


**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

**DATE:** December 1, 2009 **MEMORANDUM NO. 09-048**

**TO:** All City Offices/Department Heads  
All City Offices/Board Presidents and Commission Presidents

**FROM:** Wendy Greuel, City Controller 

**SUBJECT: BEST PRACTICES FOR PROFESSIONAL SERVICE CONTRACTS**

As City Controller, one of my primary goals is to ensure the best use of our limited City funds. Recently there has been a lot of discussion about personal service or consulting contracts that City Departments enter into – including with former employees. While legally binding, many of these contracts are for substantial amounts of money and lack clear responsibilities and deliverables. Particularly during these difficult economic times, we must ensure that taxpayer money is spent efficiently and effectively. Previous reviews conducted by this Office have identified weaknesses in the City's contracting process, especially for personal and professional services. The purpose of this memo is to provide you with what I consider to be best practices related to service contracts.

I offer these suggestions to help ensure that we collectively spend our limited resources wisely and effectively. To help ensure consistency in our contract agreements, and to improve accountability for both your Departments and the consultants that you engage, please consider these practices as you engage consultants for professional services.

#### **Form and Terms of the Agreement**

A written contract for professional services may take the form of an abbreviated letter agreement, or a longer formal contract that incorporates many standard provisions. Generally, the more complex the services, the longer the period of performance, and the higher the amount of anticipated expenditures, the more formal the agreement. An approved agreement also establishes the City's authority to pay the consultant; Departments should avoid using Purchase Orders for procuring professional services.

Regardless of its form, the contract should be performance-based rather than open ended. The procured services should be well defined, and the agreement should identify clear performance measures and stated outcomes. This will help clarify expectations between the parties, and allow the City to measure the consultant's success in achieving the desired results.

The agreement should have a specified period of performance and term, and should be properly executed as signed by both parties. While the contract's payment terms may be based on either the service efforts expended or on deliverables, in either case the City should identify a maximum not-to-exceed amount. In addition, as the Department negotiates and approves the contract pricing, including specific consultant rates, the City must ensure that it is commensurate with the consultant's expertise and level of experience. For example, it should be comparable with industry standards for similar

work, and reasonable in relation to the services to be provided. An open and competitive selection process is preferred, whereby the City can consider relative attributes of expertise and pricing among several qualified service providers.

### **Scope of Work and Monitoring Contractor Performance**

In identifying and justifying the need to contract for professional services, the Department should have a well-developed concept of what is expected from the consultant. That concept should be formalized through a written scope of work that is free from ambiguity and internal inconsistencies.

As stated previously, the agreement should be performance-based. Since most professional services contracts involve highly technical or specialized work, the scope defined by the City should focus on what the consultant should do, but not how to do it. This is best achieved by including a number of clear, concise and measurable deliverables, along with expected milestones over an established timeline.

A scope of work with sufficient detail and expected deliverables will allow the consultant to better estimate the costs and resources needed to accomplish each task and the project as a whole. The City will therefore have a higher level of assurance regarding the reasonableness of costs, and may avoid overruns or amendments that would otherwise be necessary to complete the project. Departments should avoid consulting arrangements for open-ended work or on-going tasks without defining an expected completion. In addition, a time-phased requirement for each activity will enable the City to hold consultants accountable for timely service delivery.

Another advantage to having a well-defined scope within the contract agreement is to facilitate Departments' on-going monitoring to ensure the quality of the consultant's work. Department management should continually assess the value received by the consultant to ensure the effective use of City resources. This can best be assured by clearly defining management's expectations and measuring the results through receiving, reviewing and approving the pre-established deliverables or key performance outcomes.

While Departments are expected to provide adequate oversight of all contractors, a recommended practice is to include specific language within the agreement that defines the City's right to continuous monitoring of the consultant's performance, as well as a general audit clause. Departments should also clearly establish who within their management structure is responsible for accepting and approving the consultant's work product.

## **Methods of Billing and Payment**

There are three basic methods that consultants use to bill for their work: time and materials; deliverables, or equal payments over time. While each may have its advantages, no one method is necessarily preferable. However, under all three payment methods, contract agreements should define a maximum total amount. In addition, payment approvals should always be contingent upon the consultant demonstrating satisfactory progress in achieving the scope of work.

### Time and Materials Method

A consultant is paid based on the actual time incurred as "billed" to the project using pre-established rates. The consultant is also reimbursed for specific out-of-pocket expenses. In addition,

- Hourly rates should be "reasonable", as defined by the marketplace for the specific service being performed and the level of expertise offered.
- Time spent as "billed" should be reasonable as tied to a defined milestone or the expected efforts that have been incurred for completing the defined tasks or deliverables.
- The specific types of out-of-pocket expenses that will be paid should be clearly defined in the contract, to eliminate ambiguity regarding allowability.
- Materials and other out-of-pocket expenses should be reimbursed at cost, with no markup by the consultant.

### Deliverable Based Method

A consultant is paid based on acceptance of specific deliverables or tasks, as defined by the scope of work. Under this method, the actual time or effort incurred by the consultant does not affect the payment amount; therefore, the consultant is at risk for delivering a product deemed acceptable to the specifications of the Department.

In order to ensure the contract presents a reasonable overall cost, a deliverable-based method is only suggested for projects or services for which the Department has a high level of knowledge or experience. Departments may also request the consultant to report their hours or efforts incurred, in either their initial proposal and/or periodically, through the term of the agreement. However, while this information would facilitate ongoing monitoring, the payment amounts would not be affected.

### Equal Payment Method

A consultant is paid equal amounts over time throughout the contract period, up to the stated fixed and maximum amount. Under this method, the consultant will receive the same payment regardless of the time or efforts incurred; however, the Department must continue to ensure the consultant is making satisfactory progress, and completes the tasks and deliverables as defined in the scope of work.

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I hope that these suggestions and best practices regarding contracting for professional services can be of some benefit to you and your staff. If you have any questions, please call Claire Bartels, Chief Deputy Controller, at (213) 978-7323.