JOHN F. COOK
MAYOR

Joyce Wilson
CITY MANAGER

LRC MEMBERSHIP
CARL L. ROBINSON, DISTRICT 4
MICHIEL R. NOE, DISTRICT 5
Eddie Holguin Jr., District 6
STEVE ORTEGA, DISTRICT 7

CITY OF EL PASO, TEXAS

MINUTES OF
LEGISLATIVE REVIEW COMMITTEE: FINANCE, INTERNAL AUDIT, ENGINEERING/CIP & MANAGEMENT SERVICES

2ND FLOOR CITY COUNCIL CHAMBERS
THURSDAY, MARCH 15, 2012
1:00 P.M. – 3:00 P.M.

The following members of the Committee were present:

Representative Carl L. Robinson (Chair)
Representative Eddie Holguin Jr.
Representative Steve Ortega

The following members of the Committee were absent.

Representative Michiel R. Noe

1. **Call to order and introductions.**

   ACTION TAKEN: The meeting was called to order by LRC Chair Representative Carl L. Robinson at approximately 1:03 p.m.

2. **Approval of Minutes for the Finance, Internal Audit, Engineering/CIP & Management Services meeting of March 15, 2012.**

   ACTION TAKEN: Representative Steve Ortega moved to approve the minutes. Motion was seconded by Representative Eddie Holguin Jr. and approved unanimously.

3. **Discussion and action on the policy and procedures for exercising options pertaining to City contracts for goods and services.**

   SUMMARY:
   Mr. Bruce D. Collins gave a presentation on contraction options at the City of El Paso

   From Presentation Slides Summary
   - Establish a definition of a contract option
   - Identify when an option should be included in a contract
   - Identify how an option should be evaluated during the selection/evaluation process
   - Identify the threshold factors to analyze in determining if an option should be exercised
   - Understand the role and importance of vendor performance in exercising an option
   - Who approves options to be exercised

   Representative Ortega asked if the option that would be in the contract would be an option that the vendor would have to allow city to exercise if it so chose? In other words does City have to exercise it if

the city chooses to? Mr. Collins Indicated that the vendor elects to offer the city an option or not by stating so in the bid.

Representative Ortega asked about bids that have a base bid and a number of optional award items referred to as option 1, option 2, that could affect who is the awarded vendor of the contract? Representative Ortega wanted to know if the focus of this presentation was on contract options alone or if it would address contracts that contained a number of optional award items.

Mr. Collins replied that the main focus of the current presentation was on options to be exercised after the bid is awarded, but indicated the presentation did touch upon how options would be awarded during the bid process. Mr. Collins stated that bid document will clearly identify the process by which the options will be exercise. Mr. Collins made the distinction between option and alternate in awards where contract and several "alternates" affect the award amount.

From presentation slides "Use of Options"

Best to Use

- Market allow City to lock a contractor into multi-year pricing structure;
- Additional items and scope for option can be defined; and
- Continuity of operations and re-occurring requirements

Should not Use

- Market prices for supplies or service likely to change due to in industry (computers, rubber products, oil based, environmental regulations);
- Price, availability of necessary materials and labor cannot be reasonably forecasted; and
- Competition for option is impracticable once initial contract is awarded

Representative Ortega asked on the use of options slides "should not use" the frequency of contract awards with options for market sensitive commodities like commodities with oil based products coming to council. Mr. Collins clarified that the presentation was presenting guidelines going forward for how the City would include options in bids and evaluation options coming back to council.

Ms. Carmen Arrieta-Candelaria, the City's Chief Financial Officer (CFO hereafter) indicated that these were guidelines Fin Services are developing and they do change based on the market. On the bid documents we include the optional years to vendors and sometimes the vendors themselves select that they won't give us an option.

Representative Ortega highlighted the oil based contracts under the "should not use" heading of the slide "oil based". Representative Ortega asked if this meant that after this change council should not expect to see an asphalt contract with an option on it. Mr. Collins replied that what staff will try to balance the approach to options. If the market is not stable enough to allow the City to offer an option, an option with not be included in those bids.

Representative Ortega indicated his objective was procurement would be as objective as possible that way you minimize opportunity for discretion. Anything you can present to us that minimized discretion and promotes objectivity life easier and our reputation with regards to procurement. The end goal is to be objective as possible eliminating where possible opportunities for discretion for elected officials and staff members. Mr. Collins replied that this presentation was developed to emphasis transparency and clarity of the process.

Representative Robinson asked about the notice of termination in city contracts and if it was for 30 days. Mr. Collins indicated that all contracts contained termination language and restated that the City maintains the authority to exercise the option or not.

Representative Robinson asked if the City has to notify vendors if we are not going to exercise the contract. In the interest of fairness do we notify vendor in at least 30 days. Mr. Collins indicated the

contractor is typically notified 30 days prior to expiration that City will not continue services. That time period could be increased if a preferred by Council.

Representative Robinson asked if 30 days was enough time to notify vendors an option will NOT be exercised. Mr. Collins said that if city has exhausted services, contractor is given a roughly 60 or 90 day notice that the contract is going to be re-bid.

Representative Ortega asked what the standard notification period was. CFO replied that standard notification was 30 days.

Representative Robinson wants to ensure City is doing its job from a management standpoint. If the City is doing our job we should be able to notify vendor within 60-90 days of contraction termination.

Mr. Collins indicated if the notice is 30 days purchasing would have to come to council at least 60 days prior to end of contract in order to get council authority to terminate the contract.

Mr. Robinson has seen where items are brought to Council at the last minute with staff saying they will need to award contract to avoid a break in services, he does not want to see that in the future.

From presentation slide Evaluation of Options

- Solicitation shall include option clauses if resultant contract provide for exercising of an option;
- Solicitations containing options shall definitively state the basis of how options shall be evaluated (inclusive or exclusive);
  Solicitations shall indicate the City may exercise option at time of award; and
- Solicitation for unit priced items should identify a minimum and maximum which may be ordered for each option

Mr. Collins further clarified Representative Ortega's earlier questions on awards with multiple options (now called alternates); solicitation will contain and have a definitive statement on how the option(s) will be evaluated. Contract award based on base bid or base bid and option(s)

Representative Ortega talked about a speech by the Mayor of Dallas. City administrators with years of experience have the power. They know the rules and how to "game the system"; what rules can be exercised and how decisions are made. How do we decide to exercise the option? Who make the initial determination to exercise the option made. The more people involved the better. If it's a three person committee even better to cut down on the potential for [trouble].

Mr. Richard Bristol, Engineering Department, mentioned a resurfacing contract regarding an alternate for retained millings. When Street Director took the option for purchasing millings, the Director and staff made the decision based on inventory of this specialized item. Department had opportunity to get millings at the price in the bid.

Representative Ortega asked if there is a mandate that the decision to exercise option comes from an individual or a group. Is there a systematic way how the taking of options is determined?

Mr. Alan Shubert, City Engineer indicated Engineering and Construction Management is responsible for procurement of construction services for services involving Davis bacon wage determination. Mr. Shubert clarified that Engineering Department was the final administrative authority on construction procurement. The vast majority of these types of contracts do not have options or alternates as the specialized Department of Transportation bids are not that common. Construction procurement bids are not forwarded to Purchasing Manager for review or approval. The process is handled in Engineering Department.

Regarding the millings, Mr. Shubert indicated that a new process for how inclusion and exercising of these alternates was going to be developed. They will do something next time so there is objective criteria for making decisions on award of alternates or deductive alternates.

Representative Ortega asked if there is a mandate that decision to exercise option comes from an individual or a group. Mr. Bristol stated that for department of transportation the decision to exercise options for the millings example was a management decision at the department level. Representative Ortega mentioned to CFO that the less we enable individuals to make the decision to exercise options the better. CFO gave the example of Financial Advisory Services contract with First Southwest. The city investment committee made the decision to bring the extension option forward to Council. She said she didn't know departmental procedures for exercising options, but that a Standard Operating Procedure for exercising options with the City did not exist.

From Slide Responsible Party Checklist.

Tab	Evaluation Factor	Department	Purchasing
1	CITY NEED FOR PRODUCT AND/OR SERVICE	X	
2	FUNDING AVAILABLE FOR OPTION	X	
3	PURCHASE ORDER	X	
4	PRICE ANALYSIS) (informal market analysis competitive/advantageous		X
5	RECENT AWARD		X
6	VENDOR PERFORMANCE REPORT(S)	X	

Mr. Collins went over the Responsible Party Checklist slide of his presentation. The Contract's Project Manager can sign off on the option. For low bid informal price analysis can be done by purchasing to determine price reasonableness of exercising option. For professional services where contract was awarded by best value, price alone wasn't determining factor; the contract would be evaluated to see if it was still advantageous to City. The vendor performance report was changed to provide a numerical weighting system. Vendor performance reports should be done at least annually depending on length of contract.

Representative Robinson asked where Purchasing was are you on training. Mr. Collins mentioned several departments trained in contract management thus far. Representative Robinson asked who is being trained. Mr. Collins stated that department heads had been afforded a training opportunity and several airport staff members have received training in contract management.

CFO stated she would work with Purchasing Manager to ensure training was delivered. We are decentralized we rely on dept. to do contract administration. Training will be put on website as a training video.

Representative Holguin-asked about Change Order process and how to make that more fair.

Mr. Collins received clarification from the legal department on how change orders are processed and addressed; which can be presented at a later LRC

Mr. Shubert stated that generally most contracts for infrastructure are based upon estimated quantities that are assumed to be correct but not always so. Shubert stated that the level of authority by statute is $100,000. Three unrelated changes under $100k could come to Council currently.

Representative Holguin asked how to change the threshold amount of change orders.
Elizabeth Ruhmann, Assistant City Attorney stated that change order authority is delegated. Ms. Ruhmann stated contract amount cannot be exceeded by more than 25%. So there is a control.

Mr. Collins mentioned contract change orders that have come forward to council to increase up to 24% of the contract value and the Cherry Road contract for PS Implementation that increased the contract amount by approximately 12%. Collins confirmed that state code did prevent City from increasing contracts by more than 25%. Engineering contracts have language built into them at time of award for amount of City Engineer delegated authority.

Mr. Shubert indicated construction is a little different than purchase of commodities because of unforeseen needs on the construction projects. Mr. Shubert stated Engineering's typical change order percentage is under 10% and normally under 5%.

Representative Robinson asked if the contractor is dictating change orders. Mr. Shubert replied the contract sometimes runs into something that they didn't bid on and requests a change order, but the change orders are verified by the City. For projects funded by federal funds, an independent cost estimate must be performed.

Ms. Ruhmann stated that the discussion on change orders exceeds what was placed on the agenda for this LRC and needs to be addressed at a different level restating the wording on the agenda in response to a question from LRC members for clarification.

An option shall be exercised only after determining that -

- **Funds are available to cover option;**
- **Requirement covered by option fulfills an existing need of the City;**
- **An informal analysis of pricing or market research indicate that the option pricing is better than available prices or that the options is a more advantageous offer;**
- **Time between award of the contract and exercising option is so short that market indicates the option is lowest price obtainable through competition or most advantageous; and**
- **A vendor performance shall be completed and vendors performance shall been determined to be "7-8" or higher**

From presentation slide Option Analysis

Mr. Collins discussed the proposed procedures for how City staff will review contract options in the future. A minimum performance threshold will be established for the vendor performance form that the contractor must meet in order for the option to be exercised by the City. The option to extend would have to be signed off by the department head.
Vendor performances reports would be maintained in accordance with records management policy and provide a database for the City to utilize. City departments could recommend poor performing vendors not be awarded future City contracts.

Representative Robinson asked if vendor was not recommended for future award, could they still submit bids. Mr. Collins indicated that vendors who perform poorly on City projects could bid on City projects, but at time of award the City council would have the option of declaring the bidder non-responsible or to award regardless of staff's documentation that vendor was not a responsible vendor.

Mr. Shubert commented regarding scoring vendors on Engineering's construction projects. On competitive sealed proposals (vertical construction) vendors past scores influence award determination on future projects. For low bid infrastructure projects, Engineering would make a recommendation on responsibility but only the Council could make the final determination.

From presentation slide Key considerations

- Increase standard length of contracts to total five years with no options
- * Currently a typical contract has an initial term of three years with a two year option

- Request Council's approval to authorize the City Manager to exercise options as an administrative matter by one of the following methods:
    - Delegated authority granted on a contract by contract basis similar to engineering resolutions
    - Delegated "blanket authority" granted by resolution and/or as a policy
    - Delegated authority granted on contracts with a total contract value (initial value plus options) not to exceed $500,000 dollars

Representative Robinson asked why the City would want to lock the vendor in to a five year contract. Mr. Collins indicated that it would be to the City's advantage to lock a vendor in at the same prices for up to five years on a case by case bases based on the commodity that was being purchased. Market sensitive commodities would not be bid for five year terms.

CFO stated that most of the Purchasing Divisions contracts were three years with two one-year options to include the termination provisions.

Representative Holguin asked how did Purchasing come up with delegated authority bullet. CFO indicated that Engineering currently has the delegation of authority and as they come up with a Standard Operating Procedure for exercising options for Purchasing Division contracts, these considerations would be brought forward to Council for approval. Mr. Collins indicated that regional cities had been contacted to see how they deal with options on their contracts.

Representative Ortega stated he was not comfortable with the considerations related to contract options presented by Purchasing while there is no Standard Operating Procedures for how contraction options are handled at the City. Representative Ortega went on to discuss contract options with respect to IT purchases. As they are high dollar multi-million dollar contracts IT purchases will receive a lot of scrutiny in the future. Representative Ortega requested some kind of vetting process for multi-million dollar decisions regarding IT purchases that are being made based on opinion of a few people with specialized knowledge. The dollar value is so high and the knowledge is esoteric.

Representative Robinson wants to see a complete comprehensive plan starting with IT regarding future high dollar expenditures and followed by other departments. Representative Robinson would like a complete comprehensive plan for IT. Representative Ortega agreed with this recommendation. Mr. Collins requested Clarification that in spending plan, when allude to how its spent would include what the bidding process would be, what items are in the design phase, which are being bid, which have been awarded and which are complete. Representative Ortega further recommended that a third party perform an inventory and assessment of future high dollar purchases so Council would have a five or ten year schedule of what expenses are going to be.

Ms. Ruhmann clarified what the LRC members were asking as it was out of the scope of the current agenda item. Did they want an IT Contract overview or a comprehensive plan for expenditures for the next 5-10 years?

CFO indicated Purchasing Division would like to move forward with conducting an option analysis when contract options will be exercised. Anytime an option comes forward to Council Purchasing Division will go forward with option analysis prior to bringing to council. CFO wants the Purchasing Division to move

forward with considerations in the presentation today so that Council will have confidence to grant Purchasing Division ability to exercise options administratively in the future. CFO wanted to highlight the focus on recruiting and training qualified staff including pursuit of professional development opportunities. There is a regular meeting Purchasing has with IT to go over solicitation status report to get ahead of what Council wants regarding procurement and exercising options; Purchasing Division is trying to improve.

Representative Robinson asked if it would it help to put separate item on the agenda for IT? CFO said yes that that was recommended. Representative Robinson will put separate item on the agenda to discuss IT high dollar purchases in the future.

Representative Ortega asked if LRC members are ok moving forward to Council as a whole. Representative Holguin asked what is being sent to council wanting to clarify if LRC members were recommending giving the City Manager authority to approve 1 million. Representative Ortega said this will go forward to council for consideration and IT item will be separate discussion. Purchasing Division can discuss key considerations for contract options, but Representative Ortega was not comfortable with delegation of administrative delegation of authority, because confidence needs to be built up with the SOP (Options Analysis) of handling options.

CFO told LRC members she would not bring key considerations forward to whole council if there is not support. Purchasing brought this forward as a way to deal with options. These are key considerations not recommendations. The options analysis is what is being recommended and she would like to bring forward to Council. This is what will be implemented from an administrative standpoint in order to respond to council concerns.

Representative Robinson asked to view the considerations slide in the presentation and asked if they were not going to opt for those. Representative Ortega confirmed that key considerations would not be brought forward at this point because there are no standard procedures in place for options or the confidence to process administratively.

Representative Holguin asked that when this comes back the discussion will be broader to discuss change orders? CFO said items will be put forward to include discussion of change orders and discussion of high dollar purchases to include IT. Representative Robinson confirmed that LRC was moving forward to consider items for discussion and action on change orders and an IT Plan.

ACTION TAKEN: Representative Ortega made a motion to present a standardized procedure for exercising contract options to the Council as a whole, with the options analysis, for recommending options by staff to the Council. Motion was seconded by Representative Holguin and approved unanimously.

4. Adjournment

ACTION TAKEN: Representative Ortega moved to adjourn the meeting. LRC Chair, Robinson adjourned the meeting at 2:20 p.m.

APPROVED AS TO FORM:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

4/9/12
Date