

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 26, 2016

To: Honorable Council President Herb J. Wesson, Jr.
Rules, Elections, Intergovernmental Relations and Neighborhoods Committee

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Subject: **DEPARTMENT OF WATER AND POWER – GOVERNANCE REFORM
(C.F. 16-0093) – REPORT ON CONTRACTING**

SUMMARY

On April 13, 2016, the Rules, Elections, Intergovernmental Relations and Neighborhoods Committee (Committee) considered the City Administrative Officer (CAO) and Chief Legislative Analyst (CLA) (C.F. 16-0093) report on governance reform options for the Department of Water and Power (Department; DWP) dated April 5, 2016. The Committee instructed the CAO and CLA to report on several issues presented in the April 5, 2016 report. In some instances, the Committee instructed other departments to report as well. To facilitate the discussion, the CAO and CLA have prepared a series of reports, organized to align with the chapters presented in the April 5, 2016 report. Where applicable, other departments have participated in the development of the material contained herein.

The Committee instructed the CAO and CLA to report on the DWP's contracting challenges and modifications/adjustments which can be made to improve the contracting process. As part of this review, the Committee requested that we identify options for modifying the General Manager's contracting authority. The Committee also requested that our Offices consider the modifications/adjustments in relation to City Council oversight and Charter Section 245.

DISCUSSION

CAO/CLA Report – April 5, 2016

The April 5, 2016 report on Governance Reform options identified five modifications that would streamline the DWP procurement process thereby achieving operational and administrative efficiencies. These modifications are as follows:

- Eliminate the ordinance requirement for design-build contracts;
- Eliminate the ordinance requirement for power contracts;

- Adjust the Request for Proposals (“RFP”)/Competitive Negotiation requirement for the purchase of specialized equipment using price and other evaluation factors;
- Increase the contracting authority of the General Manager from \$150,000 and three years to up to \$5 million and five years; and
- Eliminate the Mayor’s Executive Directive 4 (ED 4) reporting requirement for on-going operational contracts.

This report reviews each option in greater detail and the relevant sections of the City Charter and Administrative Code which would need to be changed to implement them. This report also considers a proposed modification to the Board’s contracting authority.

City Charter Modifications

Eliminate the ordinance requirement for design-build contracts

As noted in the April 5, 2016 report, the DWP states that the current practice of requiring an ordinance prior to advertising a design-build project is lengthy and open-ended with no time limit. It follows that delays in the advertisement of design-build solicitations can increase the cost of projects and expose the DWP to elevated risks that may be detrimental to the completion of its projects and mandated deadlines.

The DWP states that design-build is becoming a more viable project delivery method for cities and other public agencies. For example, the Sacramento Municipal Utility District (SMUD) has an expedited design-build approval process for projects under \$5 million. The Board of Los Angeles County Metropolitan Transportation Authority (LA Metro) can authorize design-build projects with a finding by a majority vote that the method will benefit from private sector efficiencies. According to the DWP, neither entity has a lengthy review process.

To eliminate the ordinance requirement and thereby expedite the design-build process, an amendment to City Charter Section 371 (b) would be needed. We would note that the requirement for an Ordinance prior to advertising a design-build project also applies to other City Departments and approval of this Charter Amendment may result in other agencies receiving a similar exception.

Eliminate the ordinance requirement for power contracts

Of similar concern, the DWP states that City Charter Section 674 requires an ordinance for the DWP to enter into a power contract with any state, corporation, public or private, for the construction, ownership, operation, and maintenance of facilities for the generation of energy. The Section also provides for the sale, purchase and exchange of energy.

The DWP states that the current process for securing ordinances is lengthy and open-ended and creates unnecessary delay, uncertainty, and disruption that can increase the cost of contracts.

Increasing state/federal mandates for the utilization of renewable sources will require the DWP to enter into additional power purchasing agreements. The timely completion of these agreements and the procurement of renewable sources, in a cost effective manner, may be hindered by the ordinance requirement.

Also, the DWP states that its municipal partner agencies in the Southern California Public Power Authority (SCPPA) have the authority to approve power purchase agreements in an expedited manner. This ability allows them to proactively procure renewables resources and meet state/federal mandates.

To eliminate the ordinance requirement for power contracts, a modification to City Charter Section 674 would be needed.

Implementation

If the City Council wishes to pursue these City Charter modifications it should request the City Attorney to prepare draft ballot language to amend the specified City Charter sections and submit it to the City Council for consideration.

Administrative Code Modifications

Adjust the Request for Proposals ("RFP")/Competitive Negotiation Requirement

To streamline the contracting process, the DWP seeks to adjust the Request for Proposals ("RFP")/Competitive Negotiation requirement for the purchase of specialized equipment used in water and power generation and transmission and distribution equipment. Due to the technical complexities of these items, their purchase could allow for factors other than price to be taken into account. These factors may include the equipment's applicability and long-term performance as it relates to the needs of the DWP.

As noted in the April 5, 2016 report, Administrative Code Section 10.15 (f) allows factors to be used, other than price; however, it is limited to the purchase of telecommunication services, automated/computer systems and software.

To address the DWP's request, this section of the Administrative Code can be expanded to include the purchase of specialized equipment used in water distribution and power generation and transmission.

General Manager's Contracting Authority

In terms of the General Manager's contracting authority, the April 5, 2016 report identified the DWP's desire to increase the contracting authority from \$150,000 and three years to up to \$5 million and five years.

The DWP states that its current procurement practices are inconsistent with the practices of other governmental organizations such as SMUD, Seattle City Light and LA Metro. For example, SMUD delegates authority to the General Manager to sign contracts up to \$5 million for equipment, operational inventory and construction and maintenance services. Seattle City Light's General Manager signs all contracts \$250,000 and above.

According to the DWP, these procurement practices are more efficient and effective.

Categories/Thresholds

The DWP recently met with the CAO and the CLA to discuss options for structuring the General Manager's contracting authority. The DWP proposed devising the General Manager's contracting authority into specified categories and thresholds which would allow for efficiencies in their procurement approach.

The DWP requests that the City Council consider the following categories and thresholds for the General Manager's contracting authority:

Product/Service Category	Threshold Amount (up to)
Operational Inventory/Non-stock Items	\$10 million
Professional Services	\$1 million
Single/Sole Source	\$500 thousand
Construction	No limit (includes capital construction projects approved in the annual budget process)
Exigent Service/Purchase critical to Water and Power Operations	\$1 million
Non-profit membership and intergovernmental MOUs	\$1 million

The DWP states that in 2015 they prepared 126 reports to the Board for the purchase of services and equipment. The timeframe for the preparation of these reports runs from a minimum of 60 days to as much as one year depending on the duration of the contracts. Of the 126 reports to the Board, 99 reports were for purchases that ranged from \$24,000 to \$9,618,744 for general services and equipment necessary for the Department's operations.

Aside from the threshold changes noted above, the Department continues to seek General Manager contracting authority for no more than a 5 year term.

Oversight

In terms of oversight, the General Manager's execution of contracts is not subject to City Charter Section 245 which allows the City Council to assert jurisdiction over a matter and veto the decision. The provisions of City Charter Section 245 apply to the actions of the Board – not the General Manager.

The Board has limited ability to affect the General Manager's execution of contracts as well. Under existing City procurement policy, limited oversight of the General Manager's contract authority serves as the rationale for maintaining a \$150,000 contracting threshold.

To provide some measure of oversight and monitoring to the General Manager's contracting authority, the DWP is proposing the following changes be included in any modification to the Administrative Code:

- Monthly reporting to the Board, Mayor and City Council on all contracts recently awarded by the General Manager;
- Annual listing of all contracts awarded by the DWP on its website within 60 days of the year end.

This notice-oriented approach may be sufficient with close monitoring. Another option is to include a termination clause in each of these contracts which may be executed by the Board if deemed necessary.

Issues to consider

The majority of the category and threshold amounts identified by the Department are within a moderate range consistent with the practices of other entities. However, the Council may need to consider the viability of a threshold amount of \$10 million for operational inventory/non-stock items; and a no limit threshold for construction items.

The DWP states that granting the General Manager a no limit threshold for construction items is sound policy since the allocations for capital projects are approved during their annual budget process. Granting the General Manager a no limit threshold would expedite the contracting process, but would not be subject to review by the Board or the City Council under Charter Section 245.

However, the no limit threshold authorization for the General Manager is not common in City procurement practice. If the Council plans to explore this option, it may need to consider its impact as it relates to oversight, monitoring and procurement policy considerations for other City departments.

To implement these modifications, Administrative Code Sections 10.1.1 and 10.5 would need to be amended.

Board's Contract Authority

Subsequent to the release of the April 5, 2016 report, the DWP proposed the option of expanding the Board's contracting authority. This can be achieved by modifying the Administrative Code Section which limits the ability of the Board to approve contracts to three years. Under the existing Code, contracts in excess of three years must be subsequently approved by the City Council. Given this, the DWP proposes increasing the Board's contract authority to five years.

The DWP rationalizes that the current three year limit results in repetitive, non-value added administrative efforts. To avoid a longer approval process involving the City Council, the Department's staff strives to execute three year agreements for most products and services. The Department reports that this practice doesn't result in the most advantageous pricing terms.

Often, three year agreements are followed by a series of amendments in subsequent years to ensure continuation of vital products and services. The practice of excessive amendments adds to administrative inefficiencies and higher costs. It should be noted that these amendments require Council approval if they extend the term beyond three years.

The provision of granting a City board five year contracting authority is not uncommon. Currently, the Administrative Code provides the Board of Public Works contracting authority up to five years, without City Council approval, for construction/design/project management contracts associated with the City's capital improvement projects. The Administrative Code also provides proprietary departments the authority to contract for a term of five years, without City Council approval, for franchise/concession agreements, licenses and leases.

In addition, the DWP requests that the City Council consider granting the Board contracting authority up to 10 years, without City Council approval, for specialized construction equipment or software which is offered by one vendor. The Department notes in these cases, a long term agreement provides the best pricing terms with no breaks in service or product delivery.

To implement these changes, modifications to Administrative Code Section 10.5 would need to be made.

Implementation

The DWP maintains that making these modifications to the Administrative Code would significantly improve procurement performance and objectives. If the City Council wishes to pursue these options, it should request the City Attorney to develop a draft ordinance and submit it to the City Council for consideration.

Charter Section 245 - Council Oversight

As noted in the April 5, 2016 report and earlier in this report, the City Charter provides the City Council oversight authority under Charter Section 245. Specifically, this Section permits the City Council to assert jurisdiction over a matter approved by the Board and veto the Board's decision. If a matter is vetoed by the City Council, it is remanded to the Board for further consideration.

In terms of reforms to the contracting process noted above, the City Council would retain Charter Section 245 oversight authority over all of the proposed City Charter and Administrative Code modifications, with the exception of the General Manager's contracting authority.

As the City Council considers threshold adjustments to the General Manager's contracting authority, it should factor its own limited oversight ability with respect to this option.

Office of Public Accountability

The Office of Public Accountability (OPA) released a report dated May 16, 2016 which, among other requests, opined on the contracting matter. The OPA advised that the City Council consider increasing the contracting authority of the Board and General Manager to streamline its operations and improve reliability. To that end, it identified three scaled threshold levels with commensurate conditions for contracting.

Specifically, the OPA identified a contracting threshold of up to \$5 million for the Board and General Manager to utilize with conditions to be established by the Board. In addition, it identified a contracting threshold of up to \$10 million for the Board and General Manager for expenditures associated with an approved annual budget. The OPA also called for a contracting threshold of up to \$15 million for material expenditures in an approved annual budget with five or more bidders.

Executive Directive 4

The April 5, 2016 report indicated that the DWP requests the elimination of the Mayor's Executive Directive 4 (ED 4) requirement for on-going operational contracts.

The ED 4 requirement provides that any proposal that requires City Council approval be submitted to the Mayor for review prior to consideration by the Board. The ED 4 requirement also provides that the Mayor may request a CAO report as part of its review. The DWP believes that the requirement of a CAO report as a regular practice rather than on a discretionary basis results in a review process that is lengthy, inefficient and has added to the DWP's procurement challenges.

Upon review of the DWP's initial request, it may be appropriate for the key parties to revisit the practice and application of the ED 4 requirement. The provision of a CAO report is not mandatory under ED 4 and may be applied on a limited basis to mitigate the length of reviews at the discretion of the Mayor.

Executive Directives are an administrative tool of the Mayor which do not fall within the purview of the City Council. To address concerns associated with the ED 4 requirement, it is appropriate for the DWP to address them with the Mayor. To that end, the City Council may wish to urge the Mayor and DWP to review the requirement.