OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: July 16, 2008 **IBA Report Number:** 08-77

Action Items for Managed Competition and Business Process Reengineering

OVERVIEW

The Office of the Independent Budget Analyst has facilitated dual discussions on the City's Business Process Reengineering and Managed Competition processes. Our goal has been and continues to be to clarify issues and preserve Council's policy role in both processes.

In IBA Report 08-25, *Recommendations for Timely Implementation of Business Process Reengineering (BPR) and Provision of BPR Service Level Information to City Council,* our office recommended three revisions to the BPR Ordinance. On March 26, 2008, the Budget and Finance Committee voted to adopt and support the recommendations and refer this item to the full City Council.

Also, at the March 26, 2008 Budget and Finance Committee meeting, the Center for Policy Initiatives (CPI) proposed five recommendations in their report *Managed Competition Do It Right.* The recommendations covered the following:

- Healthcare
- Service Levels
- Independent Auditor Approval
- Retain Core Capacity
- Worker Retention

To address concerns regarding the proposed revisions to the BPR Ordinance, the issues/recommendations raised by CPI, and other questions on managed competition, our office facilitated meetings with various stakeholders, including representatives from the Mayor's Office, Councilmember Atkins' office, City Attorney's Office, Labor, CPI, and the Managed Competition Independent Review Board (MCIRB). Our initial progress on

these discussions was summarized to the Budget and Finance Committee on June 18, 2008, in IBA Report 08-65 (Attachment A).

As directed by the Budget and Finance Committee, this report expands on our previous report by providing specific action items for Council consideration and discussing other issues that we recommend be addressed administratively.

FISCAL/POLICY DISCUSSION

Clarification of MCIRB's Role Early in the Process

Municipal Code Section 22.3702 states the following:

> If the City Manager intends to submit a City service to Managed Competition, the City Manager will then prepare a preliminary written Statement of Work for that particular City service, and will prepare a report setting forth the rationale for putting a City service into Managed Competition. This report will be transmitted to the Managed Competition Independent Review Board for its consideration.

It was discovered that stakeholders held varying viewpoints of what "for its consideration" meant and what the role of the Managed Competition Independent Review Board (MCIRB) is at this point in the process. It is the consensus view that the core role of the MCIRB is to make recommendations to the Mayor on whether a service should be awarded to city employees or an independent contractor. If the role of the MCIRB was expanded to include consideration of the preliminary Statement of Work (i.e. reviewing and approving) there is concern about the need for additional expertise and time involvement by the MCIRB.

To address this issue and to reflect what is believed to have been the original intent, the stakeholders reached consensus that the meaning of "for its consideration" is "for informational purposes." It is our recommendation that the Municipal Code be edited to reflect this. Also, it is further recommended that the Managed Competition Guide (Guide) be updated to include this clarification.

Review and Approval of the Preliminary Statement of Work by Council

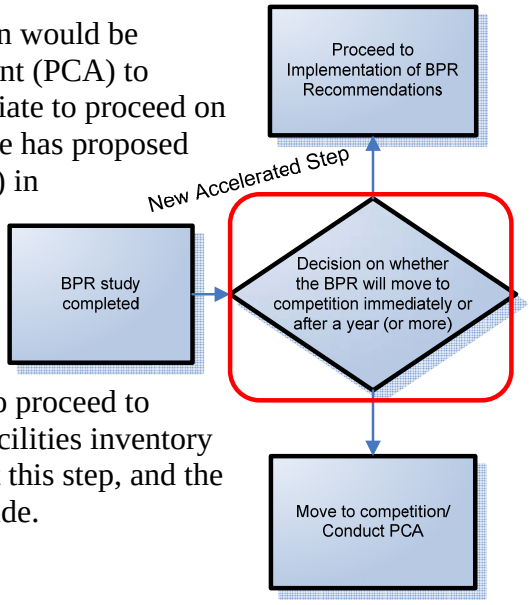
The Budget and Finance Committee had previously discussed and taken action on the review and approval of the Statement of Work (SOW) by Council. The Municipal Code states that when a service is selected for pre-competition, a preliminary written SOW will be prepared which will outline "service specifications" to be included in the SOW. To implement this requirement, the option of having the MCIRB review and approve the preliminary SOW was considered. However, as discussed above, it is now proposed that the preliminary SOW will be given to the MCIRB for informational purposes only. It is further proposed that the Council review and approve the preliminary Statement of Works, consistent with their policy role. The preliminary SOW will define service levels and serve as the foundation for the Request for Proposal's Statement of Work. In order

for Council to be assured that there are no changes in the service specifications, we recommend that the Mayor's Office certify that the SOW as detailed in the Request for Proposal (RFP) is consistent with the preliminary SOW as approved by Council. It is our recommendation that Council review and approval of the preliminary Statement of Work be codified into Municipal Code Section 22.3702 and that the Guide be updated to clearly define the content of the Preliminary SOW.

It is anticipated that in the near future, preliminary SOWs for Dead Animal Removal, Container Services, and Street Sweeping will be docketed for Council review and approval, consistent with this proposal.

Accelerated Step for Identifying which Functions Proceed to Competitive Procurement

Previously, upon completion of its BPR, a function would be evaluated through a full pre-competition assessment (PCA) to determine if the function was eligible and appropriate to proceed on to a competitive procurement. The Mayor's Office has proposed and initiated a pre-PCA step (depicted to the right) in which a decision can be made expeditiously on whether or not to proceed immediately to competition. This was exemplified in the handling of the Facilities Maintenance BPR. It was determined, prior to performing a full pre-competition assessment, that it was not practical to proceed to competition due to the lack of a comprehensive facilities inventory and condition assessment. It is recommended that this step, and the criteria for the decision, be documented in the Guide.



Center for Policy Initiatives (CPI) Proposals

As mentioned earlier in this report, at the March 26, 2008 Budget and Finance Committee CPI raised the following five issues relative to Managed Competition:

- Healthcare: "To prevent an unfair bidding advantage, differences in the employer contribution to employee health covered should be excluded from bid comparison."

  There is agreement by all parties that health care costs will be excluded from consideration. It is recommended that this be specified in the Guide.

- Service Levels: "To make sure we get what we pay for, specific service outcomes and performance measures must be described and publicly debated before contracts go to bid."

As described in the previous section, it is proposed that the City Council approve the preliminary SOW that includes information on service specifications. These specifications will serve as the foundation for the RFP Statement of Work.

- Independent Auditor Approval: "The City Auditor should review the accuracy of cost comparison data of bids being considered under managed competition."

  The City Auditor agrees that this is an appropriate step in the process but has indicated he does not have sufficient resources available to fully address this activity. He has indicated for FY 2009 that he will be able to conduct the cost accuracy review for the Solid Waste Collection Services bid proposals only and will be proposing this be incorporated into his FY 2009 Audit Work Plan. Solid Waste Collections is the most significant procurement process that will take place next year. Cost accuracy reviews associated with the procurement processes for street sweeping, container services, Miramar greenery operations, and dead animal removal will need to be conducted by Financial Management or the IBA. For procurements planned for in FY 2010, it is recommended that the Auditor identify the resources necessary to address this work based on his experience with Solid Waste Collections and consider incorporating it into this FY 2010 work plan.

  Also, the cost methodology that will be used to evaluate bids needs to be fully detailed and documented. It is our understanding that the cost methodology guide is currently in process and we recommend, upon its completion, that the guide be reviewed at a future Budget and Finance Committee meeting.

- Retaining Core Capacity: "Before the decision is made to put a city function to bid, whether and how the City can retain the core capacity to do the work should be evaluated."

  This is already included in the managed competition ordinance and is being implemented. It is recommended that examples of how the City will address core capacity be included in the Guide.

- Worker Retention: "Workers whose jobs are transferred to a contractor through Managed Competition should be retained on the same job for 90 days and have first refusal rights to the job."

  The Mayor's Office has committed to utilizing the City's Reduction-in-Force (RIF) procedures to execute any lay-offs as a result of managed competition; this includes transferring impacted positions to other vacant positions in the City. However, they have not yet committed to requiring first rights of refusal.

In comparison, the County Board of Supervisors has adopted a policy to minimize the impact of contracting on County employees by "requiring contractors, to the extent permitted by law and the particular circumstances of the service, to give first preference in hiring to displaced County employees." The Mayor's Office proposes to encourage vendors to give City employees the right of first refusal.

The Council could consider adopting a similar policy or language that could be added in the RFP/contract enabling City employees the first right of refusal. In an example from the City of Phoenix, the following language is included in the contract addressing displaced City employees:

> *"The Contractor recognizes that as a direct result of this Agreement, certain City employees job positions may be eliminated. Therefore, as partial consideration to the City for entering into this Agreement with the Contractor, the Contractor agrees to offer employment to such displaced employees to fill any comparable position that becomes available as a result of this Agreement. It is understood that such displaced City employees would be required to meet the Contractor's minimum qualification requirements which are normally specified by the Contractor in order for such displaced City employees to be offered a position."*

Proposed Amendments to the Business Process Reengineering Ordinance

On March 26, 2008, the Budget and Finance Committee approved the IBA proposed recommendations to amend the Business Process Reengineering Ordinance (O-19523) to require A) timely implementation of BPRs that demonstrate cost savings, efficiencies or service level enhancements with no budgetary increases; B) timely reporting to the City Council of service levels identified in BPR studies involved in an active management competition procurement process; and C) streamlined docketing of completed BPRs for City Council review and approval (detailed in IBA Report 08-25, see Attachment B).

Based on discussions with stakeholders and recommendations summarized in this report, revisions to the proposed amendments for the BPR Ordinance are necessary:

- The original proposal for timely implementation (Recommendation A) included the identification of a six-month time period to complete meet and confer on a function's BPR recommendations. It is a violation of collective bargaining to identify a specific time frame.
- The original proposal for timely implementation (Recommendation A) also identified the requirement that the pre-competition assessment (PCA) be completed in that same six-month period. However, with the addition of the accelerated step for identifying which functions proceed to competitive procurement (previously outlined), this requirement is not necessary.
- The IBA originally proposed the timely reporting of service levels identified in BPR studies to City Council (Recommendation B); however, given the new/clarified steps in the process (accelerated step for identifying which functions proceed to competitive procurement and the review and approval of the preliminary SOW by City Council) and improved communications, including the

distribution of summary reports and updates by the Mayor's Office, the IBA now proposes to delete Recommendation B.

The IBA recommends adoption of the proposed revised amendments (identified above) to the BPR Ordinance as detailed in IBA Report 08-25 and summarized below:

- Completed BPR studies that show cost savings, efficiencies and/or increased service levels can be achieved upon implementation, with no budgetary increases, must be docketed for Council review to initiate implementation within six months of study completion or completion of meet and confer, whichever is longer.
- BPR studies be docketed for Council approval directly, reflecting the current process.

Use of Consultants in the Managed Competition Process

In conjunction with the discussions on managed competition and BPR as summarized above, the IBA was also requested to do additional research on the use of consultants by other municipalities who are involved in managed competition. In our research, the use of consultants varies by municipality. In Indianapolis, a consultant was utilized to develop an activity-based costing model that compared the costs of in-house services to those provided by private firm. In Charlotte, a consultant was hired to perform in two capacities, a) one section helped develop the bid for the employees and assisted in the evaluation of the costs to perform the service and b) the other helped write the City's Request for Proposal (RFP) and conducted the scope of work. In the early years of managed competition in Phoenix, assistance was needed in cost accounting, however much of the expertise has now been cultivated within departments. The need for consultants can be triggered by a municipality's lack of experience in cost analysis and cost accounting, the inability for the municipality to be totally acquainted with new technologies or state-of-the art service delivery strategies, or the complexity of the function being considered for competitive procurement.

CONCLUSION

These discussions enabled multiple stakeholders in the managed competition process to discuss outstanding issues and understand the various viewpoints of concern as they relate to the process. The IBA would like to thank all stakeholders for their participation and assistance.

The following table summarizes the action items that are outlined in this report:

Summary of Action Items	Amend Code/ Ordinance	Update M.C. Guide	Other
Clarification of MCIRB's Role Early in the Process	X	X	

Summary of Action Items	Amend Code/ Ordinance	Update M.C. Guide	Other
Accelerated Step of Identifying which Functions Proceed to Competitive Procurement		X	
Review/Approval of Preliminary SOW by Council	X	X	
CPI Proposals:			
Healthcare		X	
Service Levels	X	X	
Independent Auditor Approval		X	X[1]
Retaining Core Capacity		X	
Worker Retention			X[2]
Timely Implementation of BPRs	X		

[1] Incorporate into Audit Work Plan
[2] Possible Council Policy

[SIGNED]

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[SIGNED]

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Attachment A: IBA Report 08-65, *Update on Managed Competition Issues*
Attachment B: IBA Report 08-25, *Recommendations for Timely Implementation of Business Process Reengineering (BPR) and Provision of BPR Service Level Information to City Council*