



Meeting Date: 9/2/2022

To: Public Works Commission
Lauren Post, Chair
Fady Zoubi, Vice Chair
Lynne Newhouse Segal
Paul Woolford

Through: Carla Short, Interim Public Works Director

From: Rachel Alonso, Prop B Project Director
Alexander Burns, Manager of Contract Administration

Subject: Overview of Contract Delegation and Restricted Communications

Director's Recommendation: Information item only. Receive and discuss.

Executive Summary: This presentation expands upon the introductory contracting presentation from the 8/19/2022 commission meeting. The first part of the presentation will cover: administrative code definitions of threshold amount and minimum competitive amount; administrative code requirements for commission approvals and allowances for department approvals; and specific examples of projects utilizing different procurement methods. The second part of the presentation will describe the contract approval delegation thresholds developed by the Proposition B Oversight and Accountability Working Group.

Attachments:
1. Presentation



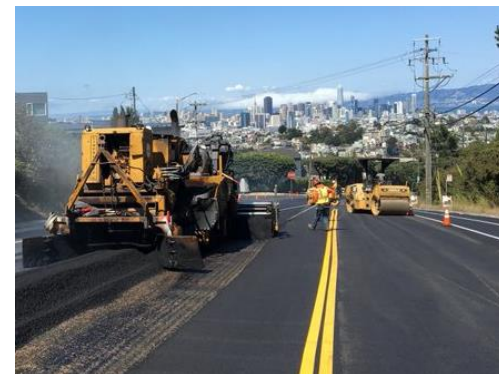
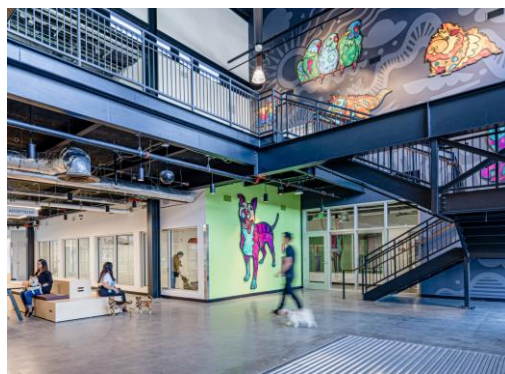
September 2, 2022

Contract Approval Delegation and Competitive Selection Period Policies

Yadira Taylor, Deputy City Attorney

Rachel Alonso, Proposition B Project Director

Alex Burns, Manager of Contract Administration



What is Public Procurement?

- Public procurement refers to the purchase of City/department goods, services, and public works.
- Expected to be completed efficiently and with high standards of conduct to ensure high quality of service delivery in a way that safeguards the public interest.



Public Contracting Laws and Regulations

- City Charter – Section 9.118
- Administrative Code
 - Chapter 6: Public Works Contracting Policies & Procedures
 - Chapter 21: Acquisition of Commodities & Services
 - Chapter 21G: Grants
 - Social Policies:
 - Ch. 14B: Local Business Enterprise (LBE) Program
 - Ch. 12B: Equal Benefits
 - Ch. 12X: Prohibits Contracting in Certain States
 - State Laws – Public Contract Code
 - Federal Procurement Rules
 - Funding source requirements



Many City Agencies Involved in Contracting Process

- City Administrator
 - Office of Contract Administration – City Purchaser
 - Ch. 21 Rules & Regulations; contract and procurement templates
- Public Works Contract Administration Division
- Contract Monitoring Division (CMD)
- City Attorney’s Office – Approves contracts as to form
- Controller’s Office
- Civil Service Commission
- Commissions, Boards, Mayor/Mayor’s designee



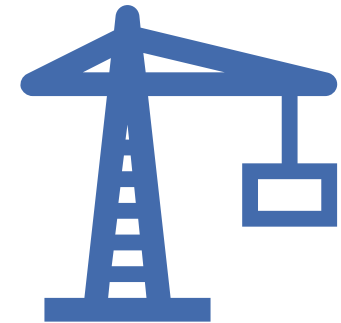
Minimum Competitive Amount/Threshold Amount

- “Formal” v. “Informal” Contracting
- Different rules apply depending on whether contract amount is below or above certain thresholds
- Minimum Competitive Amount currently is \$200,000
- Threshold Amount currently is \$1,000,000
- Other important thresholds
 - BOS approval for expenditure contracts of \$10 million or 10 years
 - \$10,000 or “Prop Q”
 - Ch. 14B: 1/2 of MCA/Threshold Amount; \$10/\$20 million for bid discounts
- MCA and Threshold Amount set to increase by regional CPI on Jan. 1, 2025



Ch. 6: Public Works Contracting and Procedures

- Governs all public works (construction) and professional design, consulting, and construction management services
- Only authorizes certain departments to contract for public works; all others must be procured by DPW
- Governs not only how to procure (requirements for bids/quotes), but also specifies required terms and conditions
- All contracts above the Threshold Amount/MCA must be contracted out
- Default is low bid “design-bid-build”
- Authorizes exemptions and alternative delivery models
 - Design-build and CM/GC
 - As-needed agreements
 - Best value
 - RFQs/RFPs for professional services; selection based on highest ranked proposer



Ch. 21: Commodities and Services

- In general, Purchaser purchases all goods and services needed by department
- Departments can directly purchase goods and services without Purchaser approval in certain circumstances
 - When approved by Purchaser; travel; agreements with other agencies
- Selection by sealed bidding or RFP/RFQ



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Ch. 21G: Grants

- New addition to Administrative Code
- Grant is award of funds to grantee for or in furtherance of a public purpose
- Requires open and competitive procurement process
- Most grants done by Operations group and will transfer to SAS



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Special Contract Types

- Emergency Contracts
 - Section 6.60
 - Section 21.15
- Sole source – requires Commission/Purchaser approvals
- As-needed/JOC contracts
 - Typically limited by time and amount



Additional Approval Actions

Ch. 6 of Administrative Code requires that Commissions approve additional items beyond contract awards and amendments:

- Approval to negotiate when failure of bids
- Contract Termination for Convenience
- Extensions of time to award construction contract beyond 120 days for federally or state-funded projects
- Assignment/Assumption/Novation



Developing Policy Recommendations

- Proposition B transition team convened three working groups to oversee planning and implementation
- Oversight and Accountability working group was charged with making recommendations regarding the operational and administrative aspects of both commissions. Members included:
 - Rachel Alonso, Prop B Project Director (CAO)
 - Natasha Mihal, City Performance Deputy (CON)
 - Alexandra Bidot, Planning and Performance Manager (PW – Finance & Admin)
 - Jon Givner, Deputy City Attorney (CAT)
 - Mark Morewitz, Health Commission Executive Secretary
 - Christine Silva, MTA Board Secretary
 - Douglas Legg, Deputy City Administrator (CAO)
 - Elizabeth Ramos, Prop B Project Analyst (CAO)
 - Bob Fuller, Public Works Commission Affairs Manager (CAO)



Developing Policy Recommendations

Charter Section 4.141(c)(3)

- Approve all contracts proposed to be entered into by the Department, provided that the Commission may delegate this responsibility to the Director of the Department, or the Director's designee

Recommendation

- Commission adopt delegation policy incorporating thresholds for contract awards and modifications based on contract type and size. Thresholds are informed by other Chapter 6 departments' thresholds and average contract actions per-meeting.

Goals

- Oversight that is meaningful
- Continued departmental operations
- Sufficient time in meeting agendas for non-contract items
- Comfort and confidence with contract approvals and delegation policy

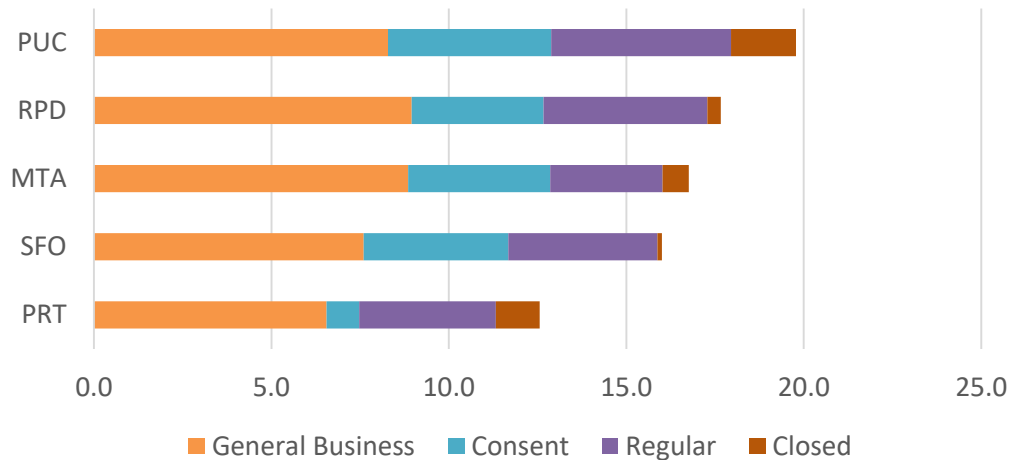


Precedent

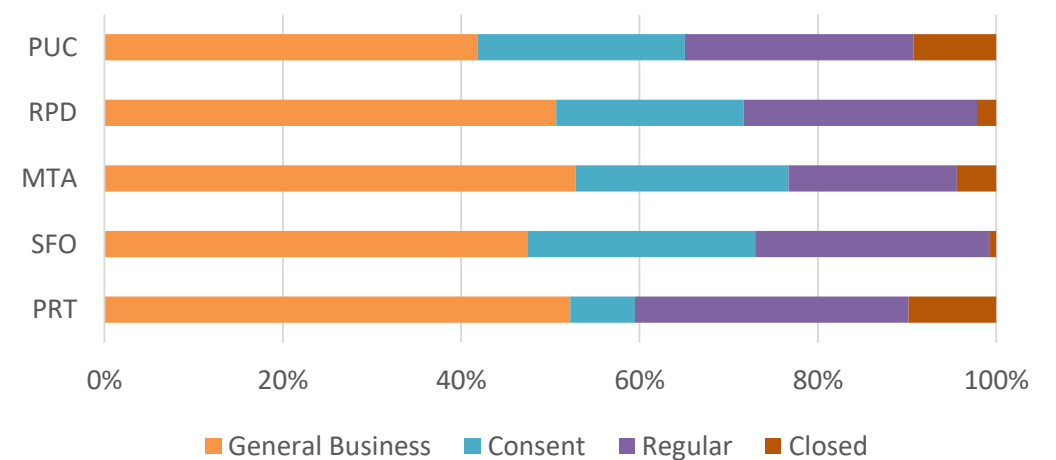
- Average Chapter 6 commission meeting duration is 3.5 hours with 17 agenda items

| Department | Mtgs per Month | General Business | Consent | Regular | Closed | Total | Avg Regular Meeting Duration |
|----------------|----------------|------------------|------------|------------|------------|-------------|------------------------------|
| MTA | 1.8 | 8.9 | 4.0 | 3.2 | 0.7 | 16.8 | 5:48 |
| PRT | 1.4 | 6.6 | 0.9 | 3.9 | 1.2 | 12.6 | 3:41 |
| PUC | 1.8 | 8.3 | 4.6 | 5.1 | 1.8 | 19.8 | 4:18 |
| RPD | 1.0 | 9.0 | 3.7 | 4.6 | 0.4 | 17.7 | 2:20 |
| SFO | 1.7 | 7.6 | 4.1 | 4.2 | 0.1 | 16.0 | 1:05 |
| Average | 1.5 | 8.1 | 3.5 | 4.2 | 0.9 | 16.6 | 3:26 |

Average # Agenda Item by Type and Department



Average % Agenda Item by Type and Department



How Public Works Compares: Contract Volume

- 3 of 17 average agenda items per meeting are contract approvals
- 6 contract items expected per Public Works Commission meeting (2x the average)

| Department | Average contract items per meeting | Consent Agenda | | Regular Agenda | |
|--------------------|------------------------------------|----------------|------------|----------------|------------|
| | | Award | CO/Mod | Award | CO/Mod |
| MTA | 1.9 | 0.6 | 0.6 | 0.4 | 0.3 |
| PRT | 1.0 | 0.0 | 0.1 | 0.5 | 0.3 |
| PUC | 3.7 | 1.0 | 1.8 | 0.6 | 0.3 |
| RPD | 1.8 | 0.5 | 0.7 | 0.4 | 0.2 |
| SFO | 4.9 | 0.6 | 2.1 | 1.1 | 1.2 |
| Grand Total | 2.8 | 0.6 | 1.1 | 0.6 | 0.5 |
| | | 1.7 | | 1.1 | |
| DPW | 5.8 | 1.3 | 2.5 | 0.6 | 1.4 |
| | | 3.8 | | 2.0 | |
| SAS | 3.5 | 0.5 | 2.0 | 0.2 | 0.8 |
| | | 2.5 | | 1.0 | |

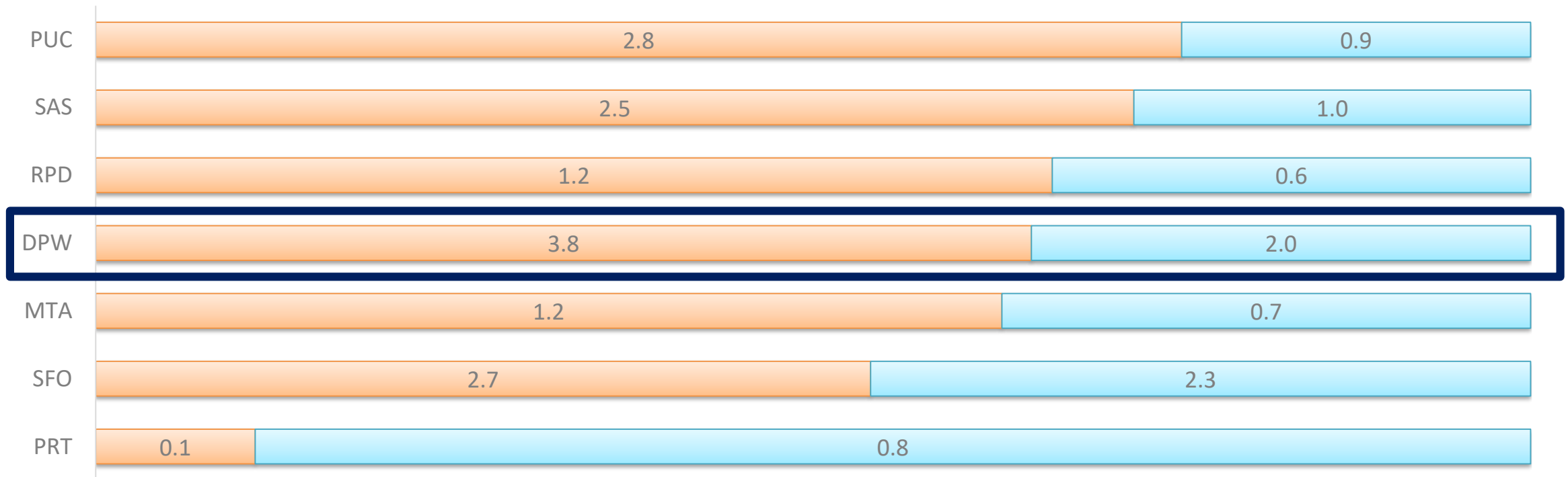


How Public Works Compares: Consent vs Regular Agenda

- Baseline contract approval ratio: 60% on consent agenda / 40% on regular agenda
- Public Works ratio: 66% on consent agenda / 34% on regular agenda

Average Ratio of Agenda Item Types (Consent vs Regular) by Department for All Approval Actions

Consent Agenda Regular Agenda



Contract Approval Threshold Recommendations: Awards

- Commission approve awards equal to or exceeding the threshold and minimum competitive amounts, as applicable. Delegate approval of smaller awards to the department

Commodities

- \geq \$1,000,000 Threshold Amount

General Services

- \geq \$1,000,000 Minimum Competitive Amount

Construction

- \geq \$1,000,000 Threshold Amount

Professional Services (Ch 6 and Ch 21)

- \geq \$200,000 Minimum Competitive Amount

Grants

- \geq \$200,000 Minimum Competitive Amount



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Grants

- \geq \$200,000 Minimum Competitive Amount

Comps:
\$129K SFO
\$500K DPH
\$1M PUC
\$10M MTA

Comps:
\$100K PRT
\$114K PUC
\$129K SFO
\$1M MTA

Comps:
\$114K PUC
\$600K PRT
\$706K SFO
\$1M MTA



Contract Approval Threshold Recommendations: Changes

- Commission approve modifications for changes to contract amount and/or duration
 - If award amount or cumulative modified amount exceeds the award thresholds (\$200K or \$1M)
 - In increments of 10% for all but Chapter 6 professional services, for which increments do not apply
- Delegate approval of mods to the department
 - If award amount or cumulative modified amount is less than the award thresholds (\$200K or \$1M)
 - Within 10% increments (i.e. 0-9.9%; 10.1-19.9%)

Commodities, General Services, Grants, Professional Services (Ch 21)

- Cumulative increases
- 10% increments
- Time or money

Professional Services (Ch 6)

- Any and all increases or decreases
- Time or money

Construction

- Cumulative increases or decreases
- 10% increments
- Time or money



Contract Approval Threshold Recommendations: Other

Revenue Contracts

Commission approval if \geq \$1,000,000 in revenue

Includes approval for any mods, amendments, or terminations of the same

Emergency Contracts

Delegate to director to award and amend emergency contracts

Requires signature of Commission chair as soon as possible (depending on nature of emergency)

Director or Director's Designee

Director refers to appointed, interim, or acting position

Director may redelegate to a Deputy or Senior Manager if needed



Contract Approval Threshold Recommendations: Consent

- Consent agenda thresholds are based on original contract award amounts
- As the award thresholds are automatically adjusted for CPI, so shall the consent agenda thresholds
- Commission may move items from the consent agenda to the regular agenda

Professional Services and Grants

- For original contract amounts between \$200K and \$1M

As-Needed Contracts

- All amendments regardless of contract amount
- Contract types: General As-Needed (GAN), Master As-Needed (MAN), and Job Order Contracts (JOC)

Everything Else

- For original contract amounts between \$1M and \$5M
- Includes construction, general services, and commodities



Competitive Selection Period Policy

- Prohibits offering selective assistance to confer a competitive advantage
- Goals: support the integrity of competitive selection processes, ensure award recommendations are fair and impartial, avoid real or perceived selective assistance, assure that no party has greater access to information than any other
- Begins upon advertisement, concludes upon award (or when the competitive process is terminated)
- Penalty: proposer subject to disqualification from the competitive process
- Exception: communications from staff consistent with solicitation instructions
- List of active solicitations not yet awarded will be provided at every meeting
- Precedent: SFO and Port Commissions



SHHH!!!





Thank you