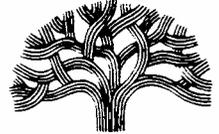


CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-7367

January 27, 2004

FINANCE AND MANAGEMENT COMMITTEE Oakland, California

**Re: CITY ATTORNEY OPINION REGARDING PROPOSED AMENDMENTS TO
OAKLAND MUNICIPAL CODE, CHAPTER 2.04, "PURCHASING SYSTEM" TO
AUTHORIZE CITY COUNCIL COMMITTEE APPROVAL OF CONTRACTS**

Dear Chairperson Wan and members of the Committee:

This report accompanies the City Manager's report recommending procurement and contracting revisions of the Public Strategies Group, and legislation which amends Oakland Municipal Code Chapter 2.04, ("Purchasing Ordinance"). The revisions include a recommendation to expedite contracting by authorizing City Council Committees to approve contracts. A new provision authorizing Committee approval of procurement contracts is included in Section 2.04.030 of the proposed legislation.

Issue

Whether the City Council may authorize City Council Committees to approve contracts?

Brief Answer

Yes. The City Council may authorize a single or several Committees of the City Council to authorize and award contracts, except for services contracts of a permanent or non-professional, non-specialized or non-technical nature, and provided that all Committee-approved contracts have been advertised and bid as required under Oakland Municipal Code Chapter 2.04, section 2.04.050.

Proposed language authorizing Council Committees to approve/award contracts is included in section 2.04.030.C of the proposed amendments. To implement this section, the Council must amend the Council Rules to establish new voting

requirements for approval of contracts, and must establish new Committee approval and legislative processes.

Analysis

1. Committee Contract Approval

The City Council could delegate to a single or several City Council Committees the authority to award procurement, construction and professional services contracts. The Oakland City Charter, Article VIII, section 808 authorizes the Council to establish contracting procedures for purchase or contract by ordinance.¹ The Council has adopted comprehensive purchasing and contracting procedures, set forth in Oakland Municipal Code Chapter 2.04, "Purchasing Ordinance". The Council can amend the Purchasing Ordinance to authorize a Council Committee or Committees to award City contracts, except for contracts requiring Council waiver of competitive processes or contracts for permanent services or non-professional/specialized/technical services. These exceptions are discussed below. A provision authorizing Council Committee approval of contracts is included in the proposed amendments.²

A. Waiver of Advertising and Competitive Bidding

The City Council may not delegate its authority to waive advertising and bidding to Council Committees. Article VIII, section 808 of the Oakland Charter requires the City Council to make specific findings, on a case-by-case basis, for contracts awarded

¹ Article VIII, Section 808 provides, in part:

(a) The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with. (Emphasis added.)

² Section 2.03.030.C of the accompanying legislation states:

C. Council Committee Contract Approval. City Council Committees may approve all contracts in accord with the authorization and legislative process set forth in the Rules of the Oakland City Council, excluding:

1) contract awards for which City of Oakland Charter Article VIII, Section 808(a) and section 2.04.050.I. below, require waiver of advertising and bidding requirements by the Council; and
2) professional service and other service contracts for which City of Oakland Charter Article IX, Sections 902 (e) requires findings by a two thirds (2/3) vote of the Council that, regardless of nature or term, the contract is in the public interest because of economy or better performance.

Contracts excluded from this section shall be approved by the full City Council as set forth in sections 2.04.030 A and B above.

without advertising and bidding.³ Therefore, the Council may not delegate procurement, construction or service contract awards to City Council Committees that require waiver of advertising and bidding. The waiver provision is set forth under Oakland Municipal Code Chapter 2.04, section 2.04.050.

B. Permanent Services, or Non-Professional, Non-Specialized and Non-Technical Services

Council Committees also would be foreclosed by the Charter from approving service contracts of a permanent or of a non-professional, non-specialized or non-technical nature. Article IX, Section 902(e) of the Charter authorizes award of permanent services contracts or non-professional/specialized/technical services contracts after a finding by a “two-thirds (2/3)” vote of the Council that such contacts are in the public interest because of economy or better performance.⁴ The express two-thirds vote requirement would preclude approval of such contracts by any legislative body or individual other than the Council.

The types of contracts requiring a two-thirds (2/3) Council vote would include services such as janitorial or other biddable services that do not require any licensing or special/technical training or knowledge and can be awarded on the basis of lowest responsive and responsible bid. While this category would also include any permanent services contracts, it has not been the City’s practice to award such contracts.

2. Implementation

In order to implement Council Committee approval of contracts, the Council must amend the Council Rules to authorize Council Committees to take the final actions needed to award contracts. Currently, Council Rules do not authorize Council Committees to take any final actions. Non-committee members can attend committee meetings and comment on proposed contract, but they cannot vote on Committee items.

³ See footnote 1 above.

⁴ Oakland Charter Article IX, Section 902, The Competitive Service, provides:

. . . The competitive Civil Service shall include all offices and employments in the City government except:

(e) Individuals or organizations engaged by contract after a finding by the Council or the Board of Port Commissioners, as the jurisdiction may be, that the service is of a professional, scientific or technical nature and is temporary in nature, or after finding by vote of two-thirds of the members of the Council or said Board that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance; provided, that no such contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service. (Emphasis added.)

Additionally, the Council must establish new Committee approval requirements and legislative processes. The Council Rules require that the Council approve all contracts by resolution. The Charter requires five (5) votes for the passage of a resolution.⁵ Therefore, to permit Committees (which consist of four members) to finally approve contracts, the Council must amend its Rules of Procedure. Also, the Council must establish a new vote-approval requirement by setting 1) a minimum number of votes to authorize a contract, or 2) a simple majority vote as provided under Robert's Rules.

Because Committees can not take action by resolution, the City Council also must adopt/approve a new form of legislation to establish an official record of final contract actions and to track the City's contract awards. Currently, resolutions constitute the City's official record of Council contract authorizations.

Conclusion

As indicated above, the City Council may delegate contract approval authority to City Council Committees for procurement, construction and service contracts that are professional, technical or scientific and temporary in nature. To implement such a decision, the Council must amend its Rules of Procedure and the Purchasing Ordinance. A new provision authorizing City Council Committees to approve contracts within Charter limits is included in the accompanying legislation that amends the Purchasing Ordinance. To track contract approvals, the Council should approve a new legislative process. The Council also must amend its Rules of Procedure to delete the resolution requirement for contract approvals.

Respectfully submitted,

John A. Russo
City Attorney

Attorney Assigned:
Doryanna M. Moreno

47476v2

⁵ Oakland Charter Article II, Section 210, Council Action, provides:

The Council shall provide by *resolution* for the order of business and the rules of procedure for the conduct of Council meetings. The Council shall act by ordinance or *resolution* or motion. The "ayes" and "noes" shall be taken on the passage of all ordinances and resolutions and entered upon the journal of the Council's proceedings. Each proposed ordinance or *resolution* shall be introduced in written or printed form. The affirmative vote of five members of the Council shall be required to adopt any ordinance or resolution, except as otherwise provided by this Charter or by general law. (Emphasis added.)

