



Office of the City Auditor

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

**AN AUDIT OF THE CITY
MANAGER'S REFORMS**

**Review And Comments On The City
Manager's Proposed Reforms**

**City Auditor Response To City Council
Questions**

**Report 04-09
December 2004**



CITY OF SAN JOSÉ, CALIFORNIA

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GERALD A. SILVA
City Auditor

December 9, 2004

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

Transmitted herewith is a report on *An Audit of the City Manager's Reforms*. 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. The City Administration's response is shown on the yellow pages before the appendices.

The City Auditor's staff members who participated in the preparation of this report are Mike Edmonds, Eduardo Luna, Ruth Merino, Jennifer Callaway, and Belinda Silvatici.

Respectfully submitted,

Gerald A. Silva
City Auditor

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Executive Summary

In accordance with the City Council's direction at its September 14, 2004 meeting, we reviewed the City Manager's proposed reforms designed to address problems identified in our audit reports entitled "A Review Of The CUSP Request For Proposal Process" and "A Review Of The Request For Proposal For The New Civic Center Converged Network System." We conducted our review in accordance with generally accepted government auditing standards and limited our audit to the work specified in the Objectives, Scope, and Methodology section of this report.

Finding I

Review And Comments On The City Manager's Proposed Reforms

In accordance with the City Council's direction, we reviewed and commented on the City Manager's proposed reforms. Appendix B is a matrix that shows the proposed reforms, status, and the City Auditor's comments on the proposed reforms. As of November 24, 2004, the Administration has finalized or nearly finalized the following reforms:

1. Developed Procurement Process Integrity Guidelines (PPIG) for the Converged Network Request for Proposal (RFP);
2. Relocating the Purchasing Division (Purchasing) to the Finance Department;
3. Restructured the organizational reporting relationships; and
4. Agreed-on steps to improve communication and coordination between the City Manager's Office (CMO) and the City Attorney's Office (CAO).

We have one recommendation to assist the Administration in relocating the Purchasing to the Finance Department. In addition to the above reforms, the Administration is working on a number of other recommended reforms. The City Auditor's Office will continue to monitor and report on the Administration's progress in implementing these recommended reforms. We have also provided the Administration with an

additional recommendation to assist them in implementing these reforms which are shown beginning on page 10.

RECOMMENDATIONS

We recommend that the Finance Department:

Recommendation #1 **Establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function. (Priority 3)**

We recommend that the Administration:

Recommendation #2 **Develop a detailed project staffing plan for its complex RFP projects that would identify the required staff, their estimated time commitments, and when they will be needed for the project. (Priority 3)**

Finding II **City Auditor Response To City Council Questions**

At its September 14, 2004 meeting, the City Council requested the City Auditor's Office to answer the following three questions:

1. Who is the City Attorney's client?
2. What is the standard for the City Attorney going up the chain of command?
3. What is the standard for City employees going up the chain of command?

The City Auditor's responses to these questions are:

- It is clear that the City Council is the City Attorney's primary client.
- The California Rules of Professional Conduct and the American Bar Association Model Rules of Professional Conduct have varying standards regarding an attorney's responsibility to report up the chain of command; and
- The City's current Code of Ethics encourages, but does not require, employees to report improper activities.

RECOMMENDATIONS

We recommend that the San Jose City Council:

- Recommendation #3** **Refer to the City’s Blue Ribbon Task Force for discussion and consideration, amending the Code of Ethics regarding an employee’s duty to report improper activities. (Priority 3)**

Introduction

In accordance with the City Council's direction at its September 14, 2004 meeting, we reviewed the City Manager's proposed reforms designed to address problems identified in our audit reports entitled "A Review Of The CUSP Request For Proposal Process" and "A Review Of The Request For Proposal For The New Civic Center Converged Network System." We conducted our review in accordance with generally accepted government auditing standards and limited our audit to the work specified in the Objectives, Scope, and Methodology section of this report.

The City Auditor thanks the City Manager's Office, the City Attorney's Office, and other City staff for their cooperation, input, and insight during the audit.

Background

Since June 2004, the City Auditor's Office has issued two reports on City-proposed procurements. Specifically, in June 2004, the City Auditor issued a report on the CUSP Request for Proposal (RFP) process. Although the report concluded that the CUSP RFP evaluation process was fair, objective, and accurate, the audit identified a number of problems with the RFP process. Accordingly, the report included 15 recommendations to improve the City's RFP process.

In August 2004, the City Attorney's Office and City Auditor's Office issued another report on the RFP process for the New Civic Center Converged Network System. Although this report concluded that overall the RFP evaluation process was fair, objective and accurate, it also concluded that the City was not in compliance with the San Jose Municipal Code requirements for standardization and identified several areas needing improvement throughout the RFP process, including non-disclosure agreements for non-compensated employees. Accordingly, the City Auditor's Office and the City Attorney's Office made six recommendations to address the problems that we identified in the report.

Subsequent to these two audit reports, the City Manager has proposed a number of reforms to address the issues identified in the reports, as well as other organizational reforms. For instance, the City Manager has proposed several organizational changes such as moving the Purchasing Division to the Finance Department and restructuring the reporting relationships

between City Service Areas and the City Manager's Office (CMO). In addition, the CMO has proposed and is in the process of implementing a number of changes to the City's RFP process.

The City Council, on September 14, 2004, directed the City Auditor's Office to perform a management audit of the City Manager's reforms and to report back within 30 days with comments and additional recommendations.

**Objectives, Scope,
And Methodology**

On September 14, 2004 the City Council directed the City Auditor to "...conduct a management audit, review and comment on the City Manager's reforms, and make any additional recommendations about how better management controls could prevent future problems..." In response to this directive, we reviewed the following matters related to the City Manager's recommended management reforms:

1. The status of fourteen audit recommendations from "A Review Of The CUSP Request For Proposal Process";
2. The status of six audit recommendations from "A Review Of The Request For Proposal For The New Civic Center Converged Network System";
3. Recommended management reforms related to such things as ethics training and organizational restructuring; and
4. Other recommended RFP improvement reforms.

In addition, we addressed the following questions regarding the responsibility of the City Attorney and City employees within the organization:

1. Who is the City Attorney's client?
2. What is the standard for the City Attorney going up the chain of command?
3. What is the standard for City employees going up the chain of command?

In reviewing these matters, we solicited input from the City Council regarding areas of concern. We also interviewed City staff that were integral in overseeing the implementation of

each of the 20 audit recommendations and various management reforms, including Senior Staff from the CMO, the Director of Aviation, the Director of Employee Services, the Director of Employee Relations, the Director of Finance, the acting Chief Information Officer, the acting Director of General Services, and members of the City Attorney's Office. We also interviewed representatives from various cities' procurement divisions and audit offices. Furthermore, we reviewed the San Jose City Charter, the San Jose Municipal Code, the City's Code of Ethics for Officials and Employees of the City of San Jose, the City's RFP Procedures Manual, the Purchasing Administrative Manual, the American Bar Association (ABA) Model Procurement Code, Government Technology Press' The Request for Proposal Handbook, various publications by the California League of Cities, and various procurement policies at the Federal and State level. Contained in this report are our comments on those City Manager-proposed reforms the Administration has finalized or nearly finalized as of November 24, 2004 and a status report on those reforms that the Administration is attempting to finalize.

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Finding I

Review And Comments On The City Manager's Proposed Reforms

In accordance with the City Council's direction, we reviewed and commented on the City Manager's proposed reforms. Appendix B is a matrix that shows the proposed reforms, status, and the City Auditor's comments on the proposed reforms. As of November 24, 2004, the Administration has finalized or nearly finalized the following reforms:

1. Developed Procurement Process Integrity Guidelines (PPIG) for the Converged Network Request for Proposal (RFP);
2. Relocating the Purchasing Division (Purchasing) to the Finance Department;
3. Restructured the organizational reporting relationships; and
4. Agreed-on steps to improve communication and coordination between the City Manager's Office (CMO) and the City Attorney's Office (CAO).

We have one recommendation to assist the Administration in relocating the Purchasing to the Finance Department. In addition to the above reforms, the Administration is working on a number of other recommended reforms. The City Auditor's Office will continue to monitor and report on the Administration's progress in implementing these recommended reforms. We have also provided the Administration with an additional recommendation to assist them in implementing these reforms which are shown beginning on page 10.

Procurement Process Integrity Guidelines For The Converged Network RFP

The Administration provided a report to the City Council on November 4, 2004 regarding its proposed Procurement Process Integrity Guidelines (PPIG), which address communication protocols for the second Converged Network RFP. In response to this report, the City Auditor's Office provided additional comments, found in Appendix C, regarding the single point of contact for procurements as well as additional issues the Administration should consider for the PPIG for the New Converged Network RFP. The Administration addressed all but one of the concerns we raised. The one concern the Administration did not address dealt with appointing a single

point of contact throughout the RFP process. At its November 9, 2004 meeting, the City Council accepted the City Manager's PPIG, but did not address the City Auditor's concern regarding the single point of contact.

**Relocating The
Purchasing
Division To The
Finance
Department**

The CMO has proposed moving Purchasing from the Department of General Services (GSD) to the Finance Department. The September 21, 2004 Council Agenda contained a recommendation to amend the Municipal Code to reflect that purchasing functions will now be located in the Finance Department. According to the Administration, a centralized function for RFPs is proposed in which Purchasing will serve as the "lead" in RFPs, forming a team that includes the client department(s) that are soliciting services to be provided through the RFP. The CAO will be involved throughout the process itself.

The City Manager, as chief administrative officer, has the authority and responsibility to propose to the City Council any organizational changes that he deems necessary to improve the operation of San Jose City government. According to the City's Director of Finance, relocating Purchasing from the GSD to Finance will better match the financial nature of Purchasing with other similar functions in Finance that are dissimilar to the maintenance nature of GSD functions. However, in our opinion, the organizational placement of Purchasing was not causal to the issues that we identified in our CUSP or Converged Network RFP reports and relocating Purchasing from GSD to Finance will not in and of itself address any of those issues.

In his September 15, 2004 memorandum to the City Council regarding the relocation of Purchasing, the City Manager stated that the Administration had performed a survey and analysis of the organizational placement of the purchasing/procurement functions. The Administration found that "the purchasing/procurement function in a number of cities is often housed in Finance." We verified the information in the Administration's surveys that found that in almost half of the jurisdictions (16 of 34) the procurement function was located within the Finance department. Furthermore, we reviewed authoritative literature such as the ICMA's *Management Policies in Local Government Finance* and found that the procurement function can be located in different parts of the organization including Finance,

Administration, a General Services Department, a separate department, or some other department.

However, we should also note that transferring Purchasing to Finance poses a potential separation of duties issue because the Accounts Payable function is also located in the Finance Department. Accordingly, Finance needs to establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function.

We recommend that the Finance Department:

Recommendation #1

Establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function. (Priority 3)

**Restructured
Organizational
Reporting
Relationships**

In a September 13, 2004 memorandum to the City Council, the City Manager described a series of actions to be taken to strengthen the City organization. One of the management reforms described in the memorandum is a restructuring of the relationship between the City Manager’s Office and the City Service Areas (CSA) “to formalize a direct reporting relationship between each CSA and specific Deputy City Manager (DCM).” In an October 8, 2004 memorandum the City Manager further states that “The overarching goal of creating a direct reporting relationship between each CSA and a specific Deputy or Assistant City Manager (ACM) is to produce an organizational culture with clear accountability and lines of communication to the City Manager’s Office...” Moreover, the City Manager’s memorandum states “strengthening reporting relationships of CSA’s to Deputy City Managers is to ensure that policy issues and other important work projects are managed with the active assistance and involvement of the City Manager’s Office, and that potential issues or problems come to my attention at an early stage so that they can be resolved appropriately.”

To implement this reform, the City Manager has modified the reporting relationships to the Deputy City Managers. Specifically, the lead ACM or DCM for the City Service Area will be accountable for CSA performance and for final review and sign-off of procurements, such as RFPs and RFQs. In addition, the ACM or DCMs will now sign-off and be accountable for all City Council memorandums and other

documents related to their CSAs. In the past, the ACM or DCMs were assigned responsibility for reviewing all City Council memorandums for specific City Council meetings. Department directors will continue to report directly to the City Manager, although the DCMs will continue to work closely with the Department directors.

In evaluating the City Manager's changes to the reporting relationships, we acknowledge that the City Charter grants the City Manager the power to "...direct and supervise the administration of all departments, offices, and agencies of the City." Further, according to the City Charter, "The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the Council for the administration of City affairs placed in his or her charge by or under this Charter." Thus, the City Manager has the authority to establish the appropriate reporting relationships necessary for him to manage the City. According to the City Manager, "the formalization of a direct reporting relationship is a significant change designed to ensure that the City Manager's Office is aware of any significant issues and concerns at the earliest possible point." In our opinion, the City Manager's changes formalize the assignment of DCMs to CSAs and make DCMs more accountable for CSA performance and submittals to the City Council.

We should note that DCMs were involved in the Converged Network RFP process. Accordingly, we are not persuaded that the City Manager's changes, in and of themselves, would have precluded some of the alleged Converged Network RFP communication problems.

**Agreed-On Steps
To Improve
Communication
And Coordination
Between The City
Manager's Office
And The City
Attorney's Office**

On October 29, 2004 a meeting was held involving the management teams of the CAO and CMO. During this meeting the CAO and CMO discussed the following issues:

- The roles of both the CMO and CAO and how those roles relate to their relationships with the Mayor and City Council;
- How both the CMO and CAO can communicate with each other in order to best serve the Mayor and Council and the City/community;
- How both the CMO and CAO can integrate more effectively in order to work toward common goals; and

- How both the CMO and CAO can communicate in ways that foster mutual understanding, collaboration, appreciation, and trust.

The CMO and CAO agreed upon the following specific steps to improve communication:

- Raise issues early and keep top managers informed;
- Be candid, listen well, and talk with people directly about sensitive issues;
- Take advantage of the offices' close proximity in the new City Hall to build better informal relationships; and
- Develop a process to facilitate coordination on media inquiries.

Furthermore, the CMO and CAO agreed upon the following specific steps in order to improve upon the coordination of meetings between both offices:

- Include CAO staff in policy and business decisions by inviting them to participate in CSA meetings and
- Improve the scheduling and preparation process in order to improve the ability for both the CMO and CAO to be more fully-prepared for City Council meetings and Closed Session meetings.

The CMO and CAO both agree that their common goal is to provide better service to the City and Community as well as to the Mayor and City Council. To reach this goal, both the CMO and CAO have agreed to schedule future joint meetings in order to assess the success of the above-mentioned efforts and to identify other actions that would enhance communication and coordination between the two offices.

According to the California League of Cities publication Counsel and Council: A Guide For Building A Productive Employment Relationship (Counsel and Council), “effective communication between city officials, city staff, and the city attorney is critical to the smooth operation of the city. Early and frequent communication about proposed city action can avoid frustration on the part of everyone ...” In addition, Counsel and Council states that the “city attorney must be kept informed of the city’s activities,” meaning “that the city attorney receives complete information in a prompt manner.” In our opinion, the results of the CMO’s and CAO’s

October 29, 2004 meeting is a good first step toward improving the communication and coordination between the two offices.

Additional City Auditor Recommendation

As shown in Appendix B, there are several additional City Manager reforms which have not been finalized. The City Auditor's Office will continue to work with the Administration on these reforms and once the reforms are finalized we will provide final comment to the City Council. However, during the course of our review we have developed a recommendation for the Administration with respect to Project Staffing.

Project Staffing

To ensure appropriate staffing levels as the City moves forward with future complex and urgent RFPs, the model established for the second Converged Network RFP currently underway, will be utilized where staff capacity and/or experience may be limited. The model established for the second Converged Network RFP brings together staff resources from throughout the organization, onto a single team to assure high levels of expertise beyond the subject area of the purchase to include procurement, RFP writing, and administration support. With regard to the current effort to issue a new RFP, external technical resources will be utilized to offset limited staffing capacity. The criteria for triggering this approach will be specifically identified.

During our previous two procurement reviews, we found that appropriate staffing levels and time constraints were causal to the problems encountered on the CUSP RFP and the Converged Network RFP. To ensure that the appropriate staffing is available when needed, the Administration should develop a detailed project staffing plan for its complex RFP projects. The detailed project staffing plan should identify the required staff, their estimated time commitments, and when they will be needed for the project.

We recommend that the Administration:

Recommendation #2

Develop a detailed project staffing plan for its complex RFP projects that would identify the required staff, their estimated time commitments, and when they will be needed for the project. (Priority 3)

CONCLUSION

In accordance with the City Council's direction, we reviewed and commented on the City Manager's proposed reforms. As of November 24, 2004, the Administration has finalized four reforms related to the PPIG, the relocation of the Purchasing Division, revamping the organizational reporting relationship, and steps to work towards improved communication and coordination between the CMO and CAO. In addition to these reforms, the Administration has proposed a number of other reforms that have not yet been finalized. The City Auditor's Office will continue to monitor and report on the Administration's progress in implementing these reforms. Moreover, we have identified an additional recommendation to assist the administration in implementing these reforms.

RECOMMENDATIONS

We recommend that the Finance Department:

Recommendation #1 **Establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function. (Priority 3)**

We recommend that the Administration:

Recommendation #2 **Develop a detailed project staffing plan for its complex RFP projects that would identify the required staff, their estimated time commitments, and when they will be needed for the project. (Priority 3)**

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Finding II

City Auditor Response To City Council Questions

At its September 14, 2004 meeting, the City Council requested the City Auditor's Office to answer the following three questions:

1. Who is the City Attorney's client?
2. What is the standard for the City Attorney going up the chain of command?
3. What is the standard for City employees going up the chain of command?

The City Auditor's responses to these questions are:

- It is clear that the City Council is the City Attorney's primary client.
- The California Rules of Professional Conduct and the American Bar Association Model Rules of Professional Conduct have varying standards regarding an attorney's responsibility to report up the chain of command; and
- The City's current Code of Ethics encourages, but does not require, employees to report improper activities.

Who Is The City Attorney's Client?

Based upon our review of available authoritative sources and discussions with the CAO, it is clear that the City Council is the City Attorney's primary client.

To answer "Who is the City Attorney's client and what is the standard for the City Attorney going up the chain of command?" we referred to four recent publications: 1) a League of California Cities (League) publication entitled Counsel and Council: A Guide for Building a Productive Employment Relationship (Counsel and Council); 2) another League publication entitled Practicing Ethics: A Handbook for Municipal Lawyers (Handbook); 3) the California Rules of Professional Conduct (CRPC); and 4) the American Bar Association Model Rules of Professional Conduct. Due to the evolving role of city attorneys, the Counsel and Council publication asks the same question, "Who does the City Attorney represent? Is it a corporate "city" client? Are individual "public officials" clients? Is the "public" the client?"

Is it some combination of all of these?" The publication notes that the California courts have not provided much guidance on this subject. However, it also notes that the courts have made it clear that ethical standards of the profession govern government lawyers. In California, these standards are contained in the CRPC.

The CRPC defines an attorney's role and responsibilities. Specifically, the CRPC states

"In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement."

Similarly, Counsel and Council states in response to the question, "Who is the client" that "the client is the city—the municipal corporation as a whole." Further, Counsel and Council, the Handbook, and the CRPC provide clarification as to "who is the city?" Specifically, Counsel and Council states "In general terms, the city attorney takes direction from the majority of the city council." Under the CRPC "an individual council member or other city official is not the client." The City Attorney agrees that "the Mayor and City Council are the [city attorney's] primary client."

What Is The Standard For The City Attorney Going Up The Chain Of Command?

According to the League's Handbook, "When a city attorney learns that the conduct of a city official or employee is or may be a violation of law that may be 'reasonably imputed to the organization' or is 'likely to result in substantial injury to the organization,' State Bar rules expressly authorize, (but do not require), the city attorney to take the matter to the 'highest internal authority within the organization'." Specifically, the CRPC reads "If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in the Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions Code 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest . . ." to include among others:

“ (1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or

(2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.”

In contrast to the CRPC, the ABA Model Rules of Professional Conduct Section 1.13 (b) requires the reporting of such behavior whenever the attorney believes it is in the best interest of the client to do so. According to the Handbook, the State Bar is contemplating a change to also require reporting of such behavior when it is in the best interest of the client to do so.

According to the City Attorney, he and his office consider it to be their duty to report such matters up the chain of command to the City Manager, and if still unresolved, to the City Council by way of a memorandum. There has not been an occurrence in which it was the opinion of the City Attorney that the conduct of a City official or employee was clearly in violation of law and was required to be elevated to the City Council to prevent such violation. However, the City Attorney has informed the City Auditor that it is not at all unusual for the City Attorney to elevate legal concerns to the City Council when the City Attorney believes a particular course of conduct being pursued by City staff creates significant exposure to the City. Such memorandums are generally Attorney/Client communications, which are not discussed in this report, but of which the Council is aware.

According to the City Attorney, there has never been any doubt in his mind that his primary client is and his ultimate responsibility is to the City Council.

The City Attorney did not report any problems with the Converged Network RFP because, according to the City Attorney, his office “was not aware of the level of Cisco involvement in the creation of the Converged Network RFP and believed the standardization issue was resolved in April 2004, based on representations from the IT Director that we had standardized on Cisco routers and switches in 1999, and that the only telephony equipment that would work was the Cisco equipment. We did not know that the standardization issue was not resolved nor that Cisco was heavily involved in the creation

of the RFP until the July audit/investigation. Had these issues been known at the time the RFP was going to Council, it would not have gone forward (we would not have signed off on the Council memo) or Council would have been separately advised of the issue by my Office.”

What Is The Standard For City Employees Going Up The Chain Of Command?

The City's CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE (Code of Ethics), which was last revised in 1991, addresses employee responsibilities for the reporting of improper activities. Specifically, the Code of Ethics reads as follows: “Persons in the City service are strongly encouraged to fulfill their own moral obligations to the City by disclosing to the extent not expressly prohibited by law, improper governmental activities within their knowledge. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, commanding, or influencing any person with the intent of interfering with that person's duty to disclose such improper activity.”

In regards to employees' responsibility for reporting improper activities, the City's Code of Ethics allows for, and even encourages employees to report improper activities. However, the policy does not require them to come forward. Our review of other jurisdictions found similar statements of policy on this issue; however, several other jurisdictions' policies establish a higher employee reporting standard than the City's Code of Ethics. For example, the City of Seattle's Municipal Code allows, but does not require employees to report. Specifically, their Municipal Code states “Every City employee shall have the right to report, in good faith and in accordance with this subchapter, to a City official, another government official or a member of the public, information concerning an improper governmental action.”

Similarly, the University of California's Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) does not require persons to report. Specifically, the University's policy states “Any person may report allegations of suspected improper governmental activities.”

On the other hand, other jurisdictions from different branches of government have implemented policies that require

employees to report improper activities. For instance, in 1990, President George Bush signed Executive Order 12731, which required, as a condition of federal employment, that every federal employee disclose waste, fraud, and abuse of authority within their agencies. Specifically, the Executive Order stated the following: “Public service is a trust requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.” “Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.”

Other local jurisdictions’ fraud policies require employees to report improper activities. For instance, the City of Toronto Corporate Fraud Policy states “Any employee who has knowledge of an occurrence of irregular conduct, or has reason to suspect that a fraud has occurred, shall immediately notify his/her supervisor. If the employee has reason to believe that the employee’s supervisor may be involved, the employee shall immediately notify their Commissioner and the City Auditor.”

Requiring an employee to disclose improper activities is consistent with the Governmental Accountability Project (GAP) recommendations for effective whistleblowing laws. The GAP, which is a non-profit, nonpartisan public interest law firm that specializes in whistleblower protection, has developed a checklist for effective whistleblower protection laws. With regards to disclosing an illegality, the GAP checklist states that the whistleblower law should contain a provision for a “Duty to disclose an illegality. This provision helps switch the whistleblowing context from a personal initiative for conflict, to a public service duty to bear witness.”

An August 22, 2003 memorandum from Mayor Gonzales recommended “that a Blue Ribbon Task Force be established to review outstanding issues relating to the ethics ordinances...” During December 2004, the Blue Ribbon Task Force (Task Force) is scheduled to review the Code of Ethics. Therefore, due to the varying standards regarding an employee’s duty to report improper activities, we recommend that the San Jose City Council refer to the City’s Task Force for discussion and consideration, amending the Code of Ethics regarding an employee’s duty to report improper activities.

We recommend that the San Jose City Council:

Recommendation #3

Refer to the City's Blue Ribbon Task Force for discussion and consideration, amending the Code of Ethics regarding an employee's duty to report improper activities. (Priority 3)

In response to direction from the City Council, the City has taken steps to inform employees about the options available to them for reporting any inappropriate activities. Specifically, the City has informed employees about "safe spaces" where employees can feel comfortable raising issues and voicing concerns. To assist them in locating these resources, the Office of Employee Relations has updated its intranet website to provide employees with information about the options that are available for reporting concerns, filing complaints, and raising questions. The revised website may be used to obtain information about who to contact regarding various types of issues, including but not limited to harassment and discrimination, workplace violence, ethical issues, violations of City rules or policies, substance abuse, and theft. Additionally, employees can visit the website to obtain a copy of a Memorandum of Agreement to locate a policy in the City Policy Manual, or to review the City's Code of Ethics.

To further foster an environment where employees can feel comfortable raising issues and voicing concerns, the City Auditor's Office is working with the Office of Employee Relations to establish a hotline. We have conducted a survey of the ten largest cities in California and other jurisdictions throughout the United States and Canada. We will be conducting additional research to determine the best program for the City of San Jose. The City Auditor's Office and the Office of Employee Relations will report back to the Rules Committee in January 2005.

CONCLUSION

We have responded to three questions raised by the City Council at their September 14, 2004 meeting and determined that the City Attorney's client is the City Council acting on behalf of the City. In addition, we found that the CRPC and the ABA have varying standards regarding an attorney's responsibility to report up the chain of command. Furthermore, the City's current Code of Ethics encourages but does not require employees to report improper activities.

RECOMMENDATIONS

We recommend that the San Jose City Council:

Recommendation #3 Refer to the City’s Blue Ribbon Task Force for discussion and consideration, amending the Code of Ethics regarding an employee’s duty to report improper activities. (Priority 3)

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Memorandum

TO: Gerald Silva, City Auditor

FROM: Del D. Borgsdorf

**SUBJECT: RESPONSE TO AUDITOR'S
RECOMMENDATIONS**

DATE: December 6, 2004

The Administration has reviewed the final draft of "An Audit of the City Manager's Reforms." Overall, we are in agreement with the recommendations and findings made in the report. Contained in this response is further comment on the recommendations or findings made by the City Auditor and, in some instances, examples of how we are beginning to implement the Auditor's recommendations.

The City Auditor's report provides progress through November 24, 2004 and, since that time, progress has continued on each of the categories reviewed by the City Auditor. The City Auditor's report acknowledges the hard work that the Administration has completed and the efforts to address the various management reforms that are underway. We look forward to the City Auditor's review of additional progress on management reforms in early 2005 and thank the City Auditor's Office for its cooperation, input and insight.

Recommendation #1: Establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function. (Priority 3)

The Administration concurs that policies and procedures need to be developed and implemented to document the segregation between Purchasing Division and Accounts Payable. In addition, the Administration concurs with the assigned priority level and time frame indicated, 60 days to one year, for implementing this recommendation. Both the recommendation and timeframe allow for the Departments of General Services and Finance to complete the transfer and begin making the necessary changes to improve procurement service delivery.

Efforts to complete the transfer of procurement functions and establish an expanded procurement function in the Department of Finance are underway. On November 22, 2004, the Department of Employee Services opened recruitment for the Deputy Director of Procurement with an estimated closing date of December 17, 2004. Once this position is filled, this staff member will serve as the in-house expert and resource for procurements. This new staff member will greatly assist with implementing the various procurement recommendations, drafting procedures and policies, and with advising the organization on all procurements.

Recommendation #2: Develop a detailed project staffing plan for complex RFP projects that would identify the required staff, their estimated time commitments, and when they will be needed for the project. (Priority 3)

The Administration concurs that detailed project staffing plans need to be developed for complex Request for Proposals and, in general, procurements. The Administration also concurs with the

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assigned priority level and time frame indicated, 60 days to one year, for implementing this recommendation. In fact, in the past, staffing plans have been used on a less formal basis. The most recent example of a staffing plan that was used for procurement was for the Customer Service and Performance Management System (CUSP). In this case, staff outlined in detail the resource needs by: Project Administration; Training Development & Delivery; Documentation; Hauler Representatives; Technical Resources; and, Enterprise Information Technology Support. The staffing plane outlined resource needs by lead staff member, core responsibilities (by line item), average percent of time needed, and backfill plan for the assigned staff member.

Consistent with the City Auditor's recommendation, a Staffing Plan template (Attachment A) has already been developed to use on procurements. In addition to the above, the template also requires identification of gaps in resources, quality control points, estimated begin and end project date, and estimated timelines for each listed responsibility. With the addition of this information, and the requirement of a staffing plan, it is our hope that early on staff will be able to identify resource gaps and areas where expertise may not be available in-house. In addition, the quality control points section has been added to ensure that mandated processes needed to correctly complete a project are identified and documented as early as possible. Pending is the completion of an Administrative Procedure for use and completion of the Staffing Plan template, along with communicating and training the organization of this new requirement.

Finding: In our opinion, the results of the City Manager's Office and City Attorney's Office October 29, 2004 meeting is a good first step toward improving the communication and coordination between the two offices.

The Administration agrees with the City Auditor's finding that the efforts to date are good first steps towards improving communication and coordination between both offices. The Administration has extended an open invitation to the City Attorney's Office staff to all City Service Area meetings and, since September, City Manager Senior or Executive staff has been regularly attending the weekly City Attorney's Agenda Review.

In addition, the City Attorney's Office and the City Manager's Office have recently rescheduled the sequence of Council Agenda Reviews. The City Manager's Council Agenda Review meetings consist of a review of: the previous day's Council meeting and referrals (including a review of Councilmember memos); Council & Redevelopment Board Agendas for two weeks out (all items on the agenda, including reports that have not yet been distributed); Council Committee Agendas; and, Closed Session items. The City Attorney's Agenda Review covers many of the same topics.

To better accommodate work processes and to improve coordination, beginning in January 2005, the City Attorney's Office will hold its agenda review first and then the City Attorney will attend the City Manager's Agenda Review (with the Redevelopment Executive Director, City Clerk, and Senior Staff in attendance). With this change, the City Attorney will be able to brief the Administration regarding legal issues discussed at the prior City Attorney's Agenda Review. This approach allows for legal issues to be discussed at the City Manager's Agenda Review meeting, and for staff to address them prior to items going to Council for consideration.

Finding: In our opinion, the City Manager's changes formalize the assignment of the Deputy City Manager's (DCMs) to the City Service Areas (CSAs) and makes the DCMs more

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accountable for the CSA performance and submittals to the City Council...We should note that the DCMs were involved in the Converged Network RFP process. Accordingly, we are not persuaded that the City Manager's changes, in and of themselves, would have precluded some of the alleged Converged Network RFP communication problems.

The Administration accepts the City Auditor's finding as an opinion and appreciates the City Auditor's Office's input and thoughtful discussion on this subject. We believe that the change in reporting relationship between CSAs and ACM/DCMs is significant and will strengthen the organization's ability to mitigate communication problems that led to the incidents related to the first Converged Network RFP. These changes are not independent but must be taken in the context of the overall reforms. We agree that this reporting relationship in and of it self would not prevent problems that were experienced with the first Converged Network RFP. The reporting relationship changes, combined with implementing the Purchasing transfer to Finance and establishment of a detailed project staff plan at the outset are the essential components to avoiding future problems.

While the "honeycomb" structure (Attachment B) represents the organization's preferred working relationships and environment to perform our work, it's become clear that the organization needs a second tier to strengthen accountability and formalize reporting relationships. The second organizational chart clearly delineates reporting relationships between CSAs and ACM/DCMs, along with the role of the City Manager's Office, but was developed to supplement the "honeycomb" chart and not replace it.

With this approach, ACM/DCMs have responsibility for Council committees, major City initiatives, capital projects and City Service Area (CSA) leadership. This organizational structure is built around CSA's, which form the organizational base for the City Council agenda, the City budget and coordination of City service delivery. I want to emphasize that, while the formalization of a direct reporting relationship is a significant change designed to ensure that the City Manager's Office is aware of any significant issues and concerns at the earliest possible point, it does not mean a return to a command and control structure in which each department is a stand-alone entity, and each department head reports directly to a Deputy City Manager. Past memos described a direct reporting relationship with each CSA (rather than with each department director) because we believe it is crucial to our success to continue using a collaborative approach in which the City's senior management team works together on policy issues and high priority service delivery projects to produce the best results for San José.

CONCLUSION

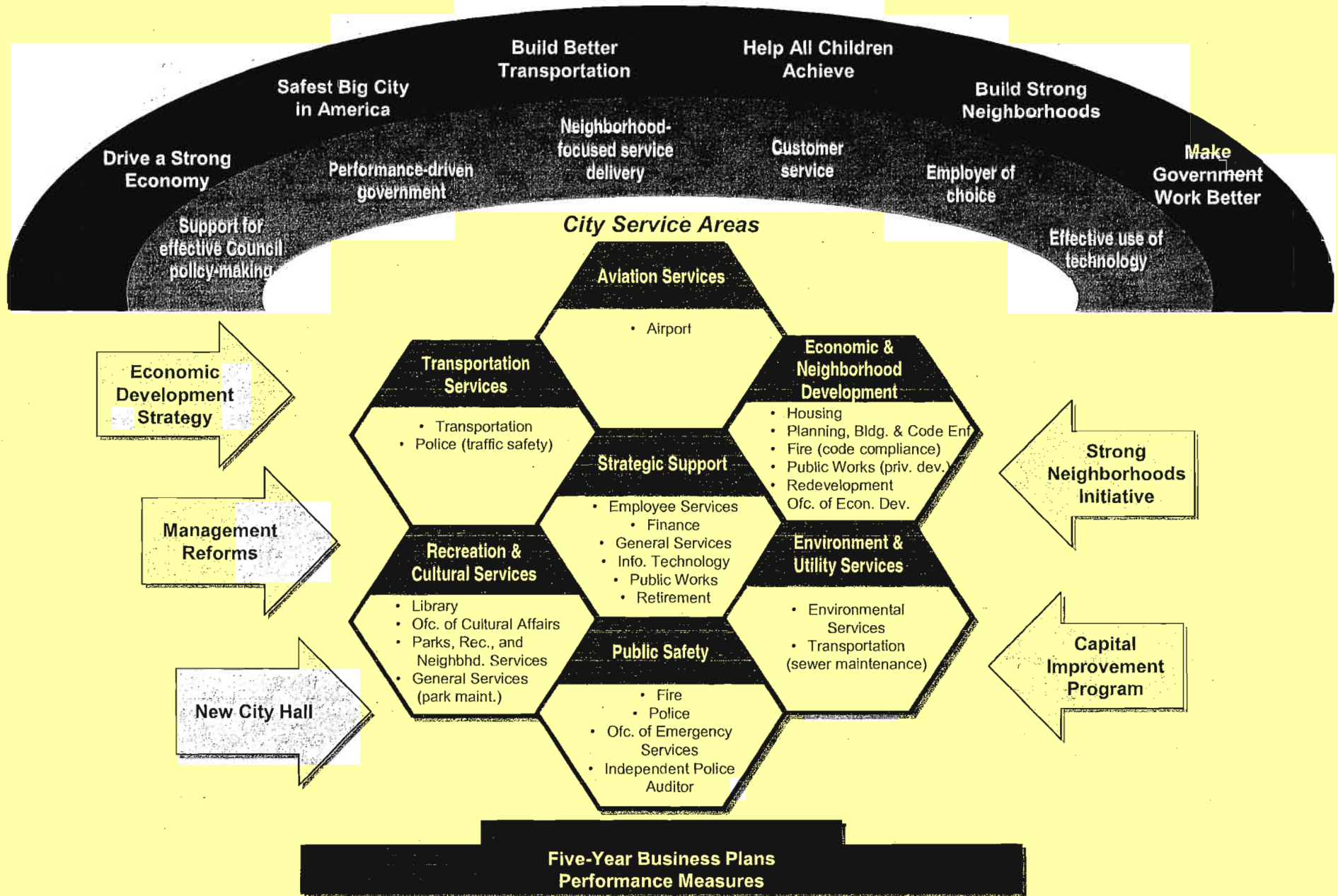
We would like to thank the City Auditor's Office for evaluating the various management reform efforts underway to improve the City's service delivery and performance. The Administration is in agreement with the recommendations made in the final draft of "An Audit of the City Manager's Reforms" and appreciates the time spent on providing valuable input on these efforts


DEL D. BORGSDORF
City Manager

Attachments (2)

Staffing Roles and Responsibilities					
<i>Project Name</i>	<i>Brief Description</i>	<i>Lead Department</i>	<i>Contact</i>	<i>Project Cost</i>	<i>Project Timeline (start and end date)</i>
<i>Resource Type</i>	<i>Resource</i>	<i>Department</i>	<i>Responsibilities</i>	<i>Average % of time</i>	<i>Backfill</i>
Project Administration					
Functional Resources					
Training Development & Delivery					
Documentation					
Technical Resources					
Enterprise IT Support					
Quality Control Checks					
Identified Resource Gaps					
Project Specific Issues					
Red - Backfill/Overstrength Positions					
Green - New Position					

CITY OF SAN JOSE CONNECTING POLICY DIRECTION WITH SERVICE DELIVERY



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)

APPENDIX B

**AUDIT RECOMMENDATIONS, RFP PROCESS
IMPROVEMENT & MANAGEMENT REFORMS**

SECTION 1: AUDIT RECOMMENDATIONS RELATED TO RFPs

AUDITOR RECOMMENDATIONS	ADMINISTRATION'S STATUS REPORT ON AUDIT RECOMMENDATIONS	CITY AUDITOR COMMENTS
<p>Conflict of Interest CUSP Rec. #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)</p> <p>CUSP Rec. #2: The City require all City personnel who participate in an evaluation process to complete a similar questionnaire. (Priority 1)</p> <p>CUSP Rec. #3: City staff should immediately request a formal City Attorney opinion when any conflict of interest issues arise. (Priority 1)</p>	<p>In order to address potential conflicts of interest, the Administration has developed an interim questionnaire for City employees, evaluators, and consultants. These forms were created for the short-term and in response to the City Auditor's recommendations. The Administration has completed a draft Conflict of Interest Statement of Policy and Procedures document. The City Attorney's Office is working with the Administration on finalizing both the draft questionnaire and policy and procedures document.</p>	<p>The Administration is in the process of addressing these recommendations and will present the results in early 2005. The City Auditor's Office will review the status of these recommendations and present the results of our review at the same meeting.</p>
<p>Standardization City Council 8-10-04 & NCH-CN Rec. #1: The City Attorney review with the City Manager's Office and the General Services Department the need for clarification or other amendments to the SJMC standardization provisions. (Priority 2)</p>	<p>This item holds an indirect relationship to the RFP process improvements. The status of this item has been reported as part of the City Manager's series of reports on New City Hall, Converged Network RFP, and is led by a different staff team.</p> <p>The Standardization Group, comprised of staff from the CMO, the Attorney's Office, and General Services meets on a weekly basis to discuss amendments to Municipal Code Section 4.12.149 as well as revisions to the Administrative Procedures Manual. The RFP Validation Committee has reviewed and commented on the draft revisions to the Municipal Code, and those revisions are in the process of being incorporated. In addition, the City Auditor's Office is in the process of reviewing the revised draft Municipal Code language and the draft administrative policy and procedures. The referenced drafts have also been shared with departments for the purpose of collecting additional revisions. This feedback will be taken</p>	<p>The Administration is in the process of working with the CAO and the Purchasing Division to draft changes to the San Jose Municipal Code (SJMC) Section 4.12.149 and developing a temporary procedure for implementing the SJMC requirements for standardization. We will report to Council with comments on both the proposed ordinance change and procedure once the Administration has finalized both the proposed ordinance change and procedure.</p>

AUDITOR RECOMMENDATIONS	ADMINISTRATION'S STATUS REPORT ON AUDIT RECOMMENDATIONS	CITY AUDITOR COMMENTS
	into consideration as the drafts to those documents are finalized and presentation to Council on the proposed amendments is forthcoming.	
<p>RFP Scoring, Evaluation & Analysis Improvements CUSP Rec. #4: City staff should level future vendor cost proposals only for budgeting purposes and after the City has selected a vendor. (Priority 3)</p> <p>CUSP Rec. #7: When the City uses a consensus scoring system it should document why the team members gave specific scores. (Priority 3)</p> <p>CUSP Rec. #8: The City should retain all individual scoring cards and note sheets. (Priority 3)</p> <p>CUSP Rec. #10: The City should structure its RFPs to facilitate the scoring of responses. (Priority 3)</p> <p>CUSP Rec. #11: Evaluation Teams or Committees should score all of the vendors that make product demonstrations. (Priority 3)</p> <p>CUSP Rec. #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)</p> <p>NCH-CN Rec. #4: The City include in its RFPs the relative importance of price and other factors and sub factors. (Priority 3)</p> <p>NCH-CN Rec. #5: The General Services Department work with the City Attorney to look for ways to improve how the City evaluates and scores responses to RFPs and considers price relative to other evaluative factors. (Priority 3)</p>	<p>The Administration is in the process of reviewing the current scoring process and other scoring methods. The Administration is also in the process of developing various models used for scoring and incorporating cost into the scoring process. It also has conducted research in this area to benchmark other agencies and best practices. Their efforts included improving the evaluation criteria process, including adding criteria that accounts for value-added services as a consideration. These are services or synergies that were not necessarily part of the goods or services procured, but come as a byproduct of selecting a particular vendor. In addition, the "value analysis" process will be further evaluated to reconcile the City's need to remain flexible when evaluating RFP proposals, while providing proposers enough information to understand how scoring will be weighted. Once the Administration has determined how it will implement these recommendations, written procedures will be developed for the RFP procedures manual.</p>	<p>Although we classified these recommendations as Priority 3, the Administration needs to implement them in a timely manner. In both the CUSP and the Converged Network audits, we identified a number of problems with the scoring and evaluation processes.</p> <p>The Administration provided us a copy of their preliminary scoring options and methods, including cost, for our review. We will comment on them when they are finalized. The Administration is considering adding evaluation criteria that accounts for value-added services that come as a byproduct of selecting a particular vendor. We discussed with the Administration that we are concerned that using value-added services evaluation criteria will add an additional level of subjectivity to the RFP process that may prove difficult to defend.</p> <p>The Administration will present its progress on these recommendations at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of these recommendations and present the results of our review at the same meeting.</p>
<p>Vendor Communication CUSP Rec. #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) & CUSP Rec. #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</p>	<p>The Administration plans to use the PPIG to address communication protocols for the second Converged Network RFP for vendors. The Administration plans to develop administrative procedures to address communication protocols for employees.</p>	<p>To assist the Administration in developing communication protocol policies and procedures, we provided them with the State of California's best practices, policies, procedures, and templates regarding project communication management and protocols. These documents describe general project communication protocols, e-mail protocols, and communication tracking for managing large-scale information technology projects. The Administration will present its progress on this recommendation at</p>

AUDITOR RECOMMENDATIONS	ADMINISTRATION'S STATUS REPORT ON AUDIT RECOMMENDATIONS	CITY AUDITOR COMMENTS
general services and commodities are being procured. (Priority 3)		the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting. See page 5 of the report for a discussion of the PPIG.
Attendance Records and Minutes CUSP Rec. #9: City Evaluation Teams and Committees should keep attendance records and minutes. (Priority 3)	While the attendance records recommendation portion is manageable, the production of minutes/summaries presents resource challenges. This recommendation will be addressed in the RFP Procedures Manual.	The Administration is in the process of addressing this recommendation and will present its progress at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.
Reference Checks CUSP Rec. #15: The City ensure that City staff adequately check proposer references for future RFPs. (Priority 3)	This recommendation will be addressed in the RFP Procedures Manual and the reference check phase, including clients, will be integrated into the Council report template. Reference checks will be conducted on a "Pass/Fail" basis and will not be part of the evaluation criteria for which a score is granted.	The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.
RFP Procedures Compliance CUSP Rec. #12: Evaluation Teams and Committees should comply with the City's Request for Proposal Procedures Manual. (Priority 3)	Discussion has taken place about including a broader RFP training module in the City's Citywide training sessions. Upon completion of the new RFP Procedures Manual, new training curriculum will be developed to share Citywide.	The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.
Request for Information Guidelines & Policy for Non-Compensated Outside Assistance NCH-CN Rec. #2: The Administration develop a policy to require a formal contract with scope of service and nondisclosure provisions for non-compensated outside parties who are providing technical or specialized assistance to the City. (Priority 3)	Establishing guidelines of when issuing a Request for Information (RFI) is appropriate, prior to developing a RFQ or RFP, as a means of obtaining more detailed market information for complex procurements, setting standards and/or even proceeding with a RFQ or RFP as the mechanism to procure. Procedures for non-compensated outside assistance will be addressed under the RFI guidelines, as both are efforts to obtain information about industry practices, market research, expertise, or product information. The policy will require that a formal contract with scope of services and nondisclosure provisions be executed for non-compensated outside parties. This recommendation will be further formalized during the development of the new RFP guidelines. As mentioned in the MGWB Committee RFP process report, the CMO, CAO, and Department of General Services staff will be working on developing a policy for non-compensated outside parties who	The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.

AUDITOR RECOMMENDATIONS	ADMINISTRATION'S STATUS REPORT ON AUDIT RECOMMENDATIONS	CITY AUDITOR COMMENTS
	provide technical or specialized assistance to the City.	
Amend Purpose of RFP NCH-CN Rec. #6: SJMC Section 4.13.010 be amended to clarify that the request for proposal method of procurement is authorized where the provision of services and the purchase of equipment are integral to each other in accomplishing the purpose of the project and the services are not merely incidental to the equipment purchase. (Priority 3)	The CAO, CMO, and Department of Finance will address this recommendation as part of the RFP process improvements.	The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.
Minimum Qualifications Requirements NCH-CN Rec. #3: The City structure its RFPs to facilitate the evaluation of minimum qualifications requirements. (Priority 3)	This recommendation will be included in the development of the new RFP guidelines and will be emphasized during RFP Training.	The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of this recommendation and present the results of our review at the same meeting.

SECTION 2: ADDITIONAL CHANGES, UNDER EVALUATION, FOR RFP IMPROVEMENTS

OTHER RFP IMPROVEMENTS	STATUS	CITY AUDITOR COMMENTS
RFP Document Checklist (City Auditor's Office): The City Auditor's Office staff recommended, and the Administration agrees, that a RFP Document Checklist be implemented to help staff ensure that all required documents and procedures have been completed.	This item will be implemented as part of the RFP process improvement.	During the course of our audit, we recommended that the City use RFP process checklists to ensure that project managers adhere to all applicable steps required by RFP policies and procedures. RFP process checklists complement the RFP procedures manual and ensure that all steps in the RFP process are followed and documented. According to Government Technology Press' <u>The Request for Proposal Handbook</u> , "Checklists are valuable, easy to use, and help avoid mistakes. They are a simple yet effective way to provide guidance to managers, to help them organize their work, and to inform them of key issues and critical steps. They are a quality control tool and help ensure that all critical factors have been considered". We also provided the Administration with RFP sample checklists.

OTHER RFP IMPROVEMENTS	STATUS	CITY AUDITOR COMMENTS
		The Administration will present its progress on this recommendation at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of the recommendation and present the results of our review at the same meeting.
<p>Council Report Template for RFP Awards Developing a Council report template to provide consistent information to Council on RFP processes and awards.</p>	A Council report template will be established as part of the RFP process improvement.	The Administration will present its progress on this RFP improvement at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of the RFP improvement and present the results of our review at the same meeting.
<p>Proposers' Outlet for Concerns Throughout RFP Process (City Council 8-24-04) Re-emphasize and strengthen the City's existing process for proposers to express concerns during and after a RFP process.</p>	<p>The Administration has outlined the communication protocol and protest process in the PPIG.</p> <p>This item will be addressed as part of the "Safe Spaces & CAO, CMO, City Auditor Hotline" referral.</p>	<p>The Administration has finalized the PPIG and our comments are on page 5 and Appendix C of this report.</p> <p>At the September 8, 2004 Rules Committee meeting, the City Auditor's Office proposed establishing a fraud hotline. The Rules Committee directed the City Auditor's Office to meet with Employee Relations, the CAO, and the Independent Police Auditor's Office and to return with further information and recommendations. We have met with the above groups and researched hotlines that have been established in other cities. We are conducting additional research, along with the Office of Employee Relations, to determine the best program for the City and its employees. The City Auditor and the Office of Employee Relations will continue to work on this effort. We will provide additional information to the Rules Committee in early 2005.</p>
<p>Greater Use of Technology for RFP Process Identifying enhanced use of technology (i.e., internet) to improve RFP process. This may involve establishing RFP e-libraries of resources, Question & Answers posing, and any other elements that ensure that proposers continue to have equal and constant access to information.</p>	This item will be implemented as part of the RFP process improvement.	The Administration will present its progress on this RFP improvement at the MGWB committee meeting in early 2005. The City Auditor's Office will review the status of the RFP improvement and present the results of our review at the same meeting.
<p>Procurement Process Integrity Guidelines (City Council 8-24-04) Develop PPIG/code of ethics for conduct standards for prospective proposers and incorporate them into RFP documents. The PPIG should provide conduct standards for prospective proposers during the development of the RFP, while it is in circulation, while being evaluated, and post-recommendation.</p>	The status of this reform may be found on page 5 of this report.	The Administration has finalized this reform and our comments are on page 5 and Appendix C of this report.

OTHER RFP IMPROVEMENTS	STATUS	CITY AUDITOR COMMENTS
<p>RFP Resources—Features of this model include three teams that advise and advance the issuance of a complex, high-profile RFP, which are:</p> <ol style="list-style-type: none"> 1. RFP Validation Teams—Setting validation teams to uphold, and advise, high-profile, complex RFP processes will be integrated into the RFP Procedures Manual. 2. Process Support Teams—Establishing process support teams to enhance staff capacity and assist with guiding RFP processes, along with utilizing staff team approach from across departments to assist with high-profile, complex RFPs where staff capacity and/or experience may be limited (including purchasing support, RFP writing assistance, RFP administration support, etc.). Process Support Teams will be formally integrated into the RFP Procedures Manual. 3. RFP External Resources—Obtaining external resources by contract, when internal resources are limited will be codified in the RFP Procedures Manual. This is a current practice, but will be formally memorialized in the RFP Procedures Manual. 	<p>This item will be implemented as part of the RFP process improvement. The model put in place for the second Converged Network RFP will be evaluated and integrated into the RFP Procedures Manual.</p>	<p>Although we did not recommend these improvements, we will comment on them when the Administration incorporates the improvements into the RFP Procedures Manual.</p>

SECTION 3: MANAGEMENT REFORMS

MANAGEMENT REFORMS	ADMINISTRATION'S STATUS ON MANAGEMENT REFORMS	CITY AUDITOR COMMENTS
<p>Purchasing Division Relocated to Finance Department/ Centralized RFP Point of Contact City Council 9-14-04</p>	<p>The status of this reform may be found on page 6 of this report.</p>	<p>The Administration has finalized this reform and our comments are on page 6 of this report.</p>

MANAGEMENT REFORMS	ADMINISTRATION'S STATUS ON MANAGEMENT REFORMS	CITY AUDITOR COMMENTS
<p>Ethics Training (City Council 8-10-04) Council directed Annual Ethics Training for all staff on August 10, 2004. Strategic Support City Service Area (CSA) will develop a training module by developing curriculum and a timetable to implement training.</p>	<p>The Director of Employee Services is leading the effort to put in place ethics training for the workforce. Actions in process include: adding an ethics training component to the New Employee Orientation; phasing in ethics training, beginning with senior managers; adjusting the curriculum in the Supervision and Leadership Academy to add an ethics component; identifying a group of staff that can be trained in ethics training for a "Train the Trainers" program, which will address the special needs of 24-7 operations and staffing; and identifying resources available to guide the City through this effort.</p> <p>In addition, in September 2004, as part of the advanced leadership training entitled "Art and Practice of Leadership," a training module on ethics is included. The ethics component of the new advanced employee leadership academy, The Art & Practice of Leadership, is scheduled for presentation on September 24, 2004. Twenty-five staff members are enrolled, representing 16 departments. Lessons learned from the training and curriculum content will be used to work with ICMA to further develop a module for Citywide training. Last, an onsite meeting was held on September 8, 2004 with David Childs, West Coast U.S. Director of International City-County Management Association (ICMA), to discuss successful ICMA ethics offerings and possible enhancements to the City of San Jose's employee development efforts.</p>	<p>The City Auditor's Office will review and report back on the progress of the Ethics Training program in early 2005.</p>
<p>Safe Spaces for Staff & CAO, CMO, Auditor Hotline (City Council 8-10-04 & Rules Comte. 9-8-04) On August 10, 2004, the City Council directed the City Manager to create a culture within the City of San Jose where employees feel comfortable reporting concerns/complaints, and can be assured that they will be provided a level of safety if the matter is reported. As detailed in prior reports, a response to this direction has been in progress.</p>	<p>On September 8, 2004, the City Auditor presented a proposal to the Rules Committee regarding a request to establish a hotline, within the City Auditor's Office, for the public and employees to report alleged waste, fraud, abuse, etc. The Rules Committee heard the proposal and directed that the City Auditor work with the CAO, CMO, and Independent Police Auditor's Office to develop a coordinated proposal and return to the Rules Committee in 30 days. The CMO reviewed the current process with the Rules Committee and stated that there is a need to re-emphasize and</p>	<p>At the September 8, 2004 Rules Committee meeting, the City Auditor's Office proposed establishing a fraud hotline. The Rules Committee directed the City Auditor's Office to meet with Employee Relations, the CAO, and the Independent Police Auditor's Office and to return with further information and recommendations. We have met with the above groups and researched hotlines that have been established in other cities. We are conducting additional research, along with the Office of Employee Relations, to determine the best program for the City and its employees. The City Auditor and the Office of Employee Relations will continue to work on this effort. We will provide additional information to the Rules Committee in early 2005.</p>

MANAGEMENT REFORMS	ADMINISTRATION'S STATUS ON MANAGEMENT REFORMS	CITY AUDITOR COMMENTS
	<p>re-advertise the current processes and resources in place.</p> <p>Employee concerns/complaints encompass a wide variety of areas. These include: Sexual harassment; Discrimination; Mistreatment by supervisors/co-workers; Grievances related to union contracts, such as pay and benefits; Workplace threats/violence; Substance abuse in the workplace; Abuse of authority; Ethical issues, including acceptance of gifts or conflicts of interest; General employee misconduct; Inefficiency/waste; Workplace safety issues; and Potential fraud and/or theft.</p>	
<p>Organizational/Reporting Decision-Making Changes (City Council 9-14-04)</p> <p>Strengthen management controls and decision-making processes.</p> <ul style="list-style-type: none"> ▪ City Service Areas: The relationship between the CMO and City Service Areas will be restructured to formalize a direct reporting relationship between each CSA and a specific Deputy City Manager. ▪ DCM/ACM Project Milestone Review: Improved processes will be put in place to review and evaluate project milestones and issues related to department/project management and City services. ▪ RFP Sign-Off Process: ACM/DCMs will be required to sign-off on all RFPs. An appropriate role for the City Auditor, on high-profile, complex RFPs/procurements, will be established. 	<p>The status of this reform may be found on page 7 of this report.</p>	<p>The Administration has finalized this reform and our comments are on page 7 of this report.</p>
<p>CMO/CAO Coordination on Issues Improve coordination on various issues with the CAO.</p>	<p>The status of the reform may be found on page 8 of this report.</p>	<p>The Administration has finalized this reform and our comments are on page 8 of this report.</p>
<p>CMO/Auditor Coordination on Issues (City Council 9-14-04) RFP sign-off on high profile, complex RFPs/procurements.</p>	<p>As stated above, ACM/DCMs will be required to sign-off on all RFPs. An appropriate role for the City Auditor, on high profile, complex RFPs/procurements, will be established. To be determined are criteria that define and trigger the City Auditor's participation.</p>	<p>As the Administration strengthens controls over the RFP process, we will work with the Administration to determine an appropriate role for the City Auditor. We plan to have a quality control role and review items such as scoring and documentation.</p>
<p>IT Department Assessment (City Council 8-10-04) Jim Helmer, Acting Chief Information Officer is beginning an assessment</p>	<p>The entire IT workplan, outlined in the August 10, 2004 report to the City Council, is under review as part of this effort. This effort includes staff</p>	<p>The Administration is currently in the process of reviewing the IT workplan, conducting staff interviews, meeting with client departments and benchmarking other public agency IT departments.</p>

MANAGEMENT REFORMS	ADMINISTRATION'S STATUS ON MANAGEMENT REFORMS	CITY AUDITOR COMMENTS
of the IT Department's capacity and strengths and weaknesses.	interviews, further review of the IT work plan (as referenced in the August 10, 2004 Council report), meetings with client departments, and benchmarking of other public agency IT departments. This effort will aid the IT Department in delivering vital services to client departments and external customers, improve the effectiveness of the Information Technology Planning Board, keep communications systems and data bases operating, and assist the Strategic Support CSA in addressing its goal of strengthening controls and staffing.	We will report to Council with comments once the Administration has completed their review.
<p>ITPB Standards (City Council 8-17-04) Evaluate the standards established by the ITPB in 2002, and prioritize those standards to initiate the formal standardization process—for those requiring standardization.</p>	At the September 3, 2004 meeting, the ITPB discussed with staff from the CAO the appropriate criteria for the standardization process. The CAO suggested that the ITPB work with the Information Technology Department and Purchasing Division to formulate short-term procedures that allow for the review of backlogged technology items in the purchasing queue. Deputy Director Anna Jatzcak, General Services Department, has been designated as the person authorized to sign-off on standardized purchase requests. Work on developing long-term standardization criteria continues. The ITPB, and/or subcommittees, will be holding a half-day work session on September 23, 2004 to conduct further work on validating the prioritized standards.	The ITPB is currently in the process of working with the CAO, Information Technology Department, and Purchasing Division. We will report to Council with comments once the Administration has completed their review.
<p>Pressure/Staffing Urgency (City Council 9-14-04) Address issues resulting from RFPs of highly complex or urgent nature that exert undue pressure on available staffing resources.</p>	<p>The status of the Administration's progress can be found on page 10 of this report.</p> <p>See "Safe Spaces & CAO, CMO, Auditor Hotline" referral and DCM/ACM Project Milestone Review for additional work plan details.</p>	<p>We have additional recommendations for the Administration to address as outlined on page 10 of this report.</p> <p>At the September 8, 2004 Rules Committee meeting, the City Auditor's Office proposed establishing a fraud hotline. The Rules Committee directed the City Auditor's Office to meet with Employee Relations, the CAO, and the Independent Police Auditor's Office and to return with further information and recommendations. We have met with the above groups and researched hotlines that have been established in other cities. We are conducting additional research, along with the Office of Employee Relations, to determine the best program for the City and its employees. The City Auditor and the Office of Employee Relations will continue to work on this effort. We will provide additional information to the Rules Committee in early 2005.</p>

APPENDIX C

COUNCIL AGENDA: 11-9-04
ITEM: 3.4



Memorandum

TO: Honorable Mayor and City Council

FROM: Gerald A. Silva, City Auditor

SUBJECT: *City Auditor's Comments On The Administration's Proposed Procurement Process Integrity Guidelines*

DATE: November 5, 2004

As indicated in the City Manager's November 4, 2004, memorandum regarding the Procurement Process Integrity Guidelines (Guidelines) for the New City Hall Converged Network Request for Proposals (RFP), the Administration discussed the Guidelines with the City Auditor's Office. Based on these discussions, the City Manager's Office addressed some but not all of our issues in its November 4, 2004, memorandum. Outlined below is a summary of the City Auditor's issues that the Administration did not address in its November 4, 2004, memorandum as well as some additional City Auditor concerns that we did not discuss with the Administration.

Issues Discussed But Not Addressed

- Communication Protocols: In Attachment A of the Guidelines, the Administration has outlined the following communication protocol for the Converged Network procurement:

	Prior To The RFP Release	After The RFP Release	Upon Release Of A Recommended Selection, Prior To City Council Approval
Designated City Contact For Inquiries	Project Manager	Purchasing Manager	Deputy City Manager
Designated City Contact For Council To Refer Inquiries	Project Manager ¹	Deputy City Manager	Deputy City Manager

We discussed with the Administration that its proposed communication protocol outlined above is at variance with the City Auditor's Recommendation #6, in the "Review of the CUSP Request For Proposal Process." Recommendation #6 states that "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." We made this recommendation to prevent confusion among vendors

¹ Attachment A of the Guidelines states that prior to the release of the RFP, "City staff and the offices of the Mayor and Councilmembers will refer inquiries from prospective proposers and requests to meet and discuss the upcoming project to the Project Manager." However, according to the Administration, it will correct this section to read that the Mayor and Councilmembers will refer such inquiries to a Deputy City Manager.

and establish a mechanism for providing consistent communication with respect to RFPs. The City Council approved Recommendation #6 at its June 29, 2004 meeting.

In addition, the Administration has proposed that the designated Deputy City Manager administer the RFP appeals process. Designating a Deputy City Manager to receive and investigate protests from vendors is contrary to both the City's current protest procedures in the Purchasing Administrative Manual and the American Bar Association's *2000 Model Procurement Code for State and Local Governments*. Both sources specify that proposers file protests with the Purchasing Division. According to the Administration, it designated the Deputy City Manager to receive and investigate appeals because of the significance of this RFP. In our opinion, the Administration could accomplish this same objective by allowing proposers to file protests with the Purchasing Division and then including senior staff in the appeal process on an as needed basis.

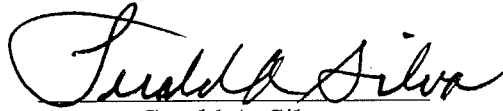
- Draft Proposer's Code of Conduct: We discussed with the Administration expanding the draft Proposer's Code of Conduct Section 2 Enforcement Provision to include not only disqualification from the RFP process but also possible debarment. Specifically, the Administration should consider modifying Section 2 of the Code of Conduct to state that a violation of the Code of Conduct may constitute "the commission of any act indicating a lack of business integrity or honesty" which under Municipal Code Section 4.10.355B, is one of the possible grounds for debarment.

Additional City Auditor Comments

- Draft Proposer's Code of Conduct: Expand the draft Proposer's Code of Conduct Section 5 Prohibition of Gifts to include offers of employment. Specifically, the Administration should consider modifying Section 5 of the Code of Conduct to prohibit the making of offers of employment to City officials or City employees in order to influence the outcome of the procurement process. We recommend that the Administration work with the City Attorney's Office to draft appropriate language.
- Code of Conduct for Contractors: At its August 24, 2004 meeting, the City Council approved a motion that included a provision that contractors adopt the City's ethical standards. According to the City Attorney's Office, the ethical standards required for vendors or contractors doing business with the City is part of the standard form agreement. This agreement includes provisions prohibiting vendors from giving gifts that would be in violation of the City's gift ordinance or causing an employee to violate the provisions of the City's Revolving Door Ordinance. The City Attorney's Office should also consider modifying the standard form agreement to prohibit contractors offering employment to influence how a City employee administers a contract.
- Protest Procedure: We are concerned that the City does not include its protest policy in the RFPs or on the City's website. According to *Government Technology Press' The Request for Proposal Handbook*, subsection entitled *Publish the Protest Policy in the RFP and other Supplier Documents*, "The RFP should identify the existence of a policy and how a supplier can obtain a copy. In many jurisdictions, the supplier has a specific

legal right to protest actions related to public procurement. These rights are often identified in both the RFP and in booklets provided to the supplier community by the organization.” Including the protest procedure in the RFP would address the above-mentioned recommended practices. Furthermore, publishing the protest procedure on the City’s website would enhance the notification process.

We appreciate the cooperation of the City Manager’s Office and look forward to continuing to work with the Administration on these issues throughout the remainder of our review. We will present further detail on these and other issues in our audit of the City Manager’s Reforms which will be discussed at the City Council meeting on December 7, 2004.



Gerald A. Silva
City Auditor

GS:lg
0504M

cc: Del Borgsdorf
Mark Linder
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