

The City's Consultant Contracting Procedures Need to be Strengthened

December 2001



Office of the City Auditor
Portland, Oregon



CITY OF
PORTLAND, OREGON

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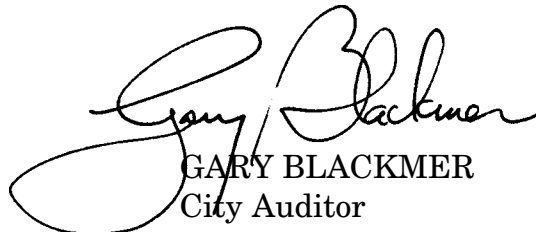
SUBJECT: Audit of the City's Consultant Contracting Procedures,
Report #275

Attached is Report #275, an audit of the City's consultant contracting procedures.

As a follow-up to our recommendations, we ask that the Director of the Bureau of Purchases provide us a status report in six months, detailing steps taken to address the report's recommendations. This status report should also be distributed to the Audit Services Division and should be coordinated through the Chief Administrative Officer and the Mayor's Office.

The auditees are / are not in agreement with the audit recommendations and findings. Their written responses are included at the back of the report.

We appreciate the cooperation and assistance we received from staff in the Bureaus and the Mayor's Office in conducting and preparing the report.


GARY BLACKMER
City Auditor

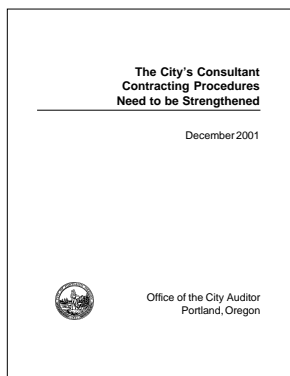
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A Report by the Audit Services Division
Report #275

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Summary

The City of Portland spends over \$50 million annually on professional consulting services. These services, termed Professional, Technical, and Expert (PTE) services, include professional assistance from architects and engineers, attorneys, accountants, graphic artists, management consultants, computer specialists, and a variety of other specialized activities. To determine how well City bureaus comply with policies intended to ensure fairness and control costs, we reviewed a sample of 25 consulting contracts from eight bureaus, representing over \$14 million in expenditures.

Mixed compliance with City rules

Our review showed mixed compliance with City policies and guidelines. We found many instances of open competition, fair selection, adequate monitoring, and required insurance and contract formats. However, we also found a variety of non-compliance with city policies and procedures. Bureaus selected some consultants without sufficient competition and rarely evaluated consultants after completion of work.

In addition, over the past several years, bureaus have increasingly employed a new method for acquiring professional services, termed “flexible” or “standard” services contracts. While this method is intended to help relieve bureaus from time-consuming repetitive solicitation processes, we found great variation in how bureaus are using standard services contracts. We are concerned that significant work is awarded to consultants with limited competition.

We also found that bureaus may acquire consulting services through payment authorizations, bypassing the contracting requirements established by purchasing guidelines. This practice should be discontinued to ensure more competition and to protect the City from risk of liability.

**Opportunities to
improve consultant
contracting**

City Council and the Bureau of Purchases have taken steps over the past several years to improve methods for PTE contracting. A revised City Code and PTE manual released in April 2000 clarified some procedures and established new methods to increase participation. In addition, Purchases’ Administrative Service Review committee developed a series of recommendations to further improve PTE contracting in the City. However, we believe that there are three additional opportunities to ensure fairness and control costs in the selection of consultant services.

First, the City could benefit from more comprehensive policies and procedures that bureaus are required to follow in selecting and contracting for consulting services. While existing City Code and the PTE manual provide valuable guidance, other governments we contacted have more com-

plete and detailed requirements. Professional literature also recommends a variety of controls that are either absent or addressed minimally by the City of Portland.

Second, bureau PTE contracting activities should be more closely monitored to ensure bureaus comply with established requirements for consultant contracting. While authority for consultant selection and management should remain at the bureau level, central monitoring and oversight by the Bureau of Purchases could improve the management of PTE consulting and compliance with City rules.

Finally, there may be opportunities to streamline and reduce PTE processing and approval steps. For example, shifting City Auditor duties into Purchases and increasing dollar amounts of contracts requiring City Council approval would streamline approvals and enhance centralized management information.

Recommendations

We make a number of recommendations in this report to improve the City's processes for selecting and contracting for consulting services. In brief, we recommend:

- A more comprehensive set of City policies and procedures that clearly establish PTE contracting requirements that bureaus must follow.
- More oversight and monitoring of consultant contracts by the Bureau of Purchases.
- Elimination and reduction of some PTE approval steps to improve oversight and speed approvals.

- Clarification of the purpose and objectives of standard services contracts, and establishment of requirements governing their use.

Chapter 1 Introduction

The City of Portland spends over \$50 million a year on services provided by consultants. We conducted this audit in order to evaluate the City's methods for acquiring consultant services. This audit was included in our FY 1999-2000 audit schedule and was conducted in accordance with generally accepted government auditing standards. However, because the City Auditor has some responsibilities for processing PTE contracts, we were not entirely free of organizational impairments to independence in conducting our work. Auditing standards require that we disclose this impairment. We limited our review to those areas specified in the objectives, scope, and methodology section of the report.

Professional, Technical and Expert Services

In the City of Portland, consultant services are referred to as Professional, Technical, and Expert Services (PTEs). Procurement of PTE services in the City is governed by rules set forth in City Code 5.68, which states:

“...‘professional, technical and expert’ shall refer to any individual or group, excluding regular City employees, who, for a fee, provides services or gives professional advice regarding matters in the field of their special knowledge or training,

including but not limited to: planners, architects, engineers, lawyers, accountants, doctors, dentists, ministers, and counselors in investments, insurance, advertising, graphics, training, public relations, communications, data processing and management systems....”

The Code grants the City Purchasing Agent authority to decide whether services not specifically listed above should be classified as PTE services. In addition, Code 5.68.015 states in part:

“To ensure that the interests of the public are fully served and that the process for awarding professional, technical and expert service contracts promotes competition and accountability, bureaus, responsibility units and selection committees shall be guided by the Professional, Technical and Expert Services Manual issued by the Bureau of Purchases and City Attorney.”

As explained in the PTE manual – entitled *Information and Guidelines: Contracting for Professional, Technical, and Expert Services* – authority for procuring PTE services rests with individual City bureaus and offices. The PTE manual was published as a guide to assist City employees in managing successful PTE procurements. The manual contains checklists and forms to help City bureaus in advertising a project, preparing a request for proposals, formulating terms and conditions, and performing outreach to minority-owned, women-owned, and emerging small businesses (M/W/ESB).

Categories of PTE Contracts

There are three categories of PTE contracts, each with different procedures based on the dollar amount of the contract. These procedures are described below and illustrated in detailed flowcharts in Appendix A.

Informal Contracts – \$5,000 or Under. PTE contracts not exceeding \$5,000 do not require approval of City Council and are normally procured and paid for with a purchase order. Bureaus are expected to obtain oral or written quotes from at least three vendors, rotate opportunities among different firms, and target M/W/ESB firms. A PTE Contract Worksheet must be completed and signed by the Bureau Director.

Informal Contracts – Between \$5,001 and \$20,297*. PTE contracts within this range require a written contract, but do not require approval by City Council. In addition, bureaus must solicit written offers from at least three firms, including at least one M/W/ESB firm. The contract and PTE Contract Worksheet are to be signed by the Bureau Director or the Commissioner-in-charge.

Formal PTE Contracts – Over \$20,297*. PTE contracts within this range must be approved by Council and signed by the Mayor and City Auditor. Bureaus must use either a request for proposal (RFP), a request for qualifications (RFQ), or a request for standard services (RFSS), and advertise for a minimum of three

* \$20,297 is the current limit for informal contracts. This limit is adjusted annually by the City Auditor based on the average inflation rate for the Portland metropolitan area.

days in the City’s designated newspaper. Formal PTE contracts also require the use of a selection committee and pre-established selection criteria. In addition, the Model Agreement for PTE Services in the City PTE manual is to be followed in preparing the contract.

The above procedures apply to all City bureaus except the Portland Development Commission (PDC). By City Charter, PDC is independent of City purchasing rules and has established its own procurement procedures. PDC defines PTE contracts as personal services. The informal quote limit for personal services and the acquisition of supplies, equipment and other services mirrors the City’s informal limit for supplies, materials, equipment and construction. This amount is adjusted annually by the average inflation rate as certified by the City Auditor. Commission action is required for acquisitions over the informal limit which is currently \$50,030.

Table 1 Volume of PTE Contracts in the City of Portland (FY 1997-98 through FY 1999-00)

Type of Contract	Number*	Dollar Value of Contracts (millions)*
PTE Contracts processed by Purchase Order	397	\$ 6.0
Informal PTE Contracts	535	\$ 7.6
Formal PTE Contracts	646	\$143.1
TOTAL	1,578	\$156.7

SOURCE: Analysis of City Auditor’s Contracts System data and the City’s automated financial system - IBIS.

* Excludes Portland Development Commission contracts

During the three-year period, FY 1997-98 through FY 1999-00, 1578 PTE contracts – valued at \$156.7 million – were entered into by City bureaus, as shown in Table 1.

Standard services contracts

Several years ago, City bureaus began using an alternate form of consultant contracting called standard services, also referred to as “flexible services” or “on-call services”. Although standard services contracting is described in the City’s PTE manual, there is no provision for it in City Code. Bureaus follow the City’s formal or informal PTE process, depending on the estimated dollar value of the services needed. The intent of standard services contracts is to save bureaus the time required to repeatedly solicit consultant proposals for small, repetitive tasks. A request for proposals (RFP), request for qualifications (RFQ), or request for standard services (RFSS) is used to select a group of consultants for open contracts in a given area of expertise. Bureaus are then supposed to rotate work among selected consultants on a task-by-task basis, and establish work orders that define the scope of work and fees.

Recent efforts to strengthen PTE Contracting

There have been several initiatives in the past few years aimed at strengthening PTE contracting in the City. In response to the 1996 Oregon Regional Consortium Disparity Study, which found discrimination in the procurement process of governments in the region, Council adopted the Fair Contracting and Employment Strategy. In addition, the Mayor established the Fair Contracting and Employment Forum which gives companies and other community stakeholders a forum to share concerns about fairness and equal treatment in City contracting. In addition, a Con-

tract Coordinating Committee – consisting of bureau managers and Commissioners’ staff – meets to discuss and coordinate issues that relate to contracting in the City.

In April 2000, Council approved several changes to City Code Section 5.68 and adopted a revised PTE manual prepared jointly by Purchases and the City Attorney. These changes emphasize increasing involvement of M/W/ESB firms in City PTE contracting. For example, Code 5.68.030 now requires bureaus to submit a list of projects requiring PTE services to Purchases at least once a year. Purchases, in turn, uses this information to publish an annual PTE calendar and ensure advertisement to Portland’s diverse communities. To acquaint bureaus with the revisions in City Code and the PTE manual, Purchases has presented a class entitled “Contracting for PTE Services” to interested bureau representatives.

The Contract Coordinating Committee was used in the City’s Administrative Services Review to evaluate City contracting practices and make recommendations for improvements. A report prepared by the Committee’s PTE Subcommittee made the following recommendations:

- Bureaus should increase the use of public pre-proposal conferences.
- Raise the limit of informal contracts to \$50,000 while increasing controls over the informal PTE contracting process.
- Allow contracts costing \$5,000 or less to be procured without competition. Limit non-competitive contracts to any one individual or firm during each fiscal year to \$5,000.

- Require that all solicitations fully describe the entire selection process.
- Selection committees should be comprised of an odd number of evaluators; the same evaluators should conduct evaluations during each phase of the selection process; and evaluators should sign a conflict of interest statement.
- Clarify the factors used to evaluate M/W/ESB utilization; have Purchases monitor bureaus' M/W/ESB evaluation efforts; establish subconsultant M/W/ESB reporting requirements; and add remedies to contracts for non-performance by contractors.
- Increase the use of standard services contracts.
- Each bureau should develop a written appeals process.
- Keep authority for PTE contracting at the bureau level.

The PTE subcommittee also concluded that PTE contracting should: (1) provide for the fair and equitable treatment of all individuals or firms through a uniform and standardized approach; (2) assure all services are procured efficiently and effectively, and at the most favorable prices available to the City; (3) promote competition; (4) provide safeguards for maintaining a procurement system of quality and integrity; and (5) ensure that City and consultant actions are in full compliance with the contract.

**Audit Objectives,
Scope, and
Methodology**

We had several objectives in conducting this audit. First, we wanted to test City bureau compliance with the provisions of Code Section 5.68 and the City PTE manual. Second, we wanted to evaluate the City's overall process for developing, reviewing, and approving PTE contracts. Third, we wanted to evaluate how well bureaus manage PTE contracts by addressing the following objectives:

1. Were the scope of work, work schedule, and deliverables adequately defined in the contract?
2. Were consultant fees negotiated to ensure reasonableness?
3. Was work progress monitored to ensure quality performance and accurate billings?
4. Were standard services contracts being used in a manner consistent with guidelines provided in the City's PTE manual?

To evaluate the City's PTE contracting process, we reviewed City Code Section 5.68 and the 1995, 1998, and 2000 editions of the City's PTE manual. In addition, we interviewed representatives from Purchases, the City Attorney's Office, the City Auditor's Office, and various other bureaus, including Environmental Services, Water, Transportation Engineering, General Services, Parks and Recreation, and Housing and Community Development. We also attended one of Purchases' "Contracting for PTE Services" training sessions.

To evaluate bureau contract management practices and compliance with City Code, we tested a sample of 25 PTE

Table 2 PTE Contracts Tested

BUREAUS	Formal Contracts	Informal Contracts	Standard Services Contracts **	TOTAL TESTED	TOTAL DOLLAR VALUE ***
Transportation Engineering	2	2	1	5	\$ 8,497,313
Environmental Services	1	1	1	3	\$ 2,068,276
General Services	2	2*	0	4	\$ 1,079,237
Water	2	1	1	4	\$ 1,216,104
Parks & Recreation	1	1	1	3	\$ 682,812
Office of Mgmt. & Finance	1	1	0	2	\$ 319,000
City Attorney	1	1	0	2	\$ 185,000
Housing & Comm. Dev.	1	1	0	2	\$ 43,000
TOTAL	11	10	4	25	\$14,090,742

SOURCE:

* One of these two informal contracts was also a flexible services contract.

** Except for the contract in the Bureau of General Services, all contracts exceeded the informal contract limit.

*** Includes contract amendments.

contracts from eight City bureaus, as listed in Table 2. The sample was selected from bureaus which had the highest number of contracts and corresponding high contract expenditures.

We prepared checklists to evaluate compliance with City Code Section 5.68 and provisions of the City's PTE manual. In addition, we evaluated to a limited extent the effectiveness of bureau contract management. In conducting our test of contracts, we reviewed contract files, consultant invoices, and payment and expenditure records. In addition, we interviewed project managers and other staff involved in contract administration.

We examined standard services contracting practices in five bureaus – Environmental Services, Water, Transportation Engineering, General Services, and Parks and Recreation. We interviewed staff responsible for administering these contracts, reviewed consultant selection practices, and tested one standard services contract from each of the five bureaus.

To identify model contract management practices in other jurisdictions, we surveyed six other governments, including the City of Seattle and King County, Washington; the City of Sacramento, California; Kansas City, Missouri; the City of Cincinnati, Ohio; and the City of Charlotte, North Carolina. In addition, we reviewed professional literature, including:

- *The Contract Cookbook for Purchase of Services*, published by the National Association of State Purchasing Officials
- *How to Select and Manage Consultants*, written by Howard L. Shenson
- *Consultant Engineering: A Guide for the Engagement of Engineering Services*, published by the American Society of Civil Engineers
- *State and Local Government Purchasing*, published by the Council of State Governments
- *The Model Procurement Code for State and Local Governments*, published by the American Bar Association
- *Report on Techniques to Improve Contract Cost Management*, prepared by Tri-Met

- *Procurement and Systems Acquisition Division General Procurement Group*, published by the United States General Accounting Office

We excluded the Portland Development Commission from the scope of this audit because PDC does not follow the same contracting procedures as other City bureaus. We do, however, plan to review PDC's contracting procedures in a separate audit in a future period.

Chapter 2 Inconsistent Practices and Some Noncompliance with City Purchasing Rules

Our review of 25 consultant contracts showed that bureaus complied with City purchasing requirements in many instances, particularly in large, formal contracts. However, we found recurring problems in small, informal contracts and some large standard services contracts.

In six of the 10 informal contracts, and in one of 11 formal contracts we tested, bureaus selected consultants on a sole source basis, meaning only one firm was contacted for the work. In our opinion, none of these sole source contracts met the City's criteria for waiving competition. We found that bureaus frequently failed to complete the PTE Worksheet that is intended to encourage and document solicitation of female and minority business consultants. We also found instances in which consultant fees were not adequately controlled, and billings and payments were inconsistent with contract provisions. Finally, in both formal and informal contracts, bureaus rarely evaluated the performance of contractors at the completion of work.

In addition, we found significant variations in how Bureaus are using standard services contracts. Although Purchases initially envisioned these contracts for small, repetitive work tasks, many bureaus are using them for

large complex projects. Bureaus are not rotating work among standard services contractors, which appears contrary to PTE manual guidelines. While bureaus benefit from faster selection of consultants under standard services contracts, we are concerned that current practices may reduce open and fair competition.

We also found that bureaus can avoid the PTE contracting process altogether by acquiring consultant services through the use of a payment authorization only.

In this chapter we discuss the findings from our review of informal, formal, and standard services contracts. In Chapter 3 we discuss the weaknesses in the City's policies that have contributed to these problems. And in Chapter 4 we provide recommendations to address these weaknesses and improve procedures and controls over the PTE contracting process.

Most formal PTE contracts complied with City requirements

In our test of 11 formal PTE contracts, we found a high rate of compliance with City Code and established contracting rules, as well as generally good contract management practices. For example, all 11 formal contracts:

- were prepared in accordance with the City's Model Agreement for PTE Services;
- had well-defined scope of work, work tasks and schedules, and deliverables;
- had consultant fees that were appropriately monitored and controlled;

- had billings that were consistent with contract compensation provisions and were properly authorized for payment;
- had required workers' compensation insurance; and,
- were reviewed by the City Attorney and forwarded to the City Auditor.

We also found that formal contracts consistently used a request for proposal (RFP) process that included pre-established selection criteria and a selection committee. In addition, in most formal contracts, project managers did a good job of monitoring the work of consultants and assuring that billings fairly represented work performed. (See Table 3.)

We did find, however, that a PTE Contract Worksheet – required by City Code – was prepared for only six of 11 contracts. In addition, evaluation of consultant performance is generally not done in the City. Eight of the eleven formal contracts we reviewed were still open, resulting in a “not applicable” response to performance evaluation. However, bureau personnel we interviewed told us they do not routinely evaluate the performance of consultants. This is contrary to City Code 5.68.060 which requires the selection committee to prepare a report on the performance of the consultant.

Table 3 Summary of test results of 11 formal PTE contracts

	Number of Contracts		
	Yes	No	N/A
Was the contract prepared in accordance with the City's Model Agreement for PTE Services?	11	-	-
Was a PTE Contract Worksheet prepared?	6	5	-
Was this a sole source contract?	2	9	-
If sole source, was a reasonable explanation documented?	1	1	-
Did the bureau use an RFP?	9	-	2
Were pre-established, weighted selection criteria included in the RFP?	9	-	-
Did the bureau use a selection committee?	9	-	-
Was a proposal solicited from at least one M/W/ESB firm?	8	1	2
If an M/W/ESB firm wasn't contacted, was a reasonable explanation documented?	1	-	10
Was the candidate who received the highest score offered the contract?	8	-	3
Did the consultant have a certificate of workers' compensation insurance or a signed declaration of independent status?	11	-	-
Was the contract reviewed by the City Attorney	11	-	-
Was the contract forwarded to the City Auditor	11	-	-
Were the scope of work, work tasks and schedules, and deliverables adequately defined in the contract?	11	-	-
Were the consultant's fees analyzed and negotiated by the bureau, and were fees clearly delineated in the contract?	11	-	-
Were consultant billings consistent with the contract's compensation provisions?	11	-	-
Did billings receive proper authorization for payment?	11	-	-
Did the bureau adequately monitor work progress and consultant billings?	10	1	-
Did the selection committee prepare a report on consultant performance?	-	3	8
After work was completed, did bureau personnel evaluate consultant performance?	-	3	8

SOURCE: City Auditor test of 11 formal PTE contracts.

N/A = Not applicable.

**Noncompliance in
informal PTE
contracts**

Our review of 10 informal contracts revealed compliance in several areas. For example, all informal contracts were in writing, used reasonable criteria for selecting consultants, were reviewed by the City Attorney, and billings received proper authorization before being paid by the City. All but one contract complied with the requirement that the consultant obtain workers' compensation insurance. Also, in almost all cases, bureaus adequately monitored work progress and consultant billings. (See Table 4)

However, we also found instances of non-compliance with City policies. As shown in Table 4, six of the 10 contracts we tested were sole source, meaning that only one firm was contacted for the work. In our opinion, none of these sole source contracts met the criteria for waiving the City's requirement for soliciting competitive quotes.

We found that three of the ten informal contracts lacked adequate control over consultant fees, and billings and payments to the consultant did not match contract provisions. In addition, in four of ten contracts, amendments raised the dollar value of the contract above the informal limit. In four of the ten contracts, no PTE Contract Worksheet was prepared as required by City Code. In only one contract in our sample was the performance of the consultant evaluated by the City, even though a performance report is required by Code. Because of these problems in informal PTE contracts, we believe the fairness of the City's PTE contracting process could be called into question.

Table 4 Summary of test results 10 informal PTE contracts

	Number of Contracts		
	Yes	No	N/A
Was the contract in writing?	10	-	-
Was a PTE Contract Worksheet prepared?	6	4	-
Were at least 3 firms contacted for quotes	4	-	6
If 3 firms weren't contacted, was a reasonable explanation documented?	-	-	10
Was this a sole source contract?	6	4	-
If sole source, was a reasonable explanation documented?	-	6	-
Was at least one M/W/ESB firm contacted?	3	1	6
If an M/W/ESB firm wasn't contacted, was a reasonable explanation documented?	-	1	-
Were expertise, experience, compensation requirements, and project approach considered in selecting the consultant?	10	-	-
Did this contract, plus other contracts with the same consultant working on the same project, exceed the informal dollar limit?	1	9	-
Was the contract reviewed by the City Attorney?	10	-	-
Did the consultant have a certificate of workers' compensation insurance or a signed declaration of independent status?	9	1	-
Did amendments result in the contract exceeding the informal dollar limit?	4	6	-
Were the scope of work, work tasks and schedules, and deliverables adequately defined in the contract?	8	2	-
Were the consultant's fees analyzed and negotiation by the bureau, and were fees clearly delineated in the contract?	7	3	-
Were the consultant's billings consistent with the contract's compensation provisions?	7	3	-
Did billings receive proper authorization for payment?	10	-	-
Did the bureau adequately monitor work progress and consultant billings?	9	1	-
After completion of the work, did the bureau evaluate the consultant's performance?	1	5	4

SOURCE: City Auditor test of 10 informal PTE contracts.

N/A = Not applicable.

**Varied use of
standard services
contracts**

We found great variation in the way bureaus are using standard services contracts. Contrary to guidelines contained in the City's PTE manual, bureaus are using the contracts to accomplish sizeable projects, rather than small, repetitive tasks. In addition, methods used to rank and select consultants are inconsistent from bureau to bureau. Finally, most bureaus are not making an attempt to rotate work among consultants with standard services contracts.

Contracts Used for Sizable Projects, Not Small Tasks

Standard services contracts were instituted as a means to save bureaus the time required to repeatedly solicit consultant proposals on small, repetitive tasks. The City's PTE manual states:

“Often, bureaus have frequent requirements for an architect, engineer, or other professional to perform a small task. Spending the time to obtain proposals from three firms for a \$1,000 job is an inefficient use of City resources when it is required to be repeated over and over again. Purchases has developed a methodology to relieve City Bureaus from this time consuming and inefficient process: “The Request for Standard Services.” It should be noted that when larger projects arise, or more complex type of work is needed, a separate RFP should be let.” (2000 PTE manual, pages 25-26)

However, as shown in Table 5, the dollar amount of current standard services contracts are as high as \$1.5 million, and work orders issued under these contracts far

Table 5 Standard services contracts in five City bureaus

Bureau	No. of contracts	Dollar range of contracts	Largest work order identified
Transp. Engineering	28	\$25,000 - \$1.5 million	\$1,007,000
General Services	62	\$18,000 - \$60,000	\$18,296
Water	8	\$75,000 - \$300,000	\$68,114
Environmental Serv.*	17	\$300,000	\$100,248
Parks & Recreation	45	\$80,000	\$114,800

SOURCE: Audit Services Division review of bureau records.

* There are 17 standard services contracts in BES. The dollar range and work order amounts in this table refer only to a group of five contracts managed by the Engineering Group.

exceeded nominal amounts for small tasks cited in the City’s PTE manual. Transportation Engineering issued work orders for as much as \$1 million; Environmental Services issued work orders over \$100,000; and the Bureau of Water issued work orders over \$68,000.

In addition, some standard services contracts were amended by sizeable amounts due to changes in the scope of work. For example, the contract we tested in the Bureau of Parks and Recreation was a \$60,000 contract used for the design of a park improvement project. The contract was increased by \$54,800 to allow the consultant to perform a separate scope of work, which included development of the park’s master plan. A \$19,296 contract in the Bureau of General Services was increased to \$35,592, based on a change to the scope of work, thus raising the contract above the informal limit.

Inconsistent Selection Practices

The five bureaus we reviewed employed a variety of methods to obtain proposals for standard services contracts. For example, two bureaus used a “Request for Standard Services” administered by Purchases; two bureaus used Request for Proposals; and one used a two-step Request for Qualifications. Within these various proposal formats, bureaus used questionable practices to evaluate and rank proposals, and select consultants for contracts.

For example, one bureau’s selection committee consisted of three bureau employees; no one on the committee was from an organization outside City government, contrary to City Code requirements. Also, the bureau eliminated some firms from competition after initial scoring of candidates for a variety of reasons, such as “they were already doing work for the City,” “they had performed poorly on earlier contracts,” or “they didn’t qualify”. The seven firms selected did not receive the highest scores in the selection process. Those that were awarded contracts received the 3rd, 4th, 5th, 8th, 9th, 10th, and 17th highest scores out of 20 proposals. Furthermore, the firm receiving the most work/dollars from the bureau at the time of our review, was the firm that placed 17th in scoring.

In another bureau, two firms originally in the top five in candidate scoring were not among the five firms awarded contracts for general engineering services. Instead, the bureau threw-out each candidate’s highest and lowest scores received from individual raters. The five firms that received the highest scores after the scores were adjusted were awarded contracts.

Lack of Work Rotation

Personnel in Purchases indicated that rotation of work among selected consultants is an essential aspect of standard services. While most bureaus attempted to rotate work among contracted consultants initially, all but one bureau abandoned their efforts to rotate work. Most of the bureaus now assign work orders based on “best fit” (i.e., assigning work to the firm that appears to have the most appropriate skills or experience for the specific job). In one of the Water Bureau’s standard services packages, only one consultant is selected for each area of expertise, thus eliminating any opportunity to rotate work.

As a result, there has been a disparity in the amount of work/dollars received by firms with standard services contracts. At the time of our review, architectural consultants received payments ranging from \$33,000 to \$172,000 from the Bureau of Environmental Services, and \$0 to \$103,921 from the Bureau of Parks and Recreation.

Because bureaus are using standard services contracts for sizeable projects, amending contracts for new scopes of work, and not rotating work among consultants, we are concerned that some work is awarded without sufficient competition.

Work on large PTE projects acquired by purchase order

We found that work on a number of large PTE projects was acquired by using a purchase order only, without going through the standard PTE process and without obtaining a contract. We selected 20 PTE purchase orders with values ranging from \$22,000 to \$547,700 for review. We found

that eight purchase orders, totaling approximately \$679,000 in value, were approved by City Council without a formal selection process or contract. Six of these eight were approved on an “emergency” basis, for development of a geographic information system, and for Y2K computer assistance. Another four purchase orders, totaling \$170,000, were processed as PTEs when they were used for purchasing computer equipment and other non-PTE services. In addition, we could not find documentation related to six purchase orders totaling \$800,000.

Purchases staff acknowledged a problem with sizeable PTE services being purchased with purchase orders when contracts should have been used. The 1998 PTE manual allowed PTE services costing up to the informal dollar limit to be acquired with purchase orders. Purchases staff stated that this problem has been addressed in the 2000 PTE manual which limits the use of purchase orders for PTE services to projects costing less than \$5,000. Purchases staff also indicated they are more closely monitoring purchase orders to prevent large PTE projects from being acquired with a purchase order.

We also learned from Purchases and City Accounting Division staff that a bureau may also use a payment authorization to obtain PTE services. Payment authorizations require the signature of the Commissioner-in-Charge or a designee, and can be used to pay invoices up to the informal dollar limit. We did not test payment authorizations to determine the extent to which they are used for PTE services, but we believe that internal controls could be strengthened in this area. For example, it is possible to use

a payment authorization to pay for work that should have been approved by an amendment to an existing contract, if the requesting bureau makes no reference to the contract on the payment authorization.

A bureau could also bypass the contracting process by dividing a project into several small tasks and assigning the tasks to a contractor over several months. Depending on the amount of each task, payments could be made using a payment authorization.

Chapter 3 Additional Opportunities to Improve City Procedures for Consultant Contracting

Despite recent improvements in the City's PTE contracting requirements, we believe there are additional opportunities to improve the fairness of consultant selection and to reduce overall costs to the City. Consultant contracting in the City could be improved by taking the following three steps:

- developing clearer and more comprehensive City rules on how Bureaus should acquire and manage consulting services
- implementing more oversight and monitoring of Bureau PTE practices to improve management and ensure compliance with established requirements, and
- revising some processing and approval steps to improve oversight and speed the acquisition of consulting services

The following sections discuss these proposed changes in detail. Chapter 4 provides specific recommendations to improve City practices for acquiring PTE services.

Inadequate PTE policies and procedures

Current City Code and Bureau of Purchases guidelines provide the framework for Bureaus to follow when acquiring consulting services. City Code defines basic requirements for PTE contracting such as advertising, bidding requirements, and selection committees. The Code also requires that the Purchasing Agent and the City Attorney develop a PTE manual to guide Bureaus in administering consultant services. The recently revised PTE manual provides guidance on a host of issues including contract categories, contract checklists, selection methods, and contract administration.

While the City Code and PTE manual offer a baseline approach to acquiring and managing consulting contracts, we believe that the City and bureaus could benefit from clearer and more comprehensive policies and procedures. Our review of purchasing manuals from other governments and the Bureau of Environmental Services, as well as industry literature, disclosed that the City of Portland provides significantly less guidance and direction to bureaus involved in the selection and contracting of consultants. Portland's City Code and manual give bureaus more discretion, provide fewer requirements on selection and contracting, and are silent on a number important topics. We believe that more comprehensive policies and procedures like those discussed below are necessary to ensure that the City's bureaus have adequate guidance in contracting for consultants. Clearer expectations and requirements reduce uncertainty, promote better contracts, and provide a fairer and more competitive contracting environment.

Some of the most significant policies that are absent from or only briefly touched upon in the City Code and PTE guidelines include:

Needs statement and justification

The new PTE manual requests that bureaus determine a need for entering into consultant contracts. However, except for narrative included in each bureau's annual budget request, we found little evidence that a formal justification process is followed before consultants are hired. The Council of State Government's publication entitled *The Contract Cookbook for Purchase of Services* recommends that an entity's purchasing rules "require using agencies to prepare a Needs Statement including, but not limited to, a description of need, justification for not contracting with other agencies or using limited term or project employees, and justification for the procurement process when other than competitive bidding is to be used."

A Needs Justification Statement helps agencies evaluate both the need for and best method of acquiring services before initiating requests for proposals. The needs assessment is intended to make agencies think about their internal priorities and objectives, and whether the service is truly needed or can be provided in another way. Once need is approved by management, agencies should then determine the most efficient and economical method of service delivery. This may entail using internal capabilities, contracting with other City agencies, using limited term employees, and/or selecting outside contractors.

Sole source and emergency selection

City Code requires bureaus to report to Purchases when they select contractors without competition due to an emergency or because a service is provided by a sole source. Purchases includes these contracts in periodic reports to City Council.

By contrast, other jurisdictions require departments to request a waiver of standard competitive processes and/or to explain the basis and factual circumstances that justify sole source selection. For example, King County, Washington, has developed detailed procedures to guide agencies that procure services where the standard competitive selection process is not practical. Agencies must request a waiver of the standard process, explain the basis and the factual circumstances justifying the waiver, and state the steps taken to ensure that the County is getting a qualified firm at a reasonable price. Agencies must also justify the waiving of any processes in place for encouraging minority and women business enterprises.

Written waivers and approvals are required because sole source and emergency selection eliminate competition, restrict access to county business, and increase risks of higher price for services.

Insurance requirements

City Code requires consultants to comply with workers compensation laws, and to maintain coverage during the course of the contract, evidenced by a valid insurance certificate on file with the City Auditor. PTE manual guidelines also list additional insurance coverage, such as general and professional liability, that may be needed by contractors unless waived by the City Attorney's Office.

In contrast, other cities have provided more complete guidance on the types, amounts, and declaration needed for different types of services. For example, the City of Seattle has prepared written procedures stipulating requirements for the amounts and types of insurance that consultants must have. Depending on the type and amount of contracted services, written procedures define what insurance documentation is required, and the types of forms and declarations required. The procedures also give guidance on how to read and interpret the insurance declarations to ensure coverage is complete and insurance companies are qualified. Special high risk services require additional insurance coverage and review by risk management officials. The procedures also provide a glossary of insurance terms to help city agencies understand insurance documents and declarations.

Seattle provides these procedures to reduce the risk of poor and non-performance by consultants and to protect the city from unnecessary costs and liability.

Controlling consultant costs and fees

The City's PTE manual contains very little information to assist bureaus in evaluating and negotiating consultant fees. By contrast, Seattle developed written procedures for city agencies to follow when negotiating and controlling contractor costs and fees. These procedures include methods for negotiating indirect costs (overhead and fringe benefits), categories of allowed indirect costs, standard ranges for fixed fees, methods to review contractor invoices for accuracy and reliability, and independent review of contract amendments above certain dollar limits.

In addition, the Bureau of Environmental Services' manual contains guidance on appropriate levels of contract mark-ups and the purpose and use of multipliers for overhead, indirect costs, and profits.

Guidance on consultant fees helps bureaus gain greater knowledge of what the contract will cost and more assurance that what the city agrees to pay is reasonable, fair, and appropriate.

Flexible / standard services contracts

Several of the cities we contacted allow the use of flexible or standard services contracts. These services contracts are used by cities to save time and money in the selection and hiring of consultants, and to provide opportunities for small businesses to obtain experience as prime consultants. Unlike Portland, other cities have developed procedures for how this program should be administered including how consultants can qualify for standard services contracts, dollar limits on the contracts, specific requirements for rotation, limits on amendments, and protections against the repeated use of certain consultants. In addition, cities provide additional rules to ensure the process is not abused, and that fairness is maintained.

Contractor performance evaluation

Although City Code requires bureaus to produce a report on consultant performance upon completion of each contract, the PTE manual contains no guidance on how to produce this evaluation, its format, or reporting requirements. The Bureau of Environmental Services PTE Contracting Manual contains instructions and a form that project managers must complete to evaluate contractor

performance. Also, the document *Principles and Practices of State and Local Government Purchasing* suggests adoption of guidelines and rules that require agencies to file an evaluation of contractor performance within a certain number of days after completion of the contract, and assure that future contracts are not awarded to contractors who receive unsatisfactory evaluations.

Project management

The *Contract Cookbook for Purchases of Services* published by the Council of State Governments also provides guidelines and suggests a number of best practices for contract administration after selection and contracting has occurred. These contract administration practices include a monitoring plan to ensure services comply with established agreements and milestones, delivery of data and materials when promised, review and approval of invoices and progress payments, documentation of changes and modifications to agreed upon services, and review and evaluation of service performance.

More oversight and monitoring of bureau PTE activities

City Code delegates authority for the management of PTE contracts to City bureaus. Unlike supply and construction contracts, the Bureau of Purchases is given no authority to advertise and select consultants for bureaus. Although Purchases and the City Attorney have prepared PTE guidelines to help bureaus acquire consulting assistance, ultimate authority for PTE contracts rests with Commissioners and individual bureaus. This decentralized approach is common in most government agencies because individual departments are viewed to be in a better position to make

the more subjective analysis of knowledge and experience of the consultant, where price is just one of the several criteria used to award consulting contracts.

However, we believe that the City could benefit from more centralized monitoring and oversight of consultant contracting conducted by individual bureaus. While authority for consultant selection and management should remain decentralized, more on-going review of bureau compliance with established Code requirements could reduce non-compliance with PTE contract requirements.

One way to achieve more ongoing review of PTE contracting is to require bureaus to submit certain essential PTE contract records to Purchases. For example, bureaus could submit RFPs and RFQs, selection committee documentation, PTE worksheets, approved contracts, and contractor performance reports. Establishing a central point for all essential PTE contract documents would also help the City produce better management information on PTE spending levels, identify opportunities to establish standard services contracts, and help monitor and improve contractor performance. In addition, centralizing information on PTE contracting could help Purchases assess achievement of M/WBE goals and provide a one-stop location for public information on City consulting activities.

We also believe that the Bureau of Purchases could play a role in helping bureaus advertise PTE consulting needs and resolve PTE disputes and appeals. For example, bureaus could use Purchases to advertise their RFP/RFQ solicitations on Purchases' website so that potential consultants could access a common website for City contracting

in addition to the usual advertising. While bureaus would retain full responsibility for preparation of RFPs, selection, and administration, use of a common website for advertising should help increase competition and access to City business.

In addition, there may be a role for Purchases in mediating and resolving contractor disputes and appeals. Currently, each bureau is responsible for handling complaints from contractors about the selection process and the fairness of awards. The Contract Coordinating Committee recommended that each bureau develop a written appeal process. Although we believe that final decisions about the selection should remain with the bureaus, the Bureau of Purchases could provide a third party review of complaints to ensure the City guidelines and rules were appropriately followed,

Two jurisdictions we contacted provide central oversight of department consulting activities. For example, in King County, the Professional Services and Construction Services Procurement Division (PCSPD) is responsible for overseeing the professional services contracting process, providing technical advise and assistance, establishing procurement standards, and filing all procurement documents. While individual county agencies retain responsibility for managing the selection and administration of consultants, the PCSPD reviews compliance with processes, approves waivers to requirements, and provides technical assistance and advice. The PCSPD may also manage the entire procurement process in some cases depending on the amount of the contract and the needs of the requesting agency.

Also, in the City of Seattle, the Executive Services Director, through the Contracting Services Division, develops overall rules for consultant selection, manages the consultant roster or standard services program, and provides technical advice and assistance to implementing agencies. While consultant contracting is decentralized, agencies are required to file a variety of documents with ESD, including the contract, amendments, selection committee reports, performance and evaluation reports, and any agency policies and procedures for contractor selection. While the ESD does not have authority to approve waivers of procurement processes, waivers must be submitted to them. The ESD also conducts selective audits of consultant contracts and amendments to verify that agencies are complying with City rules and requirements. Large contract amendments also require review and comments by the ESD prior to authorization.

The *Contract Cookbook for Purchase of Services* prepared by the Council of State Governments states that an essential element for public purchasing is a central purchasing authority responsible for policy making and oversight of public contracting. The central agency should delegate some responsibilities to agencies but retain authority to monitor all delegated activities. A central purchasing agency should also maintain a procurement management information system, approve or receive waivers of non-competitive selection, implement a process to manage protests and complaints, and provide general policies and safeguards to ensure legal, fair, and economical selection.

Reduce PTE contract processing and approval steps

In addition to increasing PTE oversight and monitoring, we also believe that there are opportunities to streamline the processing of contracts by reducing some approval steps and reviews. Specific steps that may hold opportunities for either elimination, streamlining, or consolidation within the Bureau of Purchases include the following:

Bureau contract monitoring

Some City bureaus have staff who monitor and oversee their bureau's compliance with City and bureau contracting requirements. These staff provide important controls for bureaus that manage a significant number of contracts each year. For example, over the past several years the Bureau of Environmental Services has created a contract manager position to oversee bureau contract activities, to establish specific bureau rules and regulations, and to provide technical assistance to project managers. This manager also checks on bureau compliance and arranges for periodic audit of selected contracts.

However, other bureaus may wish to rely on the Bureau of Purchases rather than internal staff to provide this contract oversight and review.

City Attorney review

All PTE contracts must be reviewed by the City Attorney's Office and approved as to form prior to execution by the City. Review and approval as to form ensures the contract is in proper written legal form, adequately identifies and obligates the consultant, correctly contains applicable provisions, complies with legal requirements, and has been

reviewed and approved for associated legal documents, and insurance certifications. Review and approval as to form is usually performed by the Office's Legal Contracts/Documents Analyst, but may also be conducted by any Deputy City Attorney. In addition, individual attorneys may review contracts if they are involved in the project or a legal issue associated with a contract.

We believe that the City Attorney should retain responsibility for reviewing all City contracts. This continuing review helps reduce the risk of liability and protects the City against loss of various kinds. However, it may be possible to improve processing times while increasing the value of City Attorney reviews by developing written guidelines that specifically stipulate insurance and documentation requirements. Written procedures would help bureaus more fully understand insurance and contract expectations, so that routine contracts would require less City Attorney's Office review time.

City Auditor processing steps

PTE contracts are also required to be submitted to the Office of the City Auditor. The City Recorder Division of the City Auditor's Office ensures that each contract has authorized signatures, current and complete insurance documentation, and required PTE worksheets. If documentation is complete, the Division assigns a contract number, distributes copies of contracts and supporting documents to various parties, and files the original contract documents. The Division also files contract amendments and insurance renewals with the original contract when provided by the Bureaus. The contract number is used to track the

contract amount and spending in the City's accounting system. The City Auditor's staff also help bureaus schedule time and submit required documents so that contracts can be approved by City Council .

With the exception of the Council agenda process, we believe the contract administration duties of the City Auditor could be reassigned to the Bureau of Purchases. We believe that the Bureau of Purchases could check for authorized signatures, verify that documentation is complete, and assign contract numbers. Purchases could also file contract documents and insurance information, and maintain records of current contracts. Upon completion of contracts, all documents would be forwarded to the City Auditor's Archives and Records Division for storage and eventual destruction in accordance with established retention schedules. Centralization of all contract documents in one office in the City would provide better management information for reporting and analytical purposes, eliminate redundant systems and record keeping, and improve control and compliance over PTE contracts.

Council approval of contracts

Consideration should also be given to increasing the current dollar limit of contracts that do not require Council review and approval. Currently all contracts of over \$20,297, must be filed with an ordinance and approved by City Council. We believe this amount is too low and requires more contracts on the Council's agenda than is necessary, slowing processing and approval, and cluttering the agenda with routine matters that could more appropriately be handled administratively. Several cities we contacted have

much higher limits before elected officials are asked to review and approve. For example, the Cities of Charlotte and Sacramento have a limit of \$100,000 before the legislative body is involved, while Seattle only asks for legislative review for contracts over \$250,000. Moreover, some governments do not involve the elected body in approval of contracts at all, delegating this authority to the chief executive officer or a designate. In these entities, the approval of the budget and spending amounts is viewed as a more appropriate place for legislative approval of spending, rather than individual contracts.

Removing some of the above steps from the PTE contract process would result in stronger central point of monitoring and oversight, speed the approval of contracts, help bureaus receive more timely service delivery from consultants, and potentially reduce administrative costs. Table 6 shows the current processing flow amended to include our recommended changes.

Table 6 Comparison of Current Processing Steps with Suggested New Process

Current Steps	New Steps
Bureau needs justification management approval specifications selection contract preparation project administration payment and performance eval.	Same
Bureau contract review policy compliance technical assistance oversight	Same, or could be assumed by Purchases
Purchases EEO certification PTE worksheets	EEO Certification, PTE worksheet, assign contract number, maintain database, file documents
City Attorney legal format insurance documents legal provisions	Same
City Auditor assign contract number maintain database file documents	Assumed by Purchases
Council review and approval of contract ordinance	Same, but higher approval limits
Mayor/City Auditor/Commissioner approve (sign) contracts	Same

Source: Current steps: City PTE Manual. New steps: Audit Services Division.

Chapter 4 Recommendations

The City of Portland has made a number of changes over the past several years to improve the methods for selecting and managing consultant contracts. These changes have helped clarify requirements and strengthen equal access to city business. However, our review revealed that additional changes are needed to improve bureau compliance with existing rules, ensure more fairness in the selection process, and better control the costs of consultant services.

To help achieve these improvements, we recommend that the Bureau of Purchases of the Office of Management and Finance, in cooperation with the City Attorney's Office, prepare an ordinance and a revised manual of PTE guidelines for City Council review and approval. The ordinance and manual should provide for the following:

- 1. Assign responsibility for monitoring and overseeing City PTE contracting to the Bureau of Purchases***

The Bureau should have authority and responsibility to oversee and monitor the acquisition of consulting services in the City. This responsibility should include a) developing standards, procedures, and processes to be followed by all City bureaus, b) monitoring compliance with these standardized procedures, c) providing technical advice and assistance to bureaus ,

d) maintaining a central file and database of PTE contracts, insurance documents, and other required documents, e) assigning contract numbers for tracking in the accounting system, and f) providing a central point for advertising, complaints, appeals, and assessment of consultant performance.

Authority for selection and management of consultants and PTE contracts should remain with bureaus and Commissioners. Typical duties of bureaus will include 1) needs justification, 2) solicitation and selection processes, 3) contract development and administration, 4) project management and monitoring, 5) payment approval, and 6) performance assessment.

2. *Revise the current written PTE manual to provide a more comprehensive set of policies and procedures that bureaus are required to follow.*

The Bureau of Purchases should revise the current manual to provide additional guidance on methods for acquiring consultant services and preparing and processing PTE contracts. Areas needing enhancement include procedures for needs justification, sole source and emergency contracting, insurance guidelines and documentation requirements, contractor fee and cost controls, consultant monitoring and evaluation, standard services contracting, selection procedures and documentation, contract amendments and extensions, and contract close-out.

All City Bureaus should be required to comply with the revised manual of PTE contracting procedures developed by the Bureau of Purchases. Waivers from required procedures should be documented in writing and submitted to the Bureau of Purchases.

3. *Simplify the process for PTE contracting by eliminating or reducing some steps in the approval process.*

- a. The Bureau of Purchases, the Office of the City Auditor, and the Office of the City Attorney should work together to eliminate and reduce current PTE contract processing steps. Duties holding the most promise for consolidation within Purchases are City Auditor contract filing, contract numbering, database management, and insurance documentation.
- b. In addition, staff that perform related contract monitoring duties in other bureaus should be reviewed to determine the feasibility of centralizing these functions in the Bureau of Purchases.
- c. To reduce the number of contracts needing City Council approval, the Bureau of Purchases should propose that current thresholds for contract amounts requiring Council approval be increased from approximately \$20,000 to at least \$50,000 with annually CPI adjustments. Higher thresholds up to \$100,000 should be considered in the future. These changes will require City Charter revision.

- 4. *Clearly define the authority, purpose, and objectives of the standard services program, and establish requirements for selection, dollar limits, and work rotation.***

The Bureau of Purchases should develop an ordinance for City Council's approval that authorizes the use and clarifies the purpose of standard services contracts. In addition, Purchases should then develop PTE manual procedures for the administration of these contracts. Purchases should establish citywide requirements that stipulate 1) how standard services contracts should be used, 2) uniform methods for solicitation and establishment of approved standard services contractor rosters, 3) limits on the dollar amounts of individual work orders that do not require re-bidding and completion, 4) requirements for rotation of work orders to all approved consultants on the list, and 5) retention of standard services contracts documents and records.

- 5. *Establish rules and controls to prevent the improper use of payment authorizations for PTE services.***

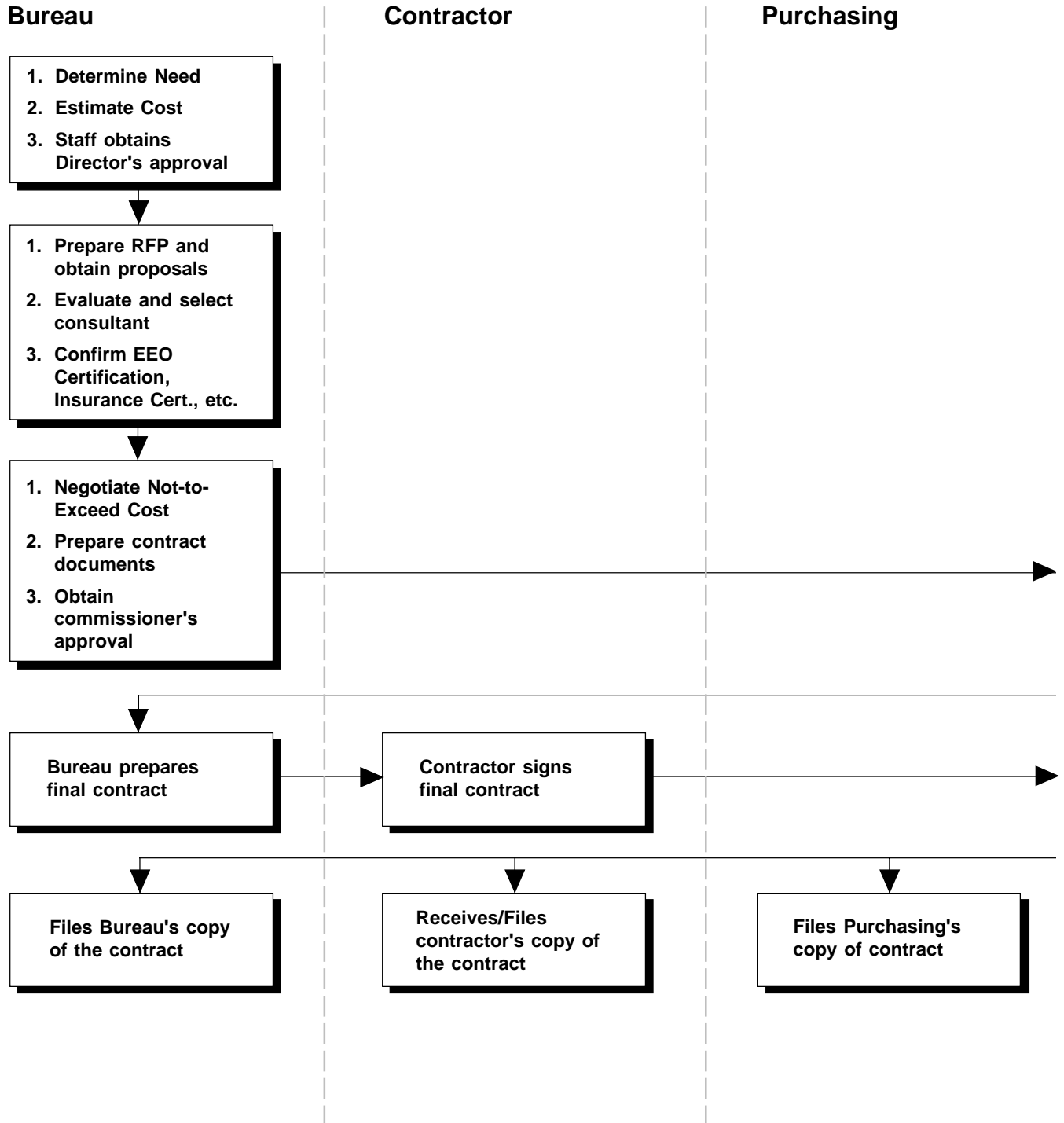
Purchases and the Accounting Division need to establish procedures for monitoring payment authorizations to ensure they are not used to inappropriately acquire consulting services. City Code and the purchasing manual should clearly prohibit the use of payment authorizations to pay for consulting services without a contract.

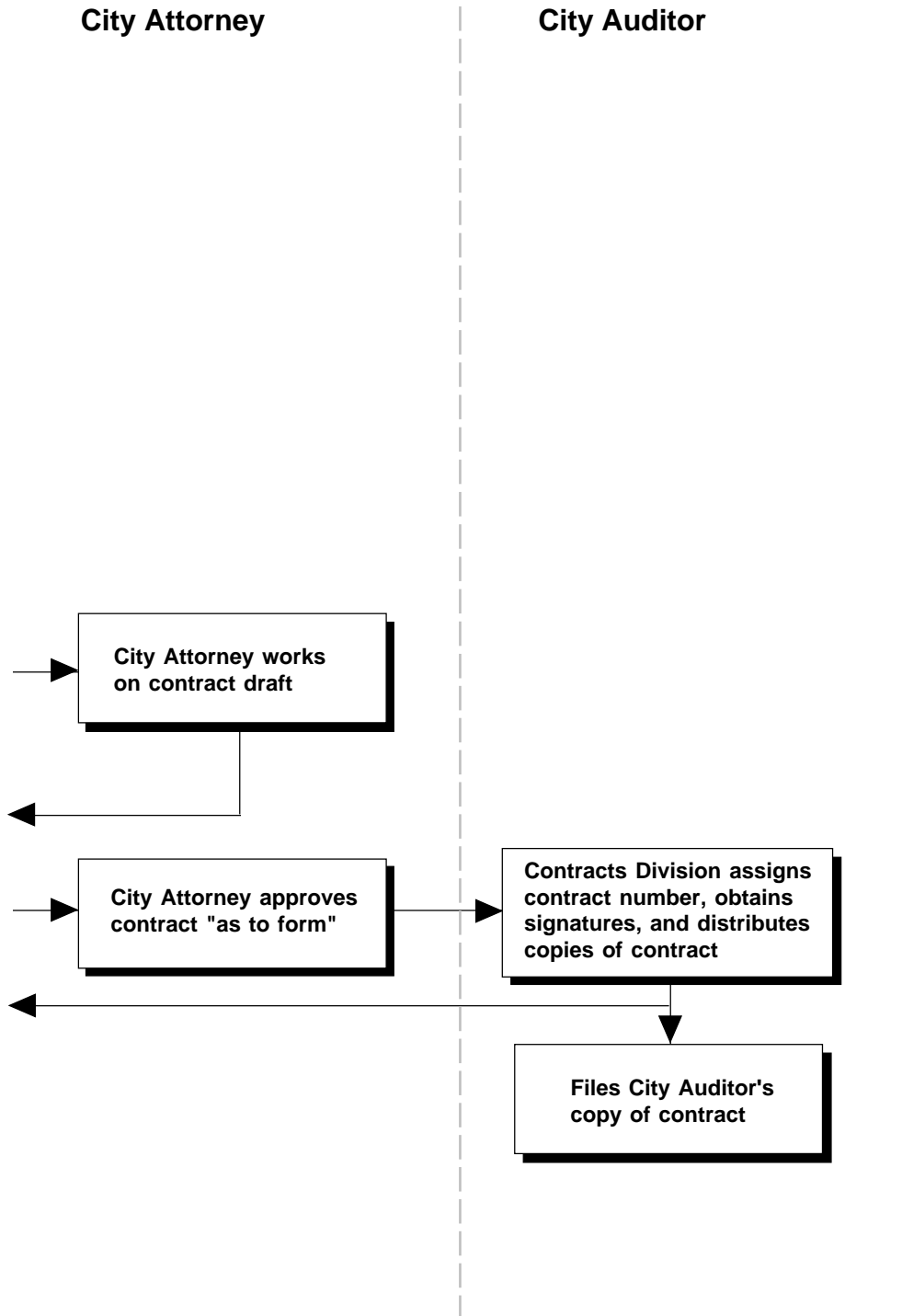
Appendix A

Flow Charts

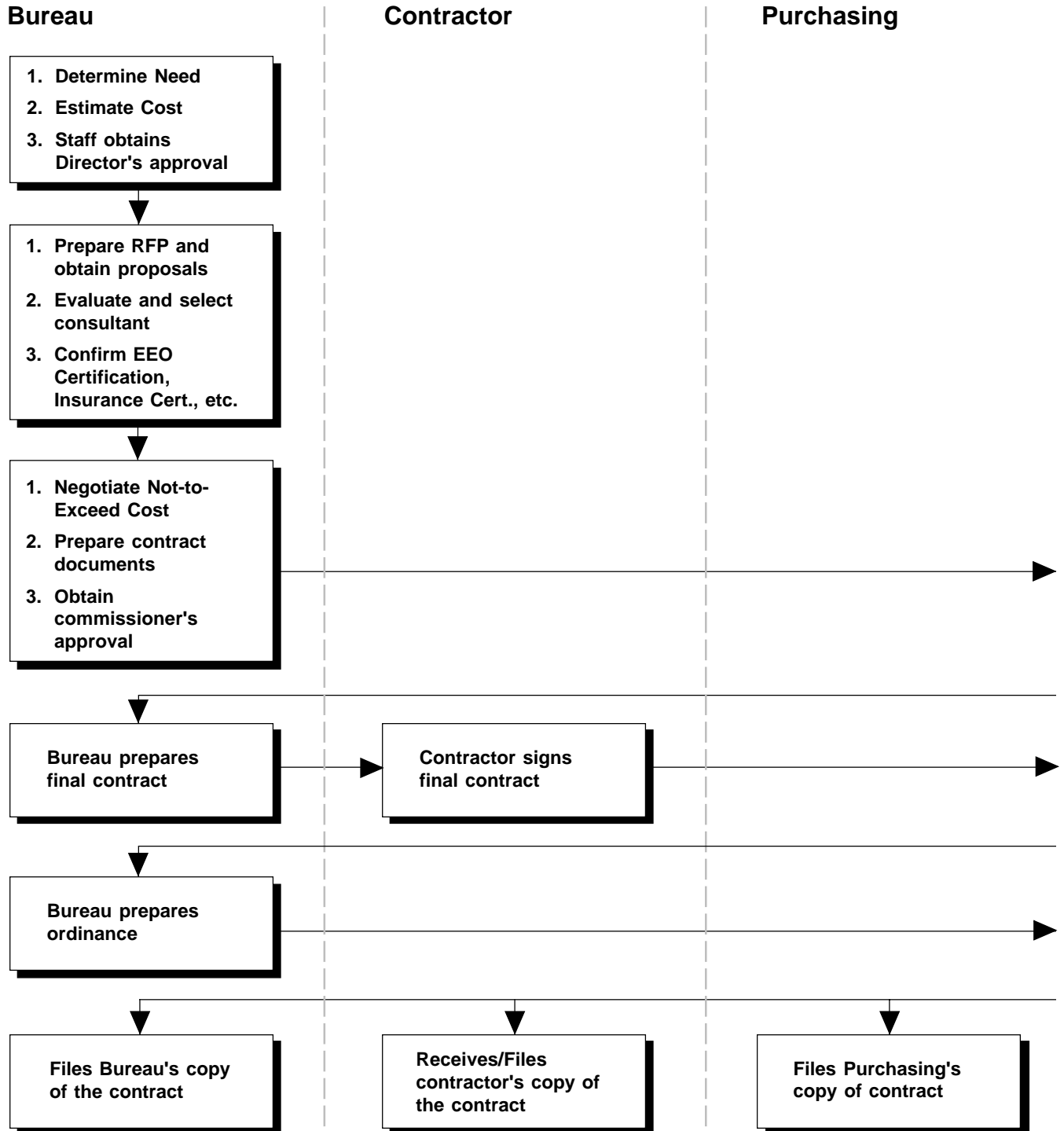
(informal and formal contracting processes)

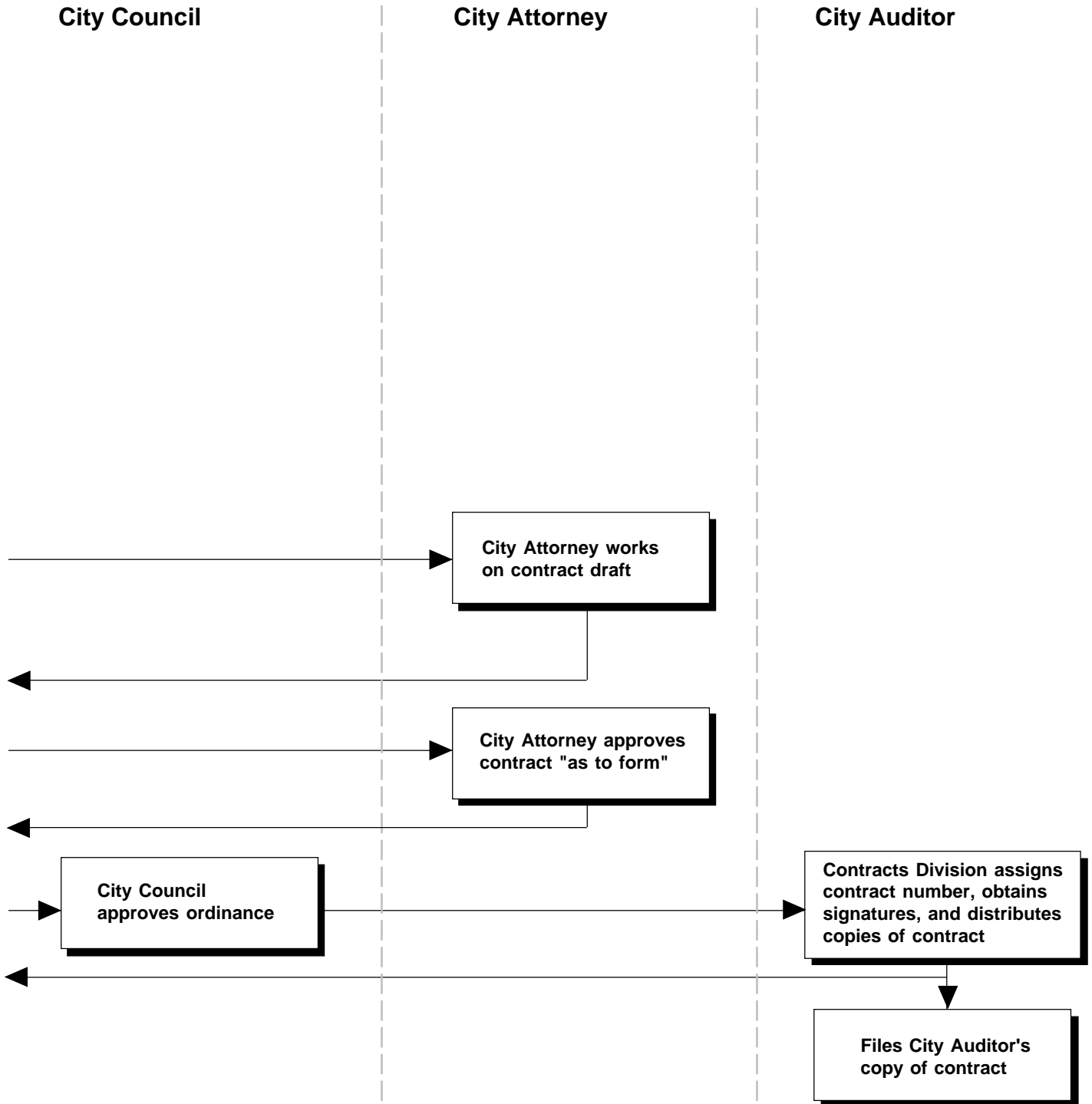
Flowchart of PTE Contracting Process (Informal Contracts > \$5,000 but under formal amount)





Flowchart of PTE Contracting Process Formal Process - Dollar amount set annually by the City Auditor





Appendix B
Professional Services Contracting Practices
Comparison of City of Portland to six other
government jurisdictions

**Professional Services Contracting Practices
Comparison of City of Portland to six other government jurisdictions
(FY 1999-00)**

	Portland, OR	Seattle, WA	King County, WA	Sacramento, CA	Kansas City, MO	Cincinnati, OH	Charlotte, NC
Budget - all funds (millions)	\$1,291	\$2,062	\$1,110	\$512	\$880	\$950	\$1,034
Prof. services spending - last year (millions)	\$64	NA	\$57	NA	NA	\$146	\$1.1
Formal policies & procedures manual for Prof. Services?	Yes	Yes	Yes	Yes	Yes	Yes	No
Purchase orders in lieu of contract?	Yes, for services up to \$5,000	No	Yes, for services up to \$2,500	Yes, for services up to \$3,000	No	No	Yes, for services up to about \$50,000
Informal dollar limit?	\$19,806 (adjusted annually by CPI)	\$33,000 (adjusted annually by CPI)	A&E* - \$150,000, other - \$25,000	Less than \$100,000	\$35,000	\$25,000	\$100,000
Council approves contracts?	If above informal limit	No	No	If above \$100,000	If above \$35,000	No	If above \$100,000
Amendment authority of dept.	None - unless allowed by contract	Up to \$250,000	No limit	None, except for public projects	Up to \$35,000 with Legal Dept. review	Require review by Law Dept.	Varies
Contracts managed / handled centrally?	No	No	Yes, by Section in Finance Dept.	No	No	No	Yes, by Procurement Services Division

SOURCE: Survey conducted by the City of Portland Audit Services Division, Fall 2000.

NA = Not Available

*A&E = Architectural & Engineering

**Professional Services Contracting Practices
Comparison of City of Portland to six other government jurisdictions
(FY 1999-00)**

	Portland, OR	Seattle, WA	King County, WA	Sacramento, CA	Kansas City, MO	Cincinnati, OH	Charlotte, NC
Fees part of selection criteria?	Yes	Yes, except on A&E* contracts	Yes, except on A&E* contracts	Yes	Yes	Yes	Yes
Price analysis & negotiation	Done by bureaus	Done by departments	On non-A&E*, price analysts in Finance assist; on A&E contracts costs are not considered	City negotiating team; can include staff from Budget, Acctng, and Purchasing	Done by departments	Dept. & City Solicitor's office negotiate	Done by Contracts Admin. Section, Legal Office and dept. staff
Who authorizes payments of invoices?	Dept. project manager	Dept. project manager	Dept. project manager	Dept. project manager	Dept. project manager	Dept. project manager	Dept. project manager
Most common contract type - payment method	Time & materials with a not-to-exceed	Cost plus fixed fee	Cost plus fixed fee	Fixed price	Various	Various	Various
Limits placed on overhead, profit, and/or markups?	No	Yes	Yes, use FAR guidelines	No	No	No	No
Use standard services contracts?	Yes	Yes **	Yes **	No	No	Yes	Yes
Dollar limits on standard services contracts?	No	\$200,000 per project; \$400,000 per consultant, per category, per department, per year	\$100,000	NA	NA	Yes (various limits)	No

SOURCE: Survey conducted by the City of Portland Audit Services Division, Fall 2000.

* A&E = Architectural & Engineering

** Seattle and King County have "consultant roster programs." A department selects a consultant from the roster and establishes a contract with the consultant after specific work has been identified. Bureaus in the City of Portland establish standing contracts with groups of consultants, then use work orders for specific work that is to be done.

NA = Not Available

Responses to the Audit



CITY OF PORTLAND, OREGON
BUREAU OF PURCHASES

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M E M O R A N D U M

TO: Gary Blackmer, City Auditor

FROM: Sue Klobertanz, Director, Bureau of Purchases
Tim Grewe, Chief Administrative Officer

SUBJECT: RESPONSE TO CONSULTING CONTRACTING AUDIT

DATE: December 4, 2001

Sue Klobertanz
Tim Grewe

The Bureau of Purchases and the Office of Management and Finance are pleased to respond to the audit performed by the Auditor's Office on the topic of consulting contracts. We particularly appreciated the ability of the Auditor's Office to provide guidance and recommendations in procedural areas for which we have shared concerns. In general, we agree with all of the stated recommendations and believe them to be in the City's best interest.

We also appreciate the recognition of the efforts made during the last two years by the Bureau of Purchases to improve the Professional, Technical and Expert Service (PTE) Guidelines, the monitoring and tracking of awards and general staff training. Although the data reviewed could not reflect contracts processed during the last year, we are confident that the positive results of these efforts will be evident when these contracts are reviewed.

As you know, one staff position was approved during the FY 2000-01 budget to work in the area of PTE contracting. Due to the need to recruit for and hire a new Purchasing Division Manager during the summer months, as well as the diversion of resources to prepare for service continuation in the event of a DCTU strike, that PTE position is just now being filled. Although we regret losing six months of effort in working on the PTE improvements, we are excited to begin the effort in 2002. The major work assignment for this new staff person is to revise and improve the current PTE manual. This effort is consistent with Recommendations #2 and 4. Further discussion of possible realignment of duties, feasibility of staff centralization, and/or Council approval thresholds will also be included in this effort (Recommendation #3).

We support increasing the centralized monitoring and oversight of PTE contracts (Recommendation #1). It is necessary, however, to note that this is a staffing and resource issue. Staffing and computer requirements will need to be included or reallocated in the FY 2002-03 budget allocation for this recommendation to be implemented. Increased monitoring of payment authorizations (Recommendation #5) may also require additional resources or the realignment of duties. Purchases and the Accounting Division will review the need for policy changes as part of the PTE Manual rewrite.

We look forward to your continued support and assistance as we move forward with this effort during the coming months.

Fair, Efficient, Effective, Accountable.



CITY OF
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December 10, 2001

INTEROFFICE MEMORANDUM

TO: Gary Blackmer, City Auditor

FROM: Jeffrey L. Rogers *JLR*
City Attorney

SUBJECT: Audit Services Division Report on Professional, Technical & Expert (PTE)
Consultant Contracting

Thank you for asking us to comment on your report on consultant contracting practices in the City. The report continues the valuable work performed by Audit Services. In many respects, the report provides good detail, the observations are worthwhile, and the recommendations deserve consideration and further discussion.

Overall, our office supports the concept of marshalling resources within the Bureau of Purchases to provide City bureaus with additional help in analysis, solicitation, selection and monitoring of professional services contracts. Additional assistance is obviously welcome.

The report's analysis of flexible or standard service contracts warrants follow-up. We are particularly pleased to see that the report now specifically raises the question of whether PTE services are sometimes acquired inappropriately through payment authorizations and other non-authorized and non-contractual means. The opportunities for improvement are significant.

In a few respects, we disagree with the report. We recommend against transferring the Auditor's contract administration duties out of your office. We believe that the work of your office, in conjunction with ours, is efficient and effective in expediting contract review. We see no need to change.

The report recommends more comprehensive policies and documentation. We believe that additional materials or rewording of the current PTE Contracting Manual would not improve the process. Enforcing currently prescribed procedures would be a better initial step. We note that the contracts actually audited are quite old, and many were processed before improvements were made to the PTE contracting procedures and manual in 2000.



Gary Blackmer, City Auditor
December 10, 2001
Page 2

The report refers to controlling consultant costs and fees, but lacks information about what financial and costing strategies could be employed in contracts. It would be helpful to have an analysis of cost methodologies and options.

Although the report emphasizes consolidating more PTE contracting oversight and administration in the Bureau of Purchases, the report does not discuss how Purchasing's PTE contracting assistance to smaller bureaus works now. Analysis and measurement of how successful that is now would be helpful in determining what functions to transfer.

Again, we appreciate the effort that went into the audit and the opportunity to comment on it.

JLR:ks



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MEMORANDUM

Date: December 7, 2001
To: Dick Tracy, Director of Audits
From: Diane Betcher, Deputy City Auditor *Diane Betcher*
Subject: Response to Audit of Consultant Contracting Procedures

We appreciate your efforts in conducting the audit of Consultant Contracting Procedures and we support the majority of your recommendations. We agree that the Bureau of Purchases should have the responsibility to oversee and monitor the City's PTE contracting process, provide a more comprehensive set of policies and procedures, and improve the standard services program.

We would elaborate on two recommendations. Raising the dollar limit of contracts that don't need Council approval has its risks. Our experience convinces us that bureaus take extra care with contracts that must be approved by Council. Raising the limit will also decentralize contract documents, which have all been filed and archived by the City Recorder because they are part of the official record of Council proceedings. We believe it's important to maintain that ability, and a new technology in the City Recorder Division can help reduce the risk as well as provide the central repository.

We are implementing an electronic records management system that will capture ordinances and contracts in an electronic format. Once fully operational, in the next six to eight months, Purchasing employees as well as the public can have electronic access to City contracts. And bureaus, knowing their contracts can be easily scrutinized, will be more accountable.

Another recommendation advises that the processing steps that are currently completed in the City Recorder Division be transferred to the Bureau of Purchases. One advantage to the current arrangement has been the authority of the elected auditor to hold bureaus accountable for technical deficiencies. Another advantage is the independent, professional role that the auditor fulfills in the commission form of government. These roles will be a challenge for the Bureau of Purchases, and must also be addressed in order that a more centralized purchasing function succeeds for Portland.


We will work with the Bureau of Purchases to accomplish a smooth transition of the processes that we believe are not part of our other City Recorder duties. Unfortunately, we will not have the time to address this transition until we complete installation of the electronic filing system for archiving documents and building the web-based public access to City agenda items and adopted ordinances, resolutions, and contracts. At that point we may also see some technological solutions that benefit both Purchases and us in performing our inter-related responsibilities.

Thank you for the opportunity to respond to this audit.



CITY OF
PORTLAND, OREGON
BUREAU OF WATER WORKS

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Date: December 11, 2001
To: Richard Tracy
Director of Audits
From: Stan VandeBergh 
Interim Chief Engineer
Subject: Consultant Contracting Audit Comments

Thank you for this opportunity to comment on the final draft of the Consultant Contracting Audit. In general, the Water Bureau is in agreement with the audit findings and recommendations. We look forward to working with all the appropriate parties in support of the recommendations that we believe will strengthen and clarify this important procurement process.

Many of our initial comments have been addressed in the process of moving this audit forward from the working draft phase to the final draft. We appreciate the efforts by auditing staff to address these concerns. There are, however, two points that we would like to further clarify.

First, in Chapter 2, "Lack of Work Rotation," (page 22) the last sentence states, "In one of the Water Bureau's Divisions, the Bureau selects just one consultant for each area of expertise, thus eliminating any opportunity to rotate work." The Water Bureau only has one standard services package where just one consultant is selected to perform. Due to the infrequent usage of these services, the Bureau elected to limit the selection to one provider and in some cases, the contractor was never asked to perform services during the life of the contract.

Secondly, we would like to comment on the overall recommendation of preparing an ordinance and revised manual of PTE guidelines. It is recommended that the Bureau of Purchases, in cooperation with the City Attorney's Office prepare these items. We strongly recommend that the user bureaus be included as a stakeholder within this process and that this be explicitly expressed in the audit recommendations. It is critical that the end user bureau's needs and input be considered and addressed in a responsible manner with respect to guidelines and processes to make the procurement process successful.

SRV:sln



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December 11, 2001

Mr. Richard Tracy
Director of Audits
1221 SW 4th Avenue Room 310
Portland OR 97204

Dear Dick:

I have reviewed the final draft of "The City's Consultant Contracting Procedures Need to be Strengthened" report and offer to you the following comments.

There are aspects of the report and recommendations that would be helpful in our efforts for contracting PTE services. I support increasing contract amounts requiring Council approval to \$50,000. This would be a positive step in simplifying and reducing the costs for processing certain PTE contracts. I also agree that some form of annual reporting on citywide PTE contracting efforts is appropriate and should be performed by the Bureau of Purchases.

For other aspects of the report, the supporting evidence as described does not lead me to believe that there are systemic problems in how the City contracts for PTE services. For instance, there were specific issues associated with contracts processed by the Office of Transportation, which were noted as part of the review of the previous Working Draft report. These issues had to do with flexible service and sole source contracts. Upon further review by both of our staffs, these problems were determined to be unsubstantiated. I would question whether the recommendations for centralization of oversight and monitoring, the addition of more rules and regulations, and the shift of functions that currently work relatively well are necessary. I would suggest that there are other options the City should consider.

Realizing that we do need to make some improvements, I recommend that we look at building on what we currently have in place. The PTE Manual is a very useful guide. It could easily be expanded to include such things as

Mr. Richard Tracy
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guidelines for flexible service contracting. There seems to be some confusion between this relatively new method of contracting and the standard services contracts. Adding this to the Manual would be valuable not only for those bureaus that use flexible service contracting, but also for those bureaus that have little, if any, familiarity with it. Given the amount of successful experience the Office of Transportation has had with flexible service contracts, I would volunteer our assistance in developing new guidelines that could be incorporated into the manual

Another recommendation that would be extremely helpful to bureaus involves in-house training. Better awareness and understanding of the PTE Manual and City Code requirements could be achieved by providing quarterly training sessions. Regularly scheduled refresher courses could be offered to staff, as well. I believe this would go a long way toward improving the problem areas noted in the report versus simply implementing more costly regulations and centralized oversight. The Bureau of Purchases, with assistance from the City Attorney's Office, would be in the best position to do these trainings.

Again, without additional justification to warrant major changes, I would suggest we take smaller steps at this time by expanding on existing systems currently in place.

I appreciate being given the opportunity to participate in the review and preparation of this final report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vic Rhodes', written in a cursive style.

Vic Rhodes
Director

VFR/mpst



CITY OF PORTLAND ENVIRONMENTAL SERVICES



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Dean Marriott, Director

December 7, 2001

Mr. Richard Tracy
Director of Audits
1221 S.W. Fourth Avenue, Room 310
Portland, Oregon 97204

Dear Dick:

I have reviewed the final draft of the audit entitled, *The City's Consultant Contracting Procedures Need to be Strengthened*, dated December 2001. As you know, my staff was interviewed during this audit, and we are very interested in the contents of the report. This letter will serve as my comments on the final draft.

In Chapter 2, *Inconsistent Practices and Some Noncompliance with City Purchasing Rules*, the audit suggests there are recurring problems with the manner in which bureaus employ standard services contracts and solicitation of informal contracts. However, the audit reflects a high level of compliance with City Code and established contracting rules in the solicitation, selection and management of formal contracts. Yet the recommendations don't specifically address the deficiencies. Instead the recommendations make a major responsibility shifts that will greatly impact areas where there was already substantial compliance.

I have two problems with this approach. First, the recommendations are not supported by the findings. Recommendations should address the deficiencies discovered versus attempting to revamp processes that don't appear to be broken. Second, the audit evaluates compliance with some standards that are not in fact mandatory. The City PTE Information and Guidelines has always been used as a guide. Users were never advised that following it to the letter was mandatory. Thus, use of discretion and innovation has been used provided it was consistent with City Code.

The entire methodology related to standard service contracts (also known as flexible service contracts) is flawed. Namely, the audit assessed compliance with guidelines as if they were mandatory requirements. Thus, the audit criticizes bureaus for not complying with guidelines and makes recommendations based on these findings. To make judgments based on whether or not bureaus have complied with non-mandatory requirements is unfair. The guidelines were intended to allow discretion and innovation to adopt different approaches provided they are consistent with City Code. In this case it appears the audit did not determine whether exercising different approaches from the guidelines enhanced one or more very important factors. These important factors include cost, schedule, and other benefits to the City in addition to specific language from the RFQ/P process.

Although the City's PTE manual first recognized these types of contracts in April 2000; BES has several years experience using these on-call type services selected through an RFQ/P process to be used as needed throughout the year. The solicitation documents clearly state the work order process, whether it is "rotation", "best fit" or other factors such as time or even requiring that more than one consultant provide a price for the particular project. Competition does occur during the selection process.

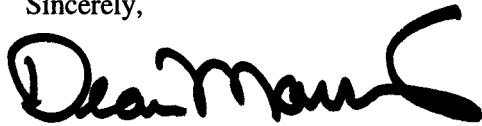
The bureaus need the ability to assign work consistent with the RFQ/P process and language of the contract. For instance, if legal services are required you don't simply go to the list of law firms the City has under a retainer agreement. You go to the particular provider that has the specialization you need such as real estate, construction, or litigation. The same is true for other PTE services providers. The need for this flexibility was not adequately acknowledged in the audit.

I do not believe that Recommendations 1 and 3 (a-b) are supported by the findings. I disagree that a case has been made to take responsibility for contracting for consulting services away from the bureaus and give it to the Bureau of Purchases. As you are aware BES has detailed policy & procedures related to the procurement of PTE services. Additionally annual training is conducted for project managers in most of these areas. As our PTE contracting expenditures far exceed that of other bureaus these in-house services have certainly increased our cost effectiveness and management of these services. Enhancements to the PTE manual, as called for in Recommendation 2, would benefit all bureaus that need to secure consulting services.

It is not clear that Recommendations 1 and 3(a-b) would improve bureau compliance, as the audit already found substantial compliance in formal contracting. It appears to be a call to further centralize authority in the Bureau of Purchases. Their job should be to assist us in securing the services we need, not to become the central point of contracting for the entire City.

Thank you for the opportunity to comment on the final draft audit.

Sincerely,

A handwritten signature in black ink that reads "Dean Marriott". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Dean C. Marriott

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