantageous in amendment situations, particularly those situations where the contract amendment amount is over 10% of the original contract, but where there is no ability to subcontract the additional work, or where the WMBE goals have already been exceeded by 10% or more.

- (3) "HRD could expand its outreach to the W/MBE community by using project managers as an additional information source."

Use of project managers as an additional information source for WMBE outreach would have limited utility, particularly without some educational or informational program for them. The certification of WMBE's by the the State goes into effect on 1/1/88, and a re-

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education process in this regard will be needed anyway.

- (4) "(a) The City Council should adopt HRD's proposed revision to the W/MBE Ordinance."

(b) HRD should propose a revision to the EEO ordinance to address emergency contracts and amendments."

We agree with the above recommendations since there are emergency contracts which require approval of the contract and amendments which may require waiver of subcontracting, which couldn't be done legally after the fact under the present rules.

- (5) "HRD should evaluate its requirements for consultants to submit "Contractor Work Force Reports" and "Equal Employment Opportunity Reports."

We agree that these reports ought to be deleted for sole proprietorships and firms up to about five employees. This would take care of the majority of our consultants, whose employment is small and static,

- (6) "HRD should provide instructions and sample documents for all required documentation to BPW for inclusion in the BPW rules."

This has been needed for some time. Since the staff size at HRD is small, an investment of some time in an instruction sheet explaining the process and the forms would be helpful to all in the contracting process. An updated resource list would also be helpful.

This concludes our response to the questions, and a word about the process is in order. This has been the most complete audit in a long time, and the most comprehensive in its coverage of issues that can stand improvement. The audit staff should be commended for their efforts.

CCH:bjc
NORW

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Your
Seattle
Human Rights Department



Bill W. Hilliard, Director
Charles Royer, Mayor

October 5, 1987

TO: Norward J. Brooks
City Comptroller

FROM: *BWH* Bill W. Hilliard
Director

RE: Consultant Contract Departmental Review
Draft Audit Report

I have reviewed the Consultant Contract Departmental Review Audit Report and agree with the recommendations addressed to the Human Rights Department.

Randy Gainer, the former Compliance Manager and Clifford Marshall, Contract Unit Supervisor have previously discussed the audit with Ms. Laura Kennedy, Supervising Auditor and she incorporated their recommendations in the report.

BWH:CM:sw

cc: Laura Kennedy, Supervising Auditor
Elaine Rose, Compliance Manager
Cliff Marshall, Supervisor Contracts Unit

Seattle
Department of
Parks and Recreation



Charles Royer, Mayor

Walter R. Hundley, Superintendent

October 6, 1987

Mr. Norward J. Brooks
City Comptroller
101 Municipal Building
Seattle, WA 98104

Subject: **Consultant Contracts -- Audit Procedures**

Dear Mr. Brooks:

This letter is the Department's response to the draft City-wide audit of compliance with consultant procedures.

Our written comments are in the same numerical order as the draft audit findings. As was the case with our previous Department response, these comments reference and/or correct your draft audit findings as appropriate. The Department's comments are below.

1. Control over Sole Source/Emergency contracts should be tightened.

"Examples of these unacceptable justifications include:

" -- A contract for a service which the City has procured from a number of vendors was deemed sole source primarily on the basis of the vendor having been a former Office of Management and Budget Director for the City." (Page 8)

The Department indicated to your staff during the initial Department audit and in response to this final draft review audit finding that the above consultant had a background and level of expertise that allowed the Department to receive excellent work products faster and for less money than the Department would have paid otherwise.

" -- A vendor won a sole source contract on the basis of her previous experience with the department, but her initial contract had been extended four times resulting in costs two times higher and contract duration three times higher than the original estimate. This same vendor was awarded another sole source contract, this one without written justification." (Page 8)

The Department will not repeat this type of amendment. Although the situation(s) surrounding this series of amendments were unusual, it is unlikely they will occur again. It should also be noted that the consultant was awarded "another sole source contract" under the consultant contract provisions for Women Business Enterprise (WBE) in relation to consultant contracts over \$1,000.00 dollars. Again, the completed work was excellent.

" -- Various contracts were deemed sole source on the basis of the vendor being "best qualified" or "uniquely qualified", rather than the only vendor qualified." (Page 9)

In keeping with the intent of your staff findings, Department managers will receive additional training on the differences between determining the best qualified and the only qualified vendor for a sole source contract. The training emphasis will be on ensuring that the best qualified is also the only qualified vendor before a sole source contract is awarded.

The Department also will continue its internal written justification process for sole source contracts which is currently a part of the Department's contract consultant manual.

2. Start, completion, and deliverable dates should be specific enough to define timely performance and billing authorization by consultants.

" -- Parks contracts usually have a fixed start and end date but the date of the contract signing is generally not indicated. The date on an attached signature routing slip (not part of the contract) indicates that the contract is frequently signed after the contract start date. This could cause confusion as to when the City is legally required to pay on the contract, especially since standard contracts also include a phrase that contracts are not binding until executed." (Page 11)

The Department revised the consultant contract form in April, 1987, to include a signature block to show the date that the Superintendent signs the contract. The start date section on the first page of the consultant contract form indicates a start date that is commensurate with the date of signing by the Superintendent.

4. Departments and BPW should issue or revise consultant contract manuals to facilitate contracting.

Your staff's specific finding referencing the Department states that:

" -- Parks had the most complete manual of the departments we reviewed. However, it applied only to non-Board approved contracts." (Page 19)

Letter to Mr. Norwood J. Brooks
October 6, 1987
Page 3

The Department is in the process of developing (as of this writing) a manual for BPW consultant contract procedures. One section will be on consultant selection for BPW consultant (design) contracts. This manual will include existing BPW rules, SMC's and RCW's governing this type of contract. It will be available to staff along with the existing consultant contract manual for non-BPW consultant contracts. Copies of these manuals will be filed with the Board of Public Works.

If you have any questions regarding these comments, please contact Curt Green, Parks Financial Management Director, at 684-8005.

Sincerely,



Walter R. Hundley
Superintendent

WRH:ras

Seattle
Engineering Department



Gary Zarker, Director of Engineering
Charles Royer, Mayor

MEMORANDUM

DATE: October 6, 1987
TO: Norward J. Brooks, City Comptroller
FROM: Gary Zarker, Director of Engineering *Gary Zarker*
SUBJECT: Response to Consultant Contract Departmental
Review Draft Audit Report

The following is the Engineering Department's response to your Draft Audit Report on Consultant Contracting:

FINDING #1

Control over sole source/emergency contracts should be tightened. The Seattle Engineering Department (SED) rarely declares any Consultant a sole source, and according to your staff during the exit conference, the proper justifications are in place for those checked. The only sole source agreement by the Engineering Department in 1986 identified by the Audit was for a Consultant to make a presentation to the City Council on a Utility Rate Study they had performed for the City. This was done as a result of City Council request and is a justified use of sole source contracting.

The emergency contracts awarded by SED were for emergency work dealing with the damage caused by heavy rainfalls and dealing with landslides, which are also justified use of emergency contracting.

The SED has always used the requirements of the Consultant Selection Ordinance (Ord. 108762, as amended) for making a sole source declaration. By doing so, we end up with very few sole source contracts. We have had no need to have our own policy or procedures on this. However, it will be added to our Consultant Selection Procedures and will include language requiring all sole source/emergency contracts over \$20,000 to be filed with the Board of Public Works (BPW).

FINDING #2

Start, completion and deliverable dates should be specific enough to define timely performance and billing authorization by consultants.

This is an area that has been a real concern for all City departments. The big problem is the amount of time it takes to get proof of insurance in a form that is acceptable to the Law Department. It has taken as much as three months to get insurance, and a three month delay of a project could be disastrous. Start and end dates are impossible to predict if you don't know when insurance will be available. Our system is to use the language "start upon written notice to proceed" for the start date, and to make our best guess for an end date. If an attached schedule differs from the dates in the Agreement, the Agreement dates rule. The schedule is treated as an estimate by the Consultant. The SED will make every effort to identify start and end dates. Notice to proceed letters will be made a part of the consultant selection record and closer scrutiny will be given to insure dates are correct.

SED does amend and/or supplement expired Agreements when the need arises. This procedure was approved by the Law Department.

FINDING #3

The Consultant Contracting Ordinance and procedures should be revised to allow flexibility for capital projects.

I agree there needs to be more flexibility for capital projects. The amount of time it takes to get additional work authorized creates a real problem in trying to meet schedules. However, getting the applicable ordinances changed is very difficult.

If a Project Manager does authorize work prior to an amendment or supplement being approved, it is because the Project Manager has weighed the consequences of delaying the project against possible litigation for working prior to having an executed agreement. The greater risk would be in delaying the project.

The process for amendments and/or supplements has been streamlined to the maximum, however, it is still a lengthy process. The SED is in favor of streamlining procedures and would support any efforts toward that goal.

FINDING #4

Departments and BPW should issue or revise consultant contract manuals to facilitate contracting.

The SED Consultant Selection policies and procedures are being revised and updated. I expect this work to be completed by November, 1987. Also, Consultant Contracting classes are being prepared to be given to all Project Managers. These classes are scheduled to take place in October or November, 1987.

FINDING #5

The Consultant Reference File should be used more effectively.

The SED has extensive working knowledge of most engineering firms that respond to SED requests for proposals. SED keeps copies of anything that the BPW may have in their files for Consultants that have done work for SED. If additional information is required, Project Managers do review BPW files.

SED seldom has a non-BPW contract for more than \$20,000. Almost all SED contracts over \$20,000 are public works related and therefore approved by the BPW. To get BPW approval, all required documentation has to be sent to the BPW.

The SED always reviews the consultant reference file for projects over \$20,000 since it is a requirement of the Consultant Selection Ordinance. That review consists of identifying consultants in the field of expertise required and mailing those firms a copy of the advertisement for consultant services.

FINDING #6

Insurance requirements should be revised to reduce delays.
Insurance monitoring should be improved to maintain adequate insurance protection.

As stated in Finding #2, getting the proof of insurance in the form acceptable to the Law Department is the biggest problem in getting timely action on any agreement. I concur with the objective of this Finding to reduce delays relating to deleting the standard wording on the ACORD certificate of insurance. Care must be taken to protect the City's interests, however, I feel the requirements set by the Law Department are excessive.

FINDING #7

Capital project managers should obtain price information to assist in architectural and engineering contract negotiations.

The SED does not require consultants to submit sealed cost estimates when submitting proposals. Most consultants we talked to resent this costly extra effort. The cost estimates cannot be used in selection; therefore, the Consultants have no incentive to try to reduce costs. The numbers you get could possibly be inflated just in case they are selected.

Since State Law does not allow costs to be included as a selection criteria, the SED uses an in-house estimate as a negotiation tool. All Consultant labor rates are scrutinized.

Once a firm is selected, the Scope of Work has to be negotiated before costs can be talked about. Most of the time, the Scope changes enough that the other estimates would not be relative. I believe it is not in anyone's best interest to require a sealed cost estimate.

FINDING #8

HRD should revise procedures and requirements to increase efficiency and compliance in the consultant contracting process.

SED is agreeable to all of your recommendations in Finding #8. Any improvements that will save time and make it easier to meet WMBE requirements would be appreciated.

GZ/DLT:ge