



City of Long Beach

Working Together to Serve

Memorandum

Date: May 17, 2016

To: Patrick H. West, City Manager *PHWest*

From: *CB* Craig A. Beck, Director of Public Works

For: Laura L. Doud, City Auditor

Subject: Job Order Contract Audit

Thank you for the opportunity to comment on the draft the Job Order Contract Audit.

Public Works management agrees with the audit's recommendations with few exceptions. The instances where management's response indicates "disagree", is in the context of proposing a more feasible alternative to satisfy the intent of the particular recommendation, or there is a conflict in the Public Contract Code or Municipal Code.

All of management's responses are within the backdrop of providing appropriate controls balanced within available operational resources.

Public Works management appreciates the City Auditor's level of due diligence reflected in the Job Order Contract Audit, and appreciates the opportunity to comment. The Public Works Department will work expeditiously to implement actions in response to the audit. We have a brand new team in place since the audit (Director, Deputy Director/City Engineer, Public Services Manager, and Executive Assistant), and we will spend whatever time necessary to make the changes recommended by the audit.

ATTACHMENT: MANAGEMENT RESPONSE AND ACTION PLAN

CC: TOM MODICA, ASSISTANT CITY MANAGER
ARTURO SANCHEZ, DEPUTY CITY MANAGER

MANAGEMENT RESPONSE AND ACTION PLAN

Public Works Job Order Contract Audit

No.	Recommendation	Priority	Page #	Agree or Disagree	Responsible Party	Action Plan / Explanation for Disagreement	Target Date for Implementation
1	Retain an independent expert to assist the department in developing JOC program processes and structure in response to the audit recommendations. This independent expert should be familiar with how a JOC program functions, be independent from the City, the department, its employees, consultants and JOC contractors, and not gain financially from any changes made to the JOC program.	H	27	Agree	Deputy Director of Public Works (DDPW)/ Project Management Division Officer (PMO)	A consultant with expertise in Job Ordering Contracting will be engaged to help develop policies, controls and procedures.	August 31, 2016
Result 2-15 are related to the City adopting legislation pertaining to the JOC program.							
2	Prequalify potential JOC contractors. Prequalification should consider past performance working with the City, experience, as well as being licensed and registered.	H	27	Agree	PMO/ Project Managers (PM)	JOC contractors will be required to meet pre-qualification requirements, and only those that demonstrate competent experience, knowledge and successful project delivery, will be allowed to provide JOC services to the City. Project manager will file a performance evaluation form after each City project so that information can be taken into account for future job orders with that contractor.	Re-bid of JOC program
3	Projects within JOC should be limited to \$500,000.	H	27	Agree	PMO/PM	The \$500,000 limitation is identified in the ordinance.	Re-bid of JOC program
4	During the selection of JOC contractors through a RFQ (Request for Qualifications) process, the City should establish an evaluation committee to evaluate qualifications based only on criteria specified in the RFQ and assign a qualifications score to each contractor.	H	27	Agree	PMO/PM	An evaluation committee will be established to determine the pre-qualifying requirements. Only contractors that meet the qualification requirements will be invited to submit bids.	Re-bid of JOC program
4a	The City should develop written policies and procedures to prevent conflicts of interest for evaluation committee members.	H	27	Agree	DDPW/PMO	A conflict of interest section will be included in the policies and procedures.	August 31, 2016
5	All prequalified contractors invited to bid should submit sealed bids based on one or more adjustment factors to the unit prices listed in the catalog based on technical specifications. The City may reject all bids and begin the process again when in the best interest of the City.	H	27	Agree	PMO/PM	Sealed bids are a requirement of the Public Contract Code (PCC) and included in the specifications.	Re-bid of JOC program
6	Contract terms for prequalified contractors would not exceed 12 months, with option of extending or renewing for two more 12-month periods.	H	27	Agree	PMO	This will be the standard, unless longer periods are approved by the City Council.	Re-bid of JOC program

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7	Require JOCs to perform a minimum of 20% of the work themselves. This clause should also be included within the JOC contracts. This requirement mitigates some of the risk associated with using numerous subcontractors on a project.	H	27	Agree	PMO/PM	The 20% limitation is identified in the ordinance.	Contract execution
8	The City should establish a process to prequalify all subcontractors, requiring them at a minimum to be licensed, insured and have sufficient relevant experience. All subcontractors used by the primary contractor must be prequalified and approved by the City.	H	27	Agree	PMO	This requirement is identified in the ordinance	August 31, 2016
9	Consulting firms hired by the City as project managers should not be affiliated with any entity holding a contract with the City for conflicting services, such as engineering, design or engineering services. And, the City should establish a process to ensure project managers are independent.	H	28	Agree	PMO/PM	Project Manager consulting firms will not have conflicting services.	Contract execution
10	When JOC contractors bid on a JOC project, the City should utilize a set of documents including a unit price catalog and pre-established unit prices, JOC technical specifications, and any other information necessary to describe the City's needs. Any architect, engineer or consultant retained by the City for this service should not be eligible to participate in the bid.	H	28	Agree	PMO/PM	Program specifications, which are incorporated in the contract, will include this prohibition.	Contract execution
11	The City should obtain an independent estimate for each JOC project and compare that to the Contractor's to ensure proposed prices are not unreasonable or undesirable.	H	28	Agree	PMO/PM	Particular focus will be given to any non-pre-priced items. Additionally, any Construction Task Catalog (CTC) values will be evaluated for appropriateness by City staff and/or independent consultant reviewer.	Contract execution
12	Before initiating a project through the JOC program, the City should determine if it will result in savings over traditional procurement methods.	H	28	Disagree	PMO/PM	The City will determine which method will provide best value, as stated in the ordinance.	Prior to issuing a notice to proceed
13	No JOC project should be for new construction.	H	28	Disagree	PMO/PM	The scope of work is more material than defining maintenance or new construction. The ordinance will provide the level of new construction.	
14	Non-catalog items should not exceed 10% of the total project cost estimate. The contractor is required to provide three written quotes for all non-catalog items, with the lowest bidder selected.	H	28	Agree	PMO/PM	Per the ordinance, project staff are prohibited from exceeding 10% of the City Manager or designee may approve non-catalog items in excess of 10%, if justified by exception.	Contract execution
15	The City should certify a project is completed to the City's expectations.	H	28	Agree	PMO/PM	JOC policies and procedures will include a requirement that a notice of completion will be filled for every work order.	Project Completion

Results 16-33 are related to Internal Processes

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16	Terminate the current JOC contracts and spending authority and rebid them based on the best interest of the City.	H	28	Agree	DDPW/PMO	When the policies and procedures are in place, the JOC contracts will be re-bid.	When currently authorized projects are completed
17	The Council Letter, bid specifications, contracts and BPOs should always be consistent, particularly with regards to: <ul style="list-style-type: none"> a. Contract amount and authorized spending amounts. b. Terms, option years, and notification documentation. c. Contract language terms and conditions, including a sufficient audit clause. Language should be current and reflective of City requirements. d. Format of project bids, including at a minimum costing of non-catalog items and bid percentage factors. 	H	28	Agree	Budget Services Officer (BSO)/PMO	Current contract management and document control practices address this.	September 30, 2016
18	Stop the approval of JOC contract extensions that cause an overlapping of terms and spending authority. Limit contract extensions to situations when original term has lapsed or the authorized amount has been fully depleted.	M	28	Agree	BSO/PMO	This was a one time anomaly and will be included in the policies and procedures.	Contract execution
19	Develop a training program for project managers (both employees and consultants) on managing projects, preparing SOWs, reviewing proposals, appropriate use of the ProGen catalog, JOC program controls and processes, and requirements under the <i>California Public Construction Code</i> .	H	28	Agree	PMO/PM	This will be addressed in the training section of the policies and procedures. Note: ProGen is now called E-Gordian.	September 30, 2016
20	Identify required qualifications/certifications for all project managers (current and future) to participate in the JOC program. Develop a policy to ensure project manager credentials are current.	H	28	Agree	PMO/PM	This will be addressed in the training section of the policies and procedures.	December 31, 2016
21	Establish clear and defined policy regarding conflict of interest (in fact and appearance) for all parties participating in the JOC program. Project managers should be required to sign a statement of independence attesting they do not have a conflict of interest with any of the parties participating in the JOC program.	H	28	Agree	PMO/PM	This will be addressed in the training section of the policies and procedures. A city employee will have final responsibility for a consultant.	August 31, 2016
22	All project managers, including consultants should report directly to the manager of the JOC program and never directly to another consultant.	H	28	Agree	PMO/PM	All project managers will report to City project manager.	Project Development

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23	Establish a process to evaluate, report and maintain information on contractor performance. Ensure there are consistent discipline mechanisms and processes in place for those contractors with poor performance, such as probation or disqualification from future work.	M	29	Agree	PMO/PM	This will be addressed in the policies and procedures. Any contractor with documented poor performance will receive no further work under that contract.	September 30, 2016
24	Develop protocols around expectations for project files that are based on best practices in project administration. These protocols should be the same for both consultants and employees. When projects are completed, all documentation attributed to the completion of the project should reside in the City's possession.	M	29	Agree	PMO/PM	This will be addressed in the written policy and precedures. This is also covered in the document retention policy.	September 30, 2016
25	The project scope of work should be completely developed by the project manager and be specific in detailing project requirements and expectations.	H	29	Agree	PMO/PM	This will be done in consultation with subject matter experts, which will not include JOC contractors.	Project Development
26	Develop list of preferred City vendors and products and include them in the catalog. Use of preferred vendors and products should not be used outside the catalog without proper justification. Projects that have the majority of costs based on preferred vendors or products outside the catalog should not be processed through the JOC program.	H	29	Disagree		The Public Contract Code prohibits naming a firm or product, or requiring use of a particular product in construction unless a process for approving an equal is provided. All department procurements are conducted in coordination with Purchasing, ensuring all requirements are followed.	
27	Develop project close-out procedures to ensure all project managers are closing out and evaluating projects in a consistent and thorough manner.	M	29	Agree	PMO/PM	Close-out procedures will be addressed in the policies and procedures.	September 30, 2016
28	Develop a tool for project managers to evaluate their experience with the contractor. This information should be considered when assessing whether the contractor should be prequalified to continue working with the City.	M	29	Agree	PMO/PM	Please reference response to #23.	September 30, 2016
29	Develop policy and procedural guidance around the program that includes all areas discussed in this report.	H	29	Agree	DDPW/PMO	Please reference response to #1.	August 31, 2016
30	Insure the JOC program has a sufficient and experienced manager dedicated to ensuring controls are functioning as designed. The JOC program manager should not be serving in any other capacity, such as a project manager, within the program.	H	29	Agree	PMO/PM	This will be handled with the new Project Management Division Officer.	When PMO is finalized

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31	Develop a formalized reporting process (project status, timeline, budgets, issues, etc.) that will provide JOC program management and above with a critical status of program operations. This includes proper reporting controls to monitor spending authority. This will create a level of oversight and accountability in all levels of the program.	H	29	Agree	BSO/PMO	The formalized reporting process will be addressed in the written policies and procedures. To monitor spending controls, Public Works will work with Gordian to include it in the E-Gordian system.	August 31, 2016
32	Develop a prioritization system for JOC projects to help mitigate the "reactionary mode" the program managers are operating in today. This system would be continuously updated as new or more urgent projects arise. However, whenever projects are started out of priority order, there should be a reasonable justification.	H	29	Agree	PMO	This will be addressed in the written policies and procedures. Management is actively involved in identifying and monitoring project requests and available resources.	August 31, 2016
33	Identify the JOC program's capacity levels. There should be parameters on the number and complexity of projects assigned to each project manager at any given time. When determining capacity levels, consider capping the number of consultants used as project managers.	H	29	Disagree	PMO	Projects are assigned based on the size, complexity and specific PM experience. Workloads will fluctuate depending on several factors that may include grant funding, legal implications, priorities, and staffing levels.	
Recommendations 34-41 are related to the Catalog Vendor, Gordian Group							
34	Update and maintain access rights in the ProGen system	M	29	Agree	BSO/PMO	Public Works will actively manage access to E-Gordian.	Upon execution of new Gordian Contract
35	Work with Gordian Group to have ProGen system automatically generate sequential project numbers and eliminate manually assigned project numbers.	M	29	Agree	BSO/PMO	Public Works will discuss with Gordian.	Upon execution of new Gordian Contract
36	Gordian Group's contract fee currently includes services the City is not utilizing, such as providing training and assisting with updating catalog items. The City should work with Gordian Group to begin providing these much-needed services.	M	29	Agree	BSO/PMO	Public Works will utilize these services.	Upon execution of new Gordian Contract
37	Establish guidelines and work with Gordian Group to be more proactive with entering City preferred products and non-catalog items into the catalog.	H	29	Agree	PMO/PM	Public Works will work with Gordian.	Upon execution of new Gordian Contract
38	Develop a conflict of interest statement for Gordian Group account managers that requires them to disclose any and all relationships that may pose a potential conflict.	H	29	Agree	BSO/PMO	This will be addressed in the written JOC policy and procedures.	Upon execution of new Gordian Contract
39	For project types that are consistent, consider working with Gordian Group to bundle materials/items within the catalog to make it more efficient for JOC contractors to submit proposals.	M	30	Agree	PMO	Public Works will discuss with Gordian, but not sure if this approach will provide additional value to the process.	Upon execution of new Gordian Contract

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40	Work with Gordian Group to develop an edit/audit report within the ProGen system where the JOC manager or system administrator has the ability to see project changes that have occurred within the system to ensure the changes were necessary and appropriate.	M	30	Agree	PMO	Public Works will discuss with Gordian.	If feasible, upon execution of new Gordian Contract
41	If Gordian Group is utilized as an expert to assist the department in developing the JOC program, as stated in Recommendation 1, change Gordian Group's fee structure to a flat rate, rather than a percentage of each JOC project.	M	30	Agree	PMO	Staff is currently negotiating with Gordian Group for new contract terms. Gordian is currently un-willing to change their pricing structure as a percentage of the project cost as this is what they have for their 300+ clients. Staff is reviewing alternatives to Gordian as an Independent Expert for cost analysis.	Upon execution of new Gordian Contract

Priority

H – High Priority - The recommendation pertains to a serious or materially significant audit finding or control weakness. Due to the seriousness or significance of the matter, immediate management attention and appropriate corrective action is warranted.

M – Medium Priority - The recommendation pertains to a moderately significant or potentially serious audit finding or control weakness. Reasonably prompt corrective action should be taken by management to address the matter. Recommendation should be implemented no later than six months.

L – Low Priority - The recommendation pertains to an audit finding or control weakness of relatively minor significance or concern. The timing of any corrective action is left to management's discretion.

Yellow areas - to be completed by the department