



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: December 1, 2011

IBA Report Number: 11-68

City Council Docket Date: December 6, 2011

Item Number: 331

Preliminary Statement of Work for Street/Sidewalk Maintenance

OVERVIEW

The City Council is responsible for ensuring that service quality is maintained through all managed competition processes in accordance with the City Charter. The implementation process put into place by the Mayor's Office, following voter approval of the managed competition ballot item in November 2006, provided no opportunity for Council to review the service levels or performance standards that staff proposed to include in the Requests for Proposals (RFP's).

To provide Council the opportunity to review service levels under consideration by the Mayor's Office, in July 2008 the IBA proposed a municipal code change which required the Mayor to bring forward to City Council, for review and approval, Preliminary Statements of Work (PSOW) for all managed competitions. In creating a role for the Council it was necessary to identify a timely step in the process which focused on service levels without divulging information considered procurement sensitive during the competition process. The PSOW is the first step which identifies key existing performance standards that are to be included in the RFP's. This proposal was approved unanimously by the City Council at its first reading in July 2008. The second reading was scheduled to follow in September 2008.

On August 22, 2008, prior to the second reading of the ordinance amending the managed competition process, an administrative law judge (ALJ) with the California Public Employment Relations Board (PERB) issued his decision in an unfair labor practice charge case filed in 2007 against the City by two of its employee organizations. The ALJ determined that the City violated the Meyers-Milias-Brown Act by failing to bargain in good faith with the employee organizations over the Managed Competition Guide and by failing to follow its impasse procedure.

The PERB decision required the City to resume negotiations on the Managed Competition Guide and the implementing ordinance. As part of the renewed negotiations, the Mayor incorporated a role for the Council in the revised Managed Competition Guide which called for the Council to review and approve the Preliminary Statements of Work. Following negotiations with labor groups, the new Guide was adopted by Ordinance on October 12, 2010.

FISCAL/POLICY DISCUSSION

Managed Competition Guide PSOW Requirements

Per the Guide, the PSOW will include the following information: “description of the function (s) to be competitively sourced and current or budgeted service levels associated with the function(s).” The Guide further states:

“The PSOW will be presented to the City Council for review and approval. The PSOW will be provided to the City Council at least two weeks prior to the City Council meeting. The purpose of the PSOW is to document the service levels associated with the delivery of the function(s) selected for competition. The service levels will be based on current status and/or what the City is required to perform per existing Ordinance. They will be included in the RFP, ensuring that there will be no service degradation as a result of the managed competition effort.”

During the Rules Committee review of performance standards for the Miramar Landfill and Streets and Sidewalk competitions, Council members expressed concerns about low service levels in the corresponding PSOW’s (e.g. 8 day average for all pothole repairs). At the October 12, 2011 Rules Committee meeting, Councilmember Alvarez testified during public comment encouraging the Council to emphasize cost savings in the PSOW’s while also establishing optimal rather than status quo service levels. In response to these collective concerns, the Mayor’s Office advised the Rules Committee and subsequently full Council, that it is the Council’s role to set the desired service levels for the PSOW. However, this is inconsistent with the Managed Competition Guide which requires PSOW service levels to be based on current status or levels that are required by Ordinance.

A number of issues can arise if bidders are requested to respond to increased service levels in managed competition rather than to current budgeted service levels:

- The full potential for cost savings associated with maintaining budgeted service levels cannot be identified if service levels are increased in the PSOW/RFP.
- Conversely, the true cost of increasing service levels is not known and the trade-offs of increasing this service over another service is not being considered in the context of the overall City’s budget.
- The annual budget process is the appropriate venue for considering possible service level increases after fully identifying the related costs and corresponding resources and weighing competing priorities.

-City employees may be unable to successfully compete if they are required to provide increased service levels given the function's current budget.

In a July 25, 2008 report to the Council (IBA Report No. 08-86 "Preliminary Statement of Work"), where we first recommended that Council review and approve the PSOW's, we noted the following:

"Given that the preliminary PSOW identifies service levels based on current funding levels, as reflected in the adopted budget, the Council review is not an opportunity to increase service levels if that were to be desired. Rather, this step is to ensure that existing service levels are well documented and approved by the legislative body and that service levels provided through competitive procurement will not result in reductions."

Recent Concerns About Existing Service levels

To date the City Council has not increased service levels beyond existing levels for any PSOW. For the Miramar Landfill PSOW Council increased the compaction level from .50, as initially reported in the PSOW, to .55 to match to recent trends. During Rules Committee discussions of the Streets and Sidewalks PSOW, members raised concerns about the service levels that were identified and requested an evaluation of costs for various levels based on three-year historical data. After discussions with the City Attorney's Office and the IBA, the Mayor's Office has revised the PSOW to include only existing service levels for the Streets and Sidewalks function consistent with the Guide. Prior direction from staff, that Council could replace existing service levels with increased levels if so desired, was a misunderstanding of the managed competition process on the part of the Mayor's Office and has been clarified.

Revisions to Streets and Sidewalks PSOW

With this clarification and in response to Rules Committee concerns, input from Councilmember Alvarez and suggestions from the IBA, MEA and AFSCME Local 127, staff has made extensive revisions to the Streets and Sidewalks PSOW. A significant change is a refinement of the service levels to reflect more detail and to provide increments of existing levels of higher performance in addition to overall averages. For example, rather than only specifying an eight day average for repairing all potholes they will require bidders to respond to existing performance of repairing 33% of potholes within 3 days and 49% within six days. Staff has taken this approach with a number of other service levels including sidewalk repairs, emergency tree trimming, minor asphalt repairs, weed abatement and graffiti removal. This is an improvement over the original approach that more accurately portrays current service as well as higher service level performance for portions of activities. Where data is available, this approach should be continued for future PSOW's.

Issues about the Overall Condition Index (OCI) and work coordination, interdepartmentally and with other City departments, have been addressed briefly in response to concerns raised by Council Members Lightner and Emerald, respectively. The PSOW now references the OCI and notes that proposers will be held accountable for quality standards related to work performed under managed competition. Regarding work coordination, the PSOW notes that stakeholder departments will be consulted during the preparation of the final Statement of Work (SOW) and that the final SOW will describe the communications protocols required between the Streets Division's managed competition work forces and City work forces. No specifics are provided in

the PSOW, and we recommend this issue be discussed in greater detail with Council prior to transitioning the managed competition work to the successful proposer. Effective work coordination will be critical to maintaining service quality.

Challenges to Reviewing PSOW Service Level Information

While we support the more detailed approach to defining service levels in PSOW, we continue to have concerns with the lack of information for effectively evaluating the reasonableness or accuracy of the proposed service levels. Performance data for the vast majority of the measures are not available in any recent public documents. Of the 19 measures included in the Streets and Sidewalks PSOW two were included in the FY 2012 budget document. In the FY 2010 budget document, the last fiscal year comprehensive measures were included, only three of these measures were included. No measures were provided in the FY 2007 or FY 2008 budget documents.

In reviewing these measures it has also been difficult to reconcile why performance in some areas, such as pothole repair, has deteriorated so significantly. Information provided to the Rules Committee, in response to their request for a three-year history of Streets and Sidewalks activities, shows the average time for repairing potholes in FY 2009 was 3 days, in FY 2010 6 days, and in FY 2011 8 days. Information provided to the IBA shows work volume decreasing significantly from 53,046 potholes repaired in FY 2009 to 39,051 in FY 2011.

During this time the Streets Division budget, which includes a multitude of functions, was reduced \$1.6 million as part of the mid-year FY 2010 and FY 2011 budget corrections, however, we have not been able to identify any specific reductions to the pothole repair function. The significant reductions appear to have been made to facilities' maintenance, tree trimming and concrete work. It is very possible that hiring freezes and a high number of vacant positions contributed to the service deterioration in pothole repairs although we have not been able to confirm this. If this is the case, it is unclear if we can expect to see higher service levels in the future if all budgeted positions are filled. Since hiring freezes are an administrative process that do not require Council action or notification, the Council would not have been made aware of potential impacts of a freeze on a particular service. Hiring decisions during a freeze are made on a case-by- case basis by the COO and are not reported to City Council, yet can significantly impact service delivery.

Recommended Process Improvements

The managed competition process has underscored the importance of consistently utilizing, tracking and reporting performance measures for all service areas including current and historical data. While it is Council's responsibility to ensure that current levels of service are maintained in managed competition, and the Guide requires that PSOW's include existing service levels, limited information is available for the Council and the IBA to effectively evaluate the service levels presented in the PSOW's. How existing service levels are described in the PSOW's is core to the managed competition process and to ensuring the Council's ability to preserve quality services to the community.

To assist the Council and IBA in future reviews of PSOW's we recommend the following:

1. Request staff to provide a five-year history for all performance measures specified in the PSOW's.
2. Request staff to provide a five-year budget history for the managed competition function under consideration.
3. Ensure that a corresponding service level is provided for each service area described in the PSOW.
4. If current services are performing below budgeted expectations, anomalies that could be causing this should be evaluated (e.g. hiring freezes; unusually high vacancies; major equipment breakdowns) when defining existing service levels.
5. For all functions involved in managed competition, include in the proposed and final budget documents all performance measures that were specified in the PSOW/RFP and data for the prior year, current year and next year's targets.
6. Request the City Attorney's Office to clarify the process for potentially increasing service levels in the future, should the Mayor or Council so desire, within the parameters of managed competition, labor matters and the City's budget process.

These items will likely need to be discussed in a separate public venue; and Council may want to refer these separate process issues to the Rules Committee for further discussion.

CONCLUSION

Substantial changes have been made to the Streets and Sidewalks PSOW which represent improvements over earlier drafts presented to the Rules Committee on September 28, 2011 and October 11, 2011. Input from interested parties has been considered and incorporated within the parameters of the Guide. Recognizing the constraints of the process, which limits the PSOW to existing service levels, the IBA recommends City Council approval of the Streets and Sidewalks PSOW.

We recommend the issue of work coordination and communication between work forces be discussed with the Council in greater detail prior to transitioning managed competition work to the successful proposals.

The IBA also requests that further consideration be given to the proposed process improvements (Items 1-6 discussed above) in the appropriate public venue in the near future.



Andrea Tevlin
Independent Budget Analyst