



Office of the City Auditor

**Report to the City Council
City of San José**

**A REVIEW OF THE CUSP
REQUEST FOR PROPOSAL
PROCESS**

**Report 04-05
June 2004**



CITY OF SAN JOSÉ, CALIFORNIA

800 N. First Street, San Jose, California 95110 • Tel: (408) 277-4601

GERALD A. SILVA
City Auditor

June 25, 2004

Honorable Mayor and Members
of the City Council
801 North First Street, Room 600
San Jose, CA 95110

Transmitted herewith is *A Review of the CUSP Request for Proposal Process*. This report is in accordance with City Charter Section 805. An Executive Summary is presented on the blue pages in the front of this report. We discussed this report with the City Administration and amended our report to reflect their comments. The Administration may submit additional comments to the City Council under separate cover.

I will present this report to the City Council on June 29, 2004. If you need any additional information, please let me know. The City Auditor's Office staff members who participated in the preparation of this report are Mike Edmonds, Eduardo Luna, Ruth Merino, Gitanjali Mandrekar, and Jennifer Callaway.

Respectfully submitted,

Gerald A. Silva
City Auditor

finaltr
GS:bh

cc: Del Borgsdorf	Soraya Serajeddini	Brian Doyle
Kay Winer	Dorothy McLaughlin	Andy Heath
Peter Jensen	Steve Willis	Jose Obregon
Carl Mosher	Wendy Walker	Anna Jatczak
Scott Johnson	Rick Doyle	Dottie Disher
Wandzia Grycz		



Table of Contents

Executive Summary	i
Introduction	1
Background	1
Objectives, Scope, And Methodology	6
When Did City Staff Become Aware Of A Potential Conflict Of Interest Issue Between The TMG Consultant And One Of The Vendors?	7
What Did City Staff Do After Becoming Aware Of The Potential Conflict Of Interest Issue?	7
Did The TMG Consultant Have An Apparent And/Or Actual Conflict Of Interest?	8
What Role Did The TMG Consultant Play In The Evaluation Process And Did The Consultant Bias The Vendor Selection Process?	10
Did TMG Comply With The Conflict Of Interest And Notification Provisions In Its Contract With The City?	10
Was The City’s Cost Analysis Of The Final Three Vendors’ Cost Proposals Fair?	11
Was The CUSP Evaluation Process Fair, Objective, And Accurate?	18
Appendix A	
Definition Of Priority 1, 2, And 3 Audit Recommendations	A-1

Table of Exhibits

Exhibit 1	
CUSP Project Timeline—December 2001 To May 2004.....	4
Exhibit 2	
City’s Forecasted Proposal And Go-Live Costs For CUSP.....	12
Exhibit 3	
City’s Ten-Year Cost Evaluation.....	12
Exhibit 4	
City Staff Involvement With The CUSP RFP Process	19

Executive Summary

In accordance with the City Council's direction at its May 4, 2004 meeting, we reviewed the CUSP Request for Proposal (RFP) process. We conducted our review in accordance with generally accepted government auditing standards and limited our review to the questions specified in the Objectives, Scope, and Methodology section of this report.

On May 4, 2004, the City Council directed the City Auditor to provide an independent review of the CUSP RFP process and report back within 30 days with the analysis. This report is in response to the City Council's direction.

We reviewed the CUSP RFP process to answer the following questions:

1. When did City staff become aware of a potential conflict of interest between the TMG consultant and one of the vendors?
2. What did City staff do after becoming aware of the potential conflict of interest issue?
3. Did the TMG consultant have an apparent and/or actual conflict of interest?
4. What role did the TMG consultant play in the evaluation process and did the consultant bias the vendor selection process?
5. Did TMG comply with the Conflict of Interest and Notification Provisions in its contract with the City?
6. Was the City's cost analysis of the final three vendors' cost proposals fair?
7. Was the CUSP evaluation process fair, objective, and accurate?

We found that City staff first became aware of a potential conflict of interest between one of the City's consultants for the CUSP RFP process and one of the vendors that submitted a response to the CUSP RFP on November 4, 2003. The Executive Steering Committee for the CUSP RFP process met on November 6, 2003, to discuss the potential conflict of interest. The Committee discussed information the consultant provided on November 5, 2003, regarding his relationship with

one of the proposers and the role the consultant played during the RFP evaluation process. The Committee decided that a conflict of interest did not exist.

The Executive Steering Committee did not request a formal City Attorney opinion on the potential conflict of interest. In addition, the Executive Steering Committee continued to involve the consultant in the CUSP RFP process after its November 6, 2003 meeting.

According to the City Attorney, the consultant did have an apparent conflict of interest regarding the CUSP RFP process. However, because of the role the consultant played in the CUSP RFP process, the consultant did not have an actual conflict of interest. Further, based on testimony from all project participants and all the documents we reviewed, we did not see any evidence to suggest that the TMG consultant attempted to influence the process and/or vendor selection to favor one vendor or another.

In addition, according to the City Attorney, the consultant violated both the conflict of interest and notification provisions of its contract with the City of San Jose.

In our opinion, the City needs to be more proactive regarding consultants and potential conflict of interest issues. Specifically, the City should require consultants to complete a conflict of interest questionnaire. Such a questionnaire would require any consultant to affirm that he or she has no actual or apparent financial or other conflicts of interest related to any specific project. The City should also require all City personnel who participate in an evaluation process to complete a similar questionnaire. Finally, City staff should immediately request a formal opinion from the City Attorney's Office when any future conflict of interest issues arise. By so doing, the City can identify and appropriately resolve any potential conflict of interest issues.

We conducted an extensive review of the final three vendors' cost proposals and held numerous meetings with City staff to determine if the City's cost analysis of the final three vendors' cost proposals was fair. We found that 1) City staff should not have added \$377,701 to Deloitte/SAP's cost proposal for cost comparison purposes; 2) City staff and TMG did not artificially raise the Deloitte/SAP cost proposal by \$4.15 million; 3) Deloitte/SAP's response to the CUSP RFP contains vague and contradictory language regarding what level of service they

were proposing to provide to the City; and 4) according to the Executive Steering Committee, cost was not a deciding factor in their vendor selection decision. Finally, using Deloitte/SAP's asserted level of service produces a ten-year cost proposal that is comparable to the other two vendors' ten-year cost proposals.

With regard to the CUSP RFP evaluation process, in our opinion, overall the process was fair, objective, and accurate. However, we did note several issues and errors during various phases of the evaluation process. It does not appear that these issues and errors would have materially affected the final outcome of the vendor selection process with the possible exception of City staff not adequately checking BearingPoint's references. In addition, we noted several areas that the City needs to improve upon when it prepares future RFPs and evaluates the responses to those RFPs. The City should treat these issues and errors as lessons learned for future procurements.

We recommend that:

1. The City require consultants to complete a conflict of interest questionnaire affirming that he or she has no actual or apparent financial or other conflicts of interest related to any specific project. (Priority 1)
2. The City require all City personnel who participate in an evaluation process to complete a similar questionnaire. (Priority 1)
3. City staff should immediately request a formal City Attorney opinion when any conflict of interest issues arise. (Priority 1)
4. City staff level future vendor cost proposals only for budgeting purposes and after the City has selected a vendor. (Priority 3)
5. The City develop a formal policy regarding when it is appropriate for City staff to question and/or communicate with respondents to City RFPs. (Priority 3)
6. The General Services Purchasing Division should be the City's primary point of contact and the manager of the RFP process for all RFPs in which general services and commodities are being procured. (Priority 3)

7. When the City uses a consensus scoring system it should document why the team members gave specific scores. (Priority 3)
8. The City should retain all individual scoring cards and note sheets. (Priority 3)
9. City Evaluation Teams and Committees should keep attendance records and minutes. (Priority 3)
10. The City should structure its RFPs to facilitate the scoring of responses. (Priority 3)
11. Evaluation Teams or Committees should score all of the vendors that make product demonstrations. (Priority 3)
12. Evaluation Teams and Committees should comply with the City's Request For Proposal Procedures Manual. (Priority 3)
13. The City should implement procedures to insure that City staff or consultants compile comparative vendor cost information that is complete and accurate. (Priority 3)
14. The City Council not give the City Manager the authority to enter into exclusive negotiations with BearingPoint/PeopleSoft until City staff adequately checks BearingPoint's references. (Priority 1)
15. The City ensure that City staff adequately check proposer references for future RFPs. (Priority 3)

Introduction

In accordance with the City Council's direction at its May 4, 2004 meeting, we reviewed the CUSP Request for Proposal (RFP) process. We conducted our review in accordance with generally accepted government auditing standards and limited our review to the questions specified in the Objectives, Scope, and Methodology section of this report.

The City Auditor's Office thanks the CUSP project team, other City staff, the City's consultants, and the vendors who responded to the CUSP RFP, for their cooperation, input, and insight during the audit.

Background

In December 2001, the City Council directed staff to develop a RFP for the procurement of an integrated Customer Relationship Management (CRM), Utility Billing System (UBS), and Partner Relationship Management (PRM) System. City staff gave the project the acronym CUSP.

Following the direction of the City Council, City staff formed an Executive Steering Committee comprised of a Deputy City Manager, the Director of Environmental Services (ESD), the City's Chief Information Officer (CIO), and the Director of Finance. In addition, the City hired a project manager and formed a support team to define the scope of the RFP.

In July 2002, the City issued a Request for Information (RFI) for an enterprise-wide solution for the CUSP project. The City designed the RFI to gather information from the industry in order to educate the user groups and the Information Technology Department (IT) staff on available solutions and to establish a price range for the project. City staff used the responses to the RFI and the information gained from product demonstrations and discussions to develop the RFP.

City staff developed and the City Council approved an RFP that City staff issued in June 2003 for Phase 1 of the CUSP project. The scope of the RFP was for a Customer Information System (CIS) to perform billing, customer service information, work order management, and partner performance monitoring. City staff planned to use the CIS solution for the garbage and recycling programs, and the Municipal Water System. City staff also planned to scale the CIS solution to include other

services such as sanitary and storm sewer. Furthermore, the RFP stated that the City would consider either a hosted or a licensed solution for the CUSP project.

There were 14 companies that responded to the RFP by the deadline of July 31, 2003. Of these 14 companies, 12 proposed the CUSP solution and two proposed only the optional bill print and mailing features identified in the RFP. The Executive Steering Committee placed its first priority on the CUSP system proposals and deferred consideration of the optional features such as the bill print and mailing features until after CUSP implementation.

To select the proposed vendor, the City used a three-phase evaluation process: Phase 1-Minimum Requirements Review; Phase 2-Functional Proposal Review; and Phase 3-Product Demonstrations, Cost Evaluations, and Interviews. The Phase 3 review included two parts. The first part included one-day product demonstrations with concurrent technical and project management interviews with each proposer. The second part of Phase 3 was high-level product demonstrations and oral presentations to the Executive Steering Committee.

The City contracted with two consulting firms to assist in the RFP evaluation process. In July 2003, the City contracted with TMG Consulting, Inc. (TMG), a CIS evaluation consultancy firm specializing in evaluation, selection, and negotiations for projects similar to the CUSP project. The City also contracted with The Application Group to assist in the technical review and cost evaluation of the RFP finalists.

On October 23, 2003, upon conclusion of the three phases of the evaluation process, the Executive Steering Committee scored and ranked two vendor finalists. The Executive Steering Committee ranked BearingPoint/PeopleSoft as the top vendor and Indus International (Indus) as the number two vendor. The Executive Steering Committee had also invited Deloitte/SAP to participate in the final demonstration phase of the process but the Executive Steering Committee opted to not score or rank Deloitte/SAP.

On November 4, 2003, the CUSP project team and the Executive Steering Committee learned of a potential conflict of interest involving the TMG consultant. Specifically, the TMG consultant on the CUSP project was married to an Indus employee, the second-ranked vendor.

On November 6, 2003, the Executive Steering Committee met and discussed the potential conflict of interest issue. The Committee concluded, without benefit of a formal opinion from the City Attorney's Office, that a conflict of interest did not exist and continued to use the services of the consultant.

According to the Executive Steering Committee, from November 2003 to March 2004, the CUSP project team analyzed alternatives to the CUSP solution such as outsourcing, upgrading the existing Socrates system, and a do nothing option.

On March 10, 2004, the CUSP team presented a report to the Making Government Work Better Committee (MGWB Committee) updating them on the CUSP project. The CUSP project team presentation included four options: 1) CUSP licensed option; 2) CUSP outsourced option; 3) upgrading the existing Socrates system; and 4) do nothing. The CUSP project team also included a Return on Investment (ROI) analysis and a commercial paper funding plan. The MGWB Committee directed staff to move forward and present two options to the City Council. The first option was to proceed with CUSP with an off-the-shelf, licensed solution with on-going technology support from the City's IT Department. The second option was to contract with an outsource vendor for the CUSP system and support.

On March 23, 2004, the City Council directed staff to proceed with a licensed, off-the-shelf solution that integrates the City's four utility services (Recycle Plus, the Municipal Water System, sanitary sewer, and storm sewer). The City Council also directed staff to return by the end of April with a recommended vendor and a funding strategy.

In April 2004, the Finance Director's report to the City Council recommended that the City Council approve three recommendations related to the CUSP project:

1. Adopt a resolution authorizing the City Manager to enter into exclusive negotiations for sixty days for the purchase, installation and integration of an Integrated Utility Billing, Customer Service, and Performance Management System with BearingPoint/PeopleSoft with the option to commence negotiations with Indus in the event business terms are not reached with BearingPoint/PeopleSoft;

2. Direct staff to proceed with the necessary actions to expand the City’s commercial paper program to provide financing for the project; and
3. Direct staff to return to Council by August 2004 for approval of a final agreement between the City and the recommended CUSP vendor solution and the related budget appropriations.

In April 2004, the City Attorney’s Office learned of the potential conflict of interest issue. On April 30, 2004, the City Attorney advised the Mayor and City Council on the potential conflict of interest and further advised that the City Council:

1. May authorize the City Manager to enter into negotiations with the recommended award to BearingPoint/PeopleSoft and
2. Should remove Indus from the recommendation as a secondary award until any conflict issues can be resolved.

On May 4, 2004, SAP sent a letter to the City Council requesting that the City “undertake a new and fair evaluation process for the ...CUSP procurement.” The City Council directed the City Auditor to provide an independent review of the CUSP RFP process and report back within 30 days with the analysis.

Exhibit 1 below is a timeline of the history of the CUSP project from December 2001 through May 2004.

Exhibit 1 CUSP Project Timeline—December 2001 To May 2004

DATE	EVENT
December 2001	The City Council directed staff to develop a RFP for the CUSP project.
January 2002	City formed an Executive Steering Committee comprised of a Deputy City Manager, the Director of ESD, the CIO, and the Director of Finance.
July 2002	City issued an RFI for an enterprise-wide solution for the CUSP project.
August 2002	The TMG consultant and a SCT Banner employee married.
October 2002	Potential vendors responded to the RFI and gave demonstrations on their products’ capabilities. The wife of the TMG consultant provided demonstrations on the SCT Banner product. In March 2003, Indus purchased SCT Banner and she became an Indus employee.
June 13, 2003	City staff developed and issued the RFP for the CUSP project.
July 14, 2003	The City contracted with TMG.
July 29, 2003	TMG commenced work on the project.
July 31, 2003	14 companies responded to the RFP of which 12 proposed a CUSP solution and two proposed only the optional bill print and mailing features.

DATE	EVENT
August 6, 2003	The General Services Department's (GSD) Purchasing Division screened the proposals to ensure that the vendors submitted all required documents. All 12 vendors passed on to Phase 2.
August 26, 2003	The Evaluation Team completed the Phase 2 evaluation-Functional Proposal Review and passed five vendors on to Phase 3. The five vendors the Evaluation Team selected were Indus, BearingPoint/PeopleSoft, Deloitte/SAP, Systems and Software, and Cayenta.
September 2, 2003	The City contracted with The Application Group to assist in the technical evaluation of the proposals.
September 2003-March 2004	Staff, the TMG consultant, and The Application Group consultant worked on the cost and financial analyses for the project. As described later in the report, TMG played a limited role in the cost and financial analysis. TMG prepared a preliminary cost analysis while City staff and The Application Group consultant performed most of the detailed cost and financial analyses.
September 15-19, 2003	Phase 3-The Evaluation Team held product demonstrations and interviews with the five remaining vendors.
October 2003	The Evaluation Team recommended two finalists BearingPoint/PeopleSoft and Indus for the second stage of Phase 3. The Executive Steering Committee added Deloitte/SAP to the final group of vendors.
October 2003	The three vendors demonstrated their product and responded to questions from the Executive Steering Committee.
October 23, 2003	The Executive Steering Committee ranked BearingPoint/PeopleSoft first and Indus second. Although Deloitte/SAP was a finalist and participated in the demonstration phase, the Executive Steering Committee did not score or rank Deloitte/SAP.
November 4, 2003	The City received an e-mail that included a reference to a potential conflict of interest issue regarding the TMG consultant whose wife works for Indus.
November 5, 2003	The TMG consultant provided the CUSP Project Manager with information relating to: 1) the TMG consultant's role in the CUSP project, 2) the TMG consultant's wife's level of involvement in Indus' CUSP proposal, and 3) any other projects where the TMG consultant and Indus participated and the outcome.
November 6, 2003	The Executive Steering Committee held a meeting and discussed the potential conflict of interest issue. Without the benefit of a formal City Attorney opinion, the Executive Steering Committee determined that no conflict of interest issue existed.
November 2003-March 2004	City staff evaluated other options to the CUSP project and prepared additional cost analyses for doing nothing, upgrading the Socrates system, and a hosted solution. City staff also prepared a Return on Investment (ROI) analysis.
March 10, 2004	City staff presented cost information on the various project alternatives to the MGWB Committee. The MGWB Committee directs staff to move forward and present two options to the City Council, an off-the-shelf licensed solution and an outsourcing solution.
March 29, 2004	The City Council directed staff to return by the end of April 2004 with a recommended vendor and a funding strategy for an off-the-shelf licensed solution for the CUSP project.
April 16, 2004	The Finance Director prepared a staff report recommending that the City Council adopt a resolution authorizing the City Manager to enter into exclusive negotiations for sixty days for the purchase, installation and integration of an Integrated Utility Billing, Customer Service, and Performance Management System with BearingPoint/PeopleSoft with the option to commence negotiations with Indus in the event business terms are not reached with BearingPoint/PeopleSoft.
April 30, 2004	The City Attorney's Office advised the Mayor and the City Council on the potential conflict of interest issue.
May 4, 2004	SAP sent a letter to the City Council requesting that the City "undertake a new and fair evaluation process for the...CUSP procurement." The Mayor and City Council directed the City Auditor to provide an independent review of the CUSP procurement project.

**Objectives, Scope,
And Methodology**

We reviewed the CUSP RFP process to answer the following questions:

1. When did City staff become aware of a potential conflict of interest between the TMG consultant and one of the vendors?
2. What did City staff do after becoming aware of the potential conflict of interest issue?
3. Did the TMG consultant have an apparent and/or actual conflict of interest?
4. What role did the TMG consultant play in the evaluation process and did the consultant bias the vendor selection process?
5. Did TMG comply with the Conflict of Interest and Notification Provisions in its contract with the City?
6. Was the City's cost analysis of the final three vendors' cost proposals fair?
7. Was the CUSP evaluation process fair, objective, and accurate?

In addressing these questions, we interviewed City staff that participated in the CUSP project, the Executive Steering Committee, and members of the City Attorney's Office. In addition, we interviewed representatives from TMG and The Application Group who assisted in the evaluation process and representatives from the three vendor finalists in the RFP process - BearingPoint/PeopleSoft, Deloitte/SAP, and Indus. We also reviewed the following documents: Municipal Code sections on conflicts of interest, the City's Request For Proposal Procedures Manual, Federal Acquisition Regulations (FAR), General Accounting Office (GAO) publications on information system procurements, the City Attorney's opinion on the conflict of interest issue, the CUSP RFP, the vendors' proposals submitted in response to the CUSP RFP, contracts and billings from TMG and The Application Group, the scoring methodologies and scoring sheets City staff used to rank vendors, the City's analysis of the final three vendors' CUSP cost proposals, and various staff reports on the CUSP project.

We did not evaluate the Return on Investment (ROI) analysis City staff submitted to the City Council.

When Did City Staff Become Aware Of A Potential Conflict Of Interest Issue Between The TMG Consultant And One Of The Vendors?

According to the Director of the Environmental Services Department (ESD), on November 4, 2003, the Chief Executive Officer of Catapult Strategies, Inc. called to discuss an e-mail regarding the San Jose CUSP evaluation process. Of concern to the caller was an allegation in the e-mail that the TMG consultant's wife was an employee of Indus International, one of the vendors that had responded to the CUSP proposal.

Because of conflicting testimonies, we could not verify that the City was aware of any potential conflict of interest prior to November 4, 2003. The TMG consultant remembers informally discussing his wife's employment status with the CUSP Project Manager sometime prior to September 10, 2003, but he cannot recall a specific date. The CUSP Project Manager denies that such a conversation took place and that she first learned of the potential conflict of interest on November 4, 2003.

What Did City Staff Do After Becoming Aware Of The Potential Conflict Of Interest Issue?

All of the Executive Steering Committee members agree that they discussed the potential conflict of interest issue at the Executive Steering Committee's November 6, 2003 meeting. According to the Executive Steering Committee members, their discussion on this issue revolved around information the TMG consultant had provided to the CUSP Project Manager on November 5, 2003 relating to 1) the TMG consultant's role in the CUSP project, 2) the TMG consultant's wife's level of involvement in Indus' CUSP proposal, and 3) any other projects where the TMG consultant and Indus participated and the outcome. We should note that some, but not all, of the Executive Steering Committee members recall that a Senior Deputy City Attorney attended the November 6, 2003 meeting but the Committee members have no recollection of the Senior Deputy City Attorney commenting on the potential conflict of interest issue. The Senior Deputy City Attorney does not remember attending the November 6, 2003 meeting and believes that he first heard about the potential conflict of interest issue in April 2004. What is clear is that the Executive Steering Committee did not request a formal City Attorney opinion on the potential conflict of interest. In addition, the Executive Steering Committee continued to involve the TMG consultant in the CUSP process after its November 6, 2003 meeting. In our opinion, the Executive Steering Committee should have immediately requested a formal City Attorney's

opinion on the potential conflict of interest and discontinued using the TMG consultant's services until the City Attorney opined on the conflict of interest issue.

Did The TMG Consultant Have An Apparent And/Or Actual Conflict Of Interest?

According to the City Attorney, the fact that the TMG consultant is married to an Indus employee constitutes an apparent conflict of interest. On April 30, 2004, the City Attorney issued a legal opinion on the potential conflict of interest issue as a supplemental memorandum to the City staff report on the CUSP project for the City Council's May 4, 2004 meeting. Citing an Opinion of the State Attorney General, the City Attorney opined that "merely the existence of the relationship with a financial interest should prohibit any participation even if there is no intent to influence the decision because of the interest and there is likelihood that selection of the party would result in financial gain." Consequently, the fact that the TMG consultant's spouse worked for Indus was sufficient for the City Attorney to recommend that the City Council exclude Indus from consideration until the conflict of interest issue was resolved.

To determine if an actual conflict of interest exists we analyzed the role the TMG consultant played in the evaluation process. We found that during the evaluation process, the TMG consultant performed a variety of CUSP project tasks. Specifically, the TMG consultant:

- Assisted staffs' script development for vendor demonstrations;
- Provided some of the scoring templates and scoring scales used in the evaluation process;
- Recorded scores based on staff input;
- Facilitated the scoring for one of the Phase 2 criteria;
- Summarized and calculated the final scores for Phase 2 and Phase 3a;
- Facilitated the Phase 3a vendor demonstrations for the functional criteria;
- Compiled preliminary cost information for the evaluation process. However, The Application Group consultant performed most of the analysis of vendor cost proposals after the City contracted with him in September 2003;

- Collaborated with City staff to summarize the results of each phase of the evaluation process including reference checks, and presented the summarized results to the Executive Steering Committee; and
- Was a point of contact between the City and the vendors that responded to the CUSP RFP.

As noted above, we did not find any evidence that the TMG consultant scored any of the proposals, conducted reference checks, or was directly involved in the vendor selection.¹ Although the TMG consultant did not conduct any vendor reference checks, he did obtain reference contact information, assisted City staff to develop reference check questions, and provided the template the Evaluation Team used to document the reference checks. In regards to the final selection process, the TMG consultant attended the product demonstrations and presented information to the Executive Steering Committee. However, according to the Executive Steering Committee members, they developed their own criteria and weighting for the final ranking of vendors. Moreover, the Executive Steering Committee members stated that the TMG consultant was not in the room when the Executive Steering Committee discussed the vendor presentations and did its final scoring and ranking of the vendors.

The City Attorney told us that the TMG consultant's role in the CUSP project as described above does not constitute an actual conflict of interest because the TMG consultant "did not provide independent analysis of the proposals but merely participated in facilitating the evaluation process". Finally, the City Council will make the actual vendor selection based upon a recommendation of a City panel that did not include the TMG consultant.

¹ The scope of services in TMG's contract with the City stated that the consultant would provide these services.

What Role Did The TMG Consultant Play In The Evaluation Process And Did The Consultant Bias The Vendor Selection Process?

Based on testimony from all project participants and all the documents we reviewed, we did not see any evidence to suggest that the TMG consultant attempted to influence the process and/or vendor selection to favor one vendor or another. The TMG consultant did not make a vendor selection decision, nor did he make a recommendation regarding a decision. The Executive Steering Committee members indicated that the TMG consultant was not involved in scoring any of the proposals and did not show favoritism toward any particular vendor. The Executive Steering Committee indicated that the TMG consultant did not influence their vendor selection decision and that he was not present when the Executive Steering Committee made its final vendor selection decision.

Did TMG Comply With The Conflict Of Interest And Notification Provisions In Its Contract With The City?

On November 5, 2003, the TMG consultant informed the CUSP Program Manager that his spouse worked for Indus. The TMG consultant's notification method does not comply with the conflict of interest provisions of the City's agreement with TMG Consulting. Specifically, Section 17 of the agreement for consultant services between the City of San Jose and TMG Consulting, Inc., effective July 14, 2003, pertains to conflict of interest. This agreement section requires that the consultant:

Avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.
CONSULTANT shall immediately notify if a proposal is submitted by any person or entity in which CONSULTANT or any of its officers or employees has any financial interest, common interest, or business interest. (emphasis added)

Furthermore, the agreement specifies that:

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City: Carl Mosher, Director
Environmental Services Director
777 North First Street, Suite 300
San Jose, CA 95112 (emphasis added)

According to the City Attorney, TMG violated both of the above provisions of its contract with the City of San Jose. Specifically, the fact that the TMG consultant's wife worked for one of the vendors that responded to the CUSP RFP most certainly gives the "appearance of conflict of interest." Further, TMG did not notify the Director of the ESD in writing about the potential conflict of interest as required. We should note that TMG did provide the ESD Director with the required notification regarding the conflict of interest on June 25, 2004.

In our opinion, the City needs to be more proactive regarding consultants and potential conflict of interest issues. Specifically, the City should require consultants to complete a conflict of interest questionnaire. Such a questionnaire would require any consultant to affirm that he or she has no actual or apparent financial or other conflicts of interest related to any specific project. The City should also require all City personnel who participate in an evaluation process to complete a similar questionnaire. Finally, City staff should immediately request a formal opinion from the City Attorney's Office when any future conflict of interest issues arise. By so doing, the City can identify and appropriately resolve any potential conflict of interest issues.

Accordingly, we recommend that:

1. The City require consultants to complete a conflict of interest questionnaire affirming that he or she has no actual or apparent financial or other conflicts of interest related to any specific project. (Priority 1)
2. The City require all City personnel who participate in an evaluation process to complete a similar questionnaire. (Priority 1)
3. City staff should immediately request a formal City Attorney opinion when any conflict of interest issues arise. (Priority 1)

**Was The City's
Cost Analysis Of
The Final Three
Vendors' Cost
Proposals Fair?**

In an April 16, 2004 memorandum to the City Council, the Director of Finance presented a cost evaluation of the final three vendors - BearingPoint/PeopleSoft, Indus, and Deloitte/SAP as shown in Exhibit 2.

Exhibit 2 City’s Forecasted Proposal And Go-Live Costs For CUSP

Vendor	Proposal Cost	Leveled Project Cost	Internal Implementation Costs	Go-Live Costs (Proposal + Internal Costs)
BearingPoint/PeopleSoft	\$6,363,970	\$6,365,941	\$1,475,772	\$7,841,713
Indus	\$5,619,208	\$5,878,545	\$1,688,897	\$7,567,442
Deloitte/SAP	\$6,269,581	\$6,647,282	\$1,402,950	\$8,050,232

Source: City staff cost estimates outlined in April 16, 2004 memorandum to the City Council.

The Director of Finance also included in this memorandum a ten-year cost evaluation for each vendor which indicated Deloitte/SAP would cost from \$4.17 million to \$4.7 million more than the other two vendors as shown in Exhibit 3.

Exhibit 3 City’s Ten-Year Cost Evaluation

Vendor	10 Year City Cost	Vendor 10 Year Cost	Implementation Cost	Total 10 Year Costs
BearingPoint/PeopleSoft	\$419,197	\$2,979,240	\$7,841,713	\$11,240,150
Indus	\$419,197	\$3,815,640	\$7,567,442	\$11,802,279
Deloitte/SAP	\$419,197	\$7,499,520	\$8,050,232	\$15,968,949

Source: City staff cost estimates outlined in April 16, 2004 memorandum to the City Council.

On May 4, 2004, SAP sent a letter to the City Council asking for the City to “undertake a new and fair evaluation process” for the CUSP procurement for the following two reasons:

1. “City staff arbitrarily amended the Deloitte/SAP bid by adding \$377,000 to the Proposed Cost” and
2. “City staff and TMG artificially raised the Deloitte/SAP bid by \$4.15 million by adding an optional and unnecessary level of service, thus creating an unfair comparison that misrepresented the Deloitte/SAP bid.”

We conducted an extensive review of the final three vendors’ cost proposals and held numerous meetings with City staff to determine the validity of Deloitte/SAP’s allegations. We found that 1) City staff should not have added \$377,701 to Deloitte/SAP’s cost proposal for cost comparison purposes; 2) City staff and TMG did not artificially raise the Deloitte/SAP cost proposal by \$4.15 million; 3) Deloitte/SAP’s response to the CUSP RFP contains vague and contradictory language regarding what level of service they were proposing to provide

to the City; and 4) according to the Executive Steering Committee, cost was not a deciding factor in their vendor selection decision. Finally, using Deloitte/SAP's asserted level of service produces a ten-year cost proposal that is comparable to the other two vendors' ten-year cost proposals.

City Staff Should Not Have Added \$377,701 To Deloitte/SAP's Cost Proposal For Cost Comparison Purposes

Deloitte/SAP's first concern in their May 4th letter claimed that "City staff arbitrarily amended the Deloitte/SAP's bid by adding \$377,000 to the Proposed Cost". We found that City staff did "level", or increase, Deloitte/SAP's cost proposal for system implementation by \$377,701. City staff added the \$377,701 because they felt Deloitte/SAP would take longer to complete the system implementation than the 12 months it proposed. Deloitte/SAP maintains that adding \$377,000 to their proposed costs was inappropriate and unfair because the City would pay them what they proposed even if they took longer than 12 months to complete the system implementation. We also found that the City leveled Indus' and BearingPoint/PeopleSoft's proposed costs by \$259,337 and \$1,971, respectively. Both the TMG consultant and The Application Group consultant told us that City staff should not do leveling for cost comparison purposes. However, leveling is appropriate for budgeting purposes once the City has selected a vendor. According to the Director of Finance, "the leveled costs were not used for cost comparison purposes. When the steering committee reviewed the costs after making their vendor selection recommendation, the proposed costs plus the internal city costs were reviewed. The purpose of having The Application Group compute the leveled costs for the project was to determine if there were any additional costs that the project may have as a means to (1) determine if there were any additional costs that would have to be considered in negotiating with the vendors, (2) to develop an estimate of the total costs that were anticipated during the project implementation and the subsequent 10 year period for the purposes of developing a return on investment model (ROI). Although the staff report to council titled that section "cost analysis" the discussion in that section covered both the proposed costs (as clearly indicated and titled in a separate column) as well as the other components included in the ROI analysis." The Director of Finance further stated that, "he apologizes if SAP or anyone else felt the information presented was misleading, but the Project Teams intent in presenting this information was to give the City Council all potential and projected costs and benefits the City may realize during the ROI period rather than presenting the Council with "surprises" later after the project had begun with

potential change orders and cost overruns”. In addition, the Director of Finance stated that “in the past IT projects have experienced “scope creep” in which staff had to go back to the Council for additional budget appropriations. It is incumbent upon us to do our fiscal due diligence in computing a realistic ROI analysis”.

In our opinion, City staff should level future vendor cost proposals only for budgeting purposes and after the City has selected a vendor.

We recommend that:

4. City staff level future vendor cost proposals only for budgeting purposes and after the City has selected a vendor. (Priority 3)

*City Staff And TMG
Did Not Artificially
Raise The
Deloitte/SAP's Cost
Proposal By \$4.15
Million*

Deloitte/SAP's second contention is that “City staff and TMG artificially raised the Deloitte/SAP bid by \$4.15 million by adding an optional and unnecessary level of service thus creating an unfair comparison that misrepresented the Deloitte/SAP bid.” We found that the primary difference among the costs of each vendor was the monthly service charge for the ten-year service support contract. In their cost proposal for the ten-year service contract, Deloitte/SAP proposed a monthly fee of \$62,496 for Recycle Plus and \$6,944 for Municipal Water, or \$69,440 a month. Over the course of ten-years, Deloitte/SAP's \$69,440 monthly charge is \$8.3 million, which is \$4.5 million and \$5.3 million higher, respectively, than Indus' and BearingPoint/PeopleSoft's proposed ten-year service contract costs. In our opinion, City staff and TMG did not “artificially” inflate Deloitte/SAP's cost proposal, but rather took the ten-year service contract costs directly from Deloitte/SAP's cost proposal in its response to the CUSP RFP.

*Deloitte/SAP's
Response To The
CUSP RFP Contains
Vague And
Contradictory
Language Regarding
What Level Of
Service They Were
Proposing To
Provide To The City*

Deloitte/SAP contends that the CUSP RFP was not clear as to what level of support the City expected them to provide. Deloitte/SAP further contends that their cost proposal includes an external support team of four that is over and above what the other vendors proposed. We reviewed in detail each vendor's proposal to determine what level of service they proposed for the ten-year service contract. In Deloitte/SAP's proposal, we found text outlining a proposed support team of four under the section for the Licensed Model - "Separate Service Contract for additional ten years..." However, in this same text we found the following contradictory language:

- "Deloitte Consulting will provide all Basis, DBA, technical and functional application support for the CUSP implementation."²
- "Based upon the information provided in the RFP concerning the operations of the City and the number of users of SAP in scope for the CUSP implementation, we have developed the following staffing model for application support services."
- "San Jose (or the Hosting Provider) will provide all Basis and Technical Architecture support required by CUSP." (Emphasis added)

According to Deloitte/SAP, their proposed service contract cost of \$69,440 per month for ten years included a support team of four to provide on-going support for the City. Deloitte/SAP told us that the above statements from their cost proposal should have read "... implementation and on-going support." Deloitte/SAP also told us that City staff should have questioned them about their cost proposal because it was much higher than the other two vendors' proposals. According to City staff, they clearly understood that Deloitte/SAP was proposing a "standard level of support" (phone and e-mail support), and that there was never any question in their minds as to what Deloitte/SAP was including in its \$69,440 per month proposal.

Because of the contradictory language in Deloitte/SAP's response to the CUSP RFP and its significantly higher price for on-going service, City staff had reasons to question what level of service Deloitte/SAP was including in its proposal. Had City

² "Implementation" is only the first 18 months of the ten-year service contract.

staff questioned Deloitte/SAP about what services they were proposing, the City might have avoided this service level controversy.

We should note that City staff did request additional cost information from one of the vendors because the vendor had not properly responded to the RFP. Specifically, the RFP required that “contractor shall provide 120 days post-implementation, on-site warranty support.” Furthermore, the RFP states that “where the word “shall” or “required” appears, proposers may not take an exception.” In their proposal Indus provided a standard 60 days of post-implementation support. This is clearly a lower level of service than the RFP required. City staff clarified with Indus the cost for 120 days of post-implementation support, and subsequently added \$226,512 to Indus’ cost proposal.

In our opinion, the City should develop a formal policy regarding when it is appropriate for City staff to question and/or communicate with respondents to City RFPs.

We recommend that:

5. The City develop a formal policy regarding when it is appropriate for City staff to question and/or communicate with respondents to City RFPs. (Priority 3)

We should note that Deloitte/SAP had the following opportunities to clarify what level of support the City was requesting and they were proposing for the ten-year service contract:

- At a pre-bidders’ conference where vendors were given the opportunity to ask questions relating to any of the requirements in the RFP;
- When responding to the City’s technical questionnaire regarding proposed support levels;
- When responding to an October 15, 2003, The Application Group consultant request regarding both external and internal resources, from project preparation through on-going support; and

- When responding to an October 29, 2003, The Application Group consultant request for additional clarification on internal staffing levels, from implementation through on-going support.

According To The Executive Steering Committee, Cost Was Not A Deciding Factor In Their Vendor Selection Decision

The Executive Steering Committee's final vendor evaluation criteria consisted of the following categories:

- Functional Fit – Does the solution have required features;
- Look & Feel – How user friendly is the product;
- Technical Architecture – How sound is the technical architecture of the product and how well does it fit into our existing infrastructure and future plans with regards to the new City Hall;
- Project Management – What is the vendor's action plan;
- Domain Experience – Have they implemented the solution demonstrated anywhere else; and
- Overall Fit – How well do the vendor and the solution fit with San Jose's way of implementing IT solutions in addressing its corporate priorities?

On October 23, 2003, the Executive Steering Committee made its final decision to recommend BearingPoint/PeopleSoft as the number one choice and Indus as the number two choice based on the criteria described above. The Executive Steering Committee made this decision after each of the three vendors completed a two-hour product demonstration. According to the Executive Steering Committee members, they decided that the Deloitte/SAP solution was not a good strategic fit for the City and that they did not want to pursue it. At this same meeting, the Executive Steering Committee proceeded to score BearingPoint/PeopleSoft and Indus on the above-described criteria. According to the Executive Steering Committee, even if all three vendors' costs were comparable, they would still have recommended BearingPoint/PeopleSoft and Indus over Deloitte/SAP.

*Using
Deloitte/SAP's
Asserted Level Of
Service Produces A
Ten-Year Cost
Proposal That Is
Comparable To The
Other Two Vendors'
Ten-Year Cost
Proposals*

As noted above, there is a great deal of conflicting testimony and documentary evidence regarding what level of service Deloitte/SAP included in its CUSP proposal. Accordingly, we assumed that Deloitte/SAP's proposed ten-year service contract did, in fact, include a support team of four. In order to make an equal ten-year service cost comparison, we clarified with the top three vendors their costs for software and hardware maintenance assuming that none of the vendors would provide any external support resources. We then made a basic cost comparison of each vendor's proposed ten-year costs.

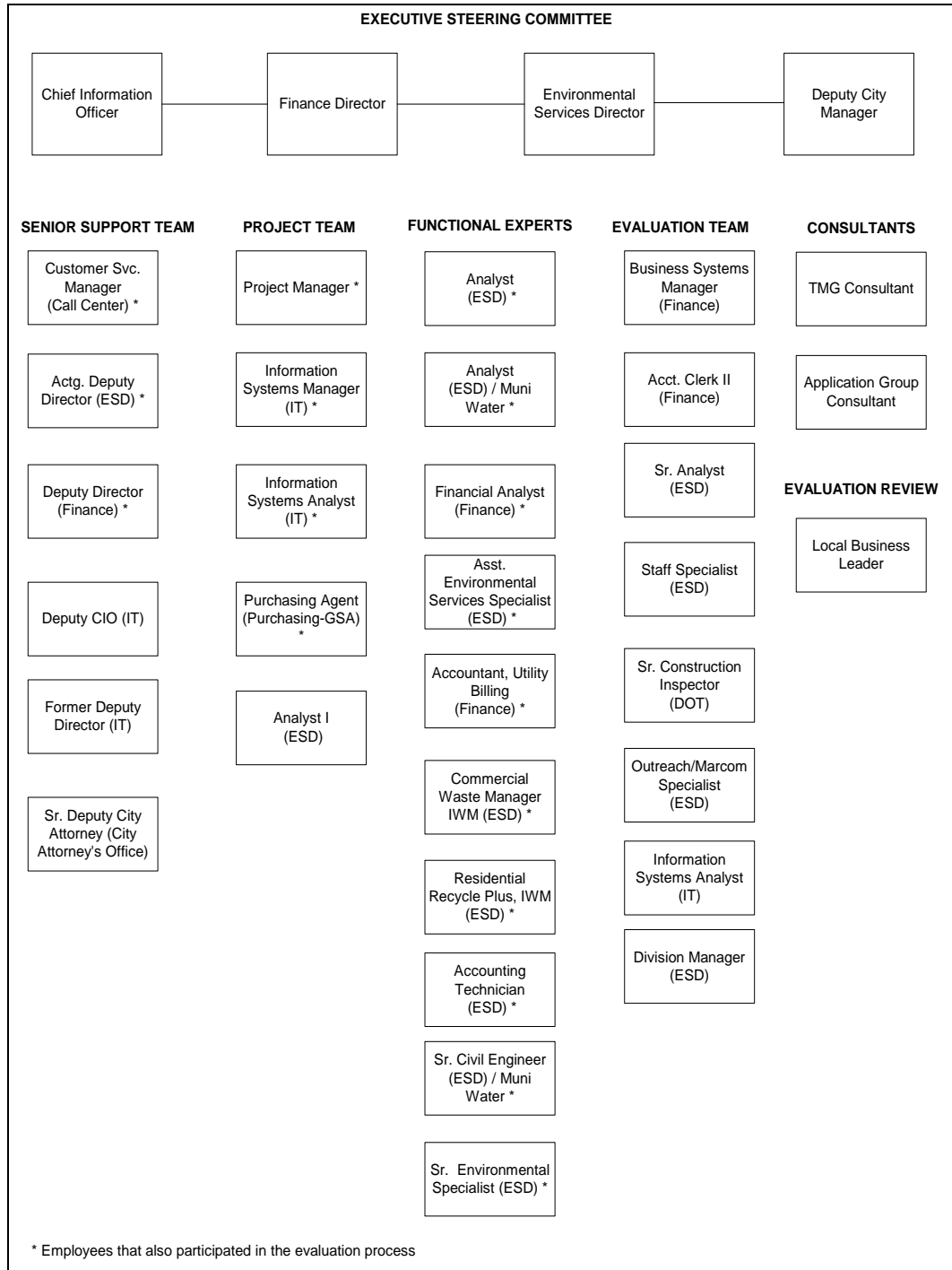
We found that, absent any leveling of costs and using Deloitte/SAP's asserted service level produces a ten-year cost proposal that is comparable to the other two vendors' ten-year cost proposals.

**Was The CUSP
Evaluation Process
Fair, Objective,
And Accurate?**

In our opinion, the CUSP project and overall the CUSP evaluation process was fair, objective, and accurate. However, we did note several issues and errors during various phases of the evaluation process. It does not appear that these issues and errors would have materially affected the final outcome of the vendor selection process with the possible exception of City staff not adequately checking BearingPoint's references. In addition, we noted several areas that the City needs to improve upon when it prepares future RFPs and evaluates the responses to those RFPs.

At the City Council's direction, the City formed an Executive Steering Committee in January 2002, to recommend a vendor for the CUSP project. A Deputy City Manager, the Director of the ESD, the City's Chief Information Officer, and the Director of Finance were on the Executive Steering Committee. The City also hired a project manager and assembled a support team and a working group comprised of staff from the Departments of Finance, ESD, and IT to study City processes, create clear CUSP requirements, and define the CUSP scope. About 33 City employees were directly or indirectly involved in the CUSP process. City staff spent about 8,400 hours, or the equivalent of four staff years, on the CUSP project. Exhibit 4 below shows the level of City staff involvement with the CUSP RFP process.

Exhibit 4 City Staff Involvement With The CUSP RFP Process



The City received a total of 14 responses to its CUSP RFP, of which 12 proposed a CUSP solution and two proposed only the optional bill print and mailing features identified in the RFP. Various evaluation panels, consisting of City staff, evaluated the 12 CUSP proposals in the following three separate phases:

- Phase 1 – Minimum Requirements Review: Per the RFP in the Phase 1 evaluation, the City would perform a Minimum Requirements Review to ensure that all vendors' proposals meet the minimum requirements. If a vendor proposal did not meet the minimum requirements, it would be deemed non-responsive and would not be considered;
- Phase 2 – Functional Proposal Review: In August 2003, the CUSP team formed an Evaluation Panel consisting of City Finance, ESD, City Manager's Office, Department of Transportation, and IT staff to review all 12 CUSP solution proposals. Based on the functional proposal scoring, the CUSP team ranked the 12 proposals and selected the five highest-ranked proposals to go to the Phase 3 evaluation. The CUSP team ranked the five highest-scoring vendors as follows: 1) Cayenta, 2) Deloitte/SAP, 3) Indus, 4) BearingPoint/PeopleSoft, and 5) Systems and Software.
- Phase 3a – Product Demonstrations, Cost Evaluations, and Interviews: This phase consisted of two major steps. Phase 3a included one-day vendor product demonstrations to the Evaluation Team with concurrent technical and project management interviews with each proposer. In addition, City staff conducted a viability/stability assessment and reference checks for each proposer. At the end of the evaluation, the Evaluation Team recommended Indus and BearingPoint/PeopleSoft to the Executive Steering Committee for the final selection. The Executive Steering Committee decided to bring three vendors forward to the final demonstration phase, 3b, because the scoring was very close for the three highest-scoring vendors. The three vendors who moved to Phase 3b were, by ranking: 1) Indus, 2) BearingPoint/PeopleSoft, and 3) Deloitte/SAP.

- Phase 3b- The Executive Steering Committee observed demonstrations from all three vendors and interviewed each of the three finalists. The Executive Steering Committee evaluated and ranked the final three vendors based on criteria the Committee developed. Although cost information was available, the Executive Steering Committee members told us that cost was neither a criterion nor a factor in their vendor selection decision. On October 23, 2003, the Executive Steering Committee scored two of the three finalists and ranked BearingPoint/PeopleSoft first and Indus second.

In our opinion, overall, the City conducted the evaluation process fairly, objectively, and accurately. However, we did identify the following issues and errors that occurred during various phases of the evaluation process:

- The GSD did not perform the Minimum Requirements Review in Phase 1 of the RFP. According to the Director of GSD, City staff asked the Purchasing Division to screen the proposals to ensure that the vendors submitted all required documents. According to the CUSP Project Manager, City staff included the RFP Minimum Requirements Review in the Phase 2 evaluation process. However, we found that the Evaluation Teams scored all 12 vendor proposals and did not deem any vendor proposals as being non-responsive. Moreover, we found one vendor proposal that did not meet the RFP minimum requirements that passed on to and was subsequently eliminated in Phase 2;
- Evaluation Teams did not complete and/or retain adequate documentation to support some of their scoring decisions;
- Evaluation Teams did not always keep individual scoring sheets and/or sufficient notes for every evaluation category;
- It was difficult to extract from the vendors' response to the RFP the answers that were specific to the scoring criteria that the evaluation committee used for the most heavily-weighted element "Domain" (vendor experience). This increased the risk that the Evaluation Team would not correctly score a vendor's response to the RFP;

- Not all Evaluation Team members attended pre-briefing meetings, which are designed to insure that every member of the team has the same interpretation of the rating criteria;
- The Evaluation Team and the Executive Steering Committee did not keep adequate meeting notes or attendance records;
- Evaluation Teams did not always have at least three evaluators to satisfy the City's Request For Proposal Procedures Manual requirement;
- The GSD Purchasing Division was not significantly involved throughout the process;
- The Executive Steering Committee invited Deloitte/SAP to be one of three vendors to make a two-hour demonstration. The Executive Steering Committee scored and ranked the other two vendors but not Deloitte/SAP because the Executive Committee decided that the Deloitte/SAP solution was not a good strategic fit for the City;
- The Executive Steering Committee decided to recommend BearingPoint/PeopleSoft as the number one choice and Indus as the number two choice on October 23, 2003 but did not formally announce their selection until April 16, 2004. Moreover, even though the Executive Steering Committee did not score or rank Deloitte/SAP, City staff directed the City's consultants to ask Deloitte/SAP and the other two vendors to provide additional information after October 23, 2003; and
- On November 24, 2003, City staff identified that some of the cost information that the TMG consultant provided the Executive Steering Committee for its October 23, 2003 meeting was incomplete and inaccurate. However, it appears that in the final analysis these errors would not have changed the Executive Steering Committee's vendor selection decision.

We performed additional inquiries and analysis for each of the above-described issues and errors. We found that these issues and errors were either relatively insignificant and/or countervailing and did not materially affect the final outcome

of the selection process. However, the City should treat these issues and errors as lessons learned for future procurements. Accordingly, we recommend that:

6. The General Services Purchasing Division should be the City's primary point of contact and the manager of the RFP process for all RFPs in which general services and commodities are being procured. (Priority 3);
7. When the City uses a consensus scoring system it should document why the team members gave specific scores. (Priority 3);
8. The City should retain all individual scoring cards and note sheets. (Priority 3);
9. City Evaluation Teams and Committees should keep attendance records and minutes. (Priority 3);
10. The City should structure its RFPs to facilitate the scoring of responses. (Priority 3);
11. Evaluation Teams or Committees should score all of the vendors that make product demonstrations. (Priority 3);
12. Evaluation Teams and Committees should comply with the City's Request For Proposal Procedures Manual. (Priority 3); and
13. The City should implement procedures to insure that City staff or consultants compile comparative vendor cost information that is complete and accurate. (Priority 3)

We also noted an issue regarding BearingPoint's references. Specifically, the RFP requested vendors to "Submit at least three (3) persons, firms and/or governmental bodies, with whom you currently have arrangements or agreements for Utility Billing and/or CRM system development and implementation." The RFP also requested vendors to "Submit at least five (5) persons, firms and/or governmental bodies, with whom you have had arrangements or agreements that are now canceled (organizations that are no longer active customers of your firm)." BearingPoint submitted three references in response to the first request, and six references in response to the second request. In addition, BearingPoint listed the names of an additional six entities.

We found that City staff did not check any of the three references in the first category and only checked one of the references in the second category and one of the additional entities that BearingPoint provided. Further, BearingPoint was involved for only three and one-half months of a 36-month project for the one reference that City staff checked from the second category. Finally, we found that the City staff's documented reference checks for BearingPoint do not specifically refer to BearingPoint's performance.

In our opinion, City staff did not adequately check BearingPoint's references. Further, the Executive Steering Committee should have had sufficient reference check information before making its final vendor selection decision. Accordingly, we recommend that:

14. The City Council not give the City Manager the authority to enter into exclusive negotiations with BearingPoint/PeopleSoft until City staff adequately checks BearingPoint's references. (Priority 1) and
15. The City ensure that City staff adequately check proposer references for future RFPs. (Priority 3)

APPENDIX A

DEFINITIONS OF PRIORITY 1, 2, AND 3 AUDIT RECOMMENDATIONS

The City of San Jose's City Administration Manual (CAM) defines the classification scheme applicable to audit recommendations and the appropriate corrective actions as follows:

Priority Class ¹	Description	Implementation Category	Implementation Action ³
1	Fraud or serious violations are being committed, significant fiscal or equivalent non-fiscal losses are occurring. ²	Priority	Immediate
2	A potential for incurring significant fiscal or equivalent fiscal or equivalent non-fiscal losses exists. ²	Priority	Within 60 days
3	Operation or administrative process will be improved.	General	60 days to one year

¹ The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number. (CAM 196.4)

² For an audit recommendation to be considered related to a significant fiscal loss, it will usually be necessary for an actual loss of \$25,000 or more to be involved or for a potential loss (including unrealized revenue increases) of \$50,000 to be involved. Equivalent non-fiscal losses would include, but not be limited to, omission or commission of acts by or on behalf of the City which would be likely to expose the City to adverse criticism in the eyes of its citizens.
(CAM 196.4)

³ The implementation time frame indicated for each priority class is intended as a guideline for establishing implementation target dates. While prioritizing recommendations is the responsibility of the City Auditor, determining implementation dates is the responsibility of the City Administration.
(CAM 196.4)