



MEMORANDUM

TO: JOINT GOVERNANCE COMMITTEE (FEDERATED AND POLICE & FIRE) OR “JGC”

CC: ROBERTO PENA, BARBARA HAYMAN

FROM: VALTER VIOLA (CORTEX)

SUBJECT: INTERNAL ORS POLICY REGARDING THE PROCUREMENT AND CONTRACTING OF GOODS AND SERVICES

DATE: JUNE 18, 2024

At the June 18, 2024 meeting of the JGC, Cortex plans to review the proposed **changes** to the draft **internal ORS** *Policy Regarding the Procurement and Contracting of Goods and Services* (the “Policy”) relative to the first version of the draft Policy that was discussed with the JGC at the January 29, 2024 meeting.

If approved, the final version of the Policy would:

- replace the current retirement boards’ policy called *Policy Regarding Roles in Vendor Selection*; and
- be supplemented by procedures*, to be signed by the CEO (not the Boards), to support the implementation of the Policy.

* *We propose to defer the development of separate **procedures** and have included more detail in the **Policy** instead. (In the future, elements of the Policy will be “carved out” and included in procedures.)*

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1. BACKGROUND

Many years ago, the San José Municipal Code was amended to grant the two Boards authority regarding the procurement of goods and services necessary for the administration of the retirement plans they administer. Those changes in authority were (and still are) consistent with best practices in the public pension arena. For example, these changes in authority are consistent with the principles in *The Clapman Report*¹, which is the generally accepted standard for pension governance principles related to defined benefit pension funds in the United States.

The table below summarizes, on the left, those goods and services that would be governed by **the proposed new Policy**. The goods and services to be covered by the **existing City rules** are summarized on the right.

New Internal ORS/Board Policy	Existing City Rules
Professional Services i.e., Consulting, including the services provided by the actuary, legal counsel, and investment risk consultant, to name a few	Non-Professional Services, Supplies, Equipment, Materials, etc. e.g., <ul style="list-style-type: none"> • Payroll and benefits related to ORS employees • Information systems (email, network services hardware, and cybersecurity)
Critical Plan Administrative Functions	

The new Policy, then, fills an important gap by addressing, in more detail, the professional services that are deemed to be critical.

¹ The Clapman Report states, in part:

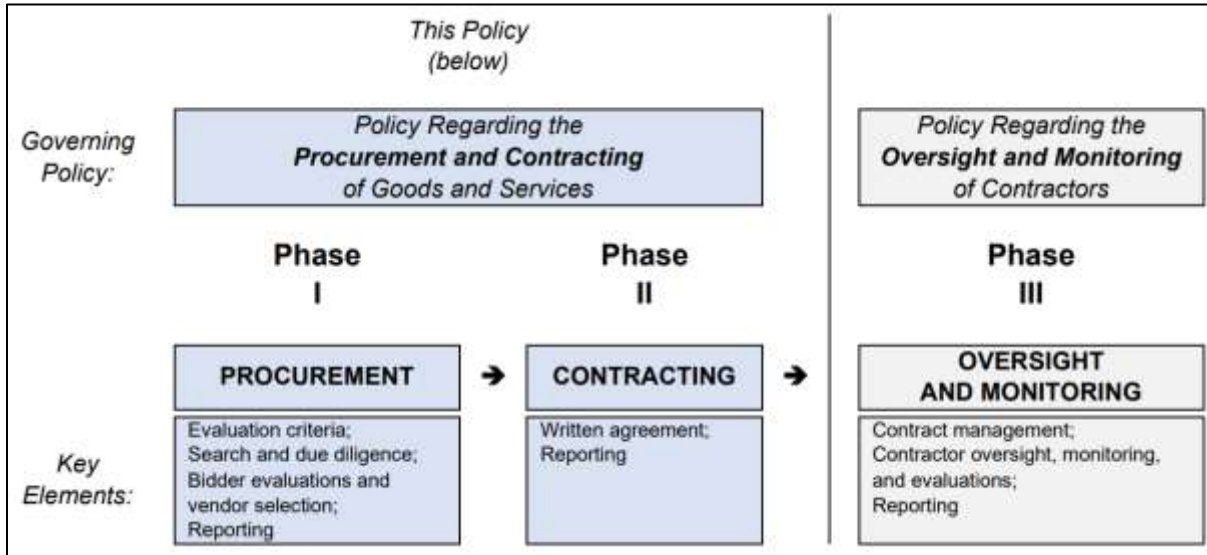
- a governing body should be permitted to rely on the expertise and advice of appropriately selected and unconflicted consultants;
- a fund should institute an evaluation process that assesses proposed fund expenditures and weighs the benefits to fund beneficiaries generated by those expenditures against the cost and quality of the service for which funds are expended; and
- a fund should establish an effective and objective monitoring policy for all service contracts.

Source: Clapman Report 2.0, Model Governance Provisions to Support Pension Fund Best Practice Principles (Peter Clapman, Chair and Christopher Waddell, Lead Author)

As noted in Cortex’s memo related to the January 29, 2024 meeting of the JGC:

- our long-term approach is to **expand the scope of the Policy** beyond procurement (Phase I in the box below) and contracting (Phase II below), to also **include a third phase (oversight and monitoring of contractors)**; but
- in the short term, however, our approach is to keep oversight and monitoring (Phase III) separate.*

* At a future JGC meeting, we propose to review the draft *Policy Regarding the Oversight and Monitoring of Contractors*.



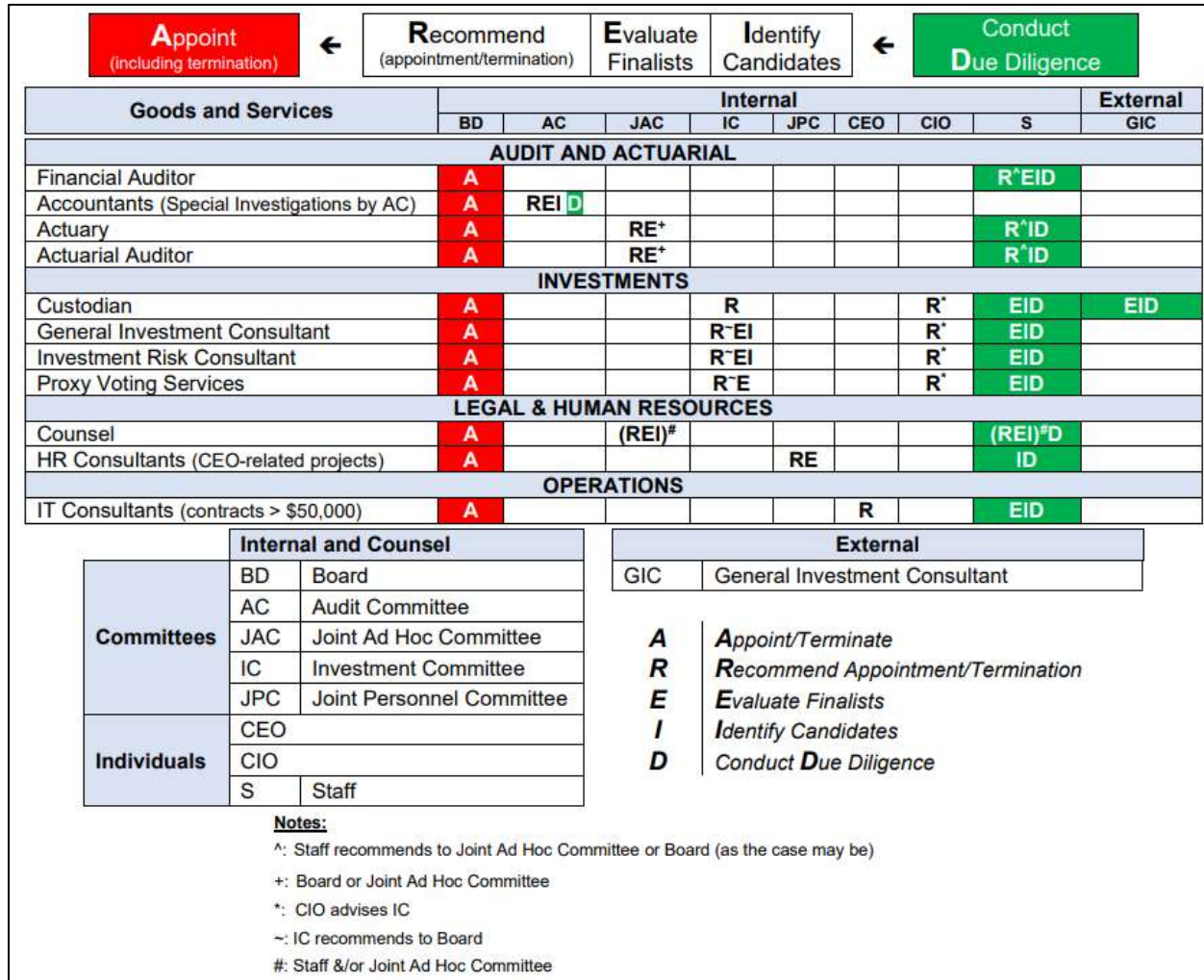
At the January 29, 2024 meeting of the JGC, Cortex received the JGC’s feedback related to the **first** draft of the Policy. Cortex also received additional feedback from ORS staff and Counsel since that meeting.

On the following pages, we review the proposed **changes** to the draft Policy relative to the first version that was discussed at the January 29, 2024 meeting.

The attached draft Policy does **not** track these changes.

2. PROCUREMENT PROCESS OVERVIEW

We changed the overview diagram to align it better with the current process/policy. The proposed overview diagram is below; an appendix shows the previous draft of the overview.



Plan	Removed Counsel's role because Counsel has no role in the illustrated process.
Counsel	Moved "Counsel" to fall under the "Legal & Human Resources" category.
City Auditor (CA)	Removed the City Auditor's role (column "CA"). ORS staff indicated that the City Auditor no longer has a role in procuring services of the Financial Auditor.
Financial Auditor	Added "Financial Auditor" as the first service row item.* While the current policy states that the Audit Committee or Staff: 1. identify interview candidates; 2. interview finalists; and 3. recommend, staff indicated that staff (not Audit Committee) are responsible for these steps, so the roles have been updated.
Accountants (Special Investigations by Audit Committee)	Added "Accountants (Special Investigations by Audit Committee)" as the second service row item.* While the current policy states the Audit Committee (AC) appoints/terminates, Counsel indicated that the Board (BD) has this authority.
* <i>These items were inadvertently omitted in Draft 1.</i>	
Actuary and Actuarial Auditor	The roles of the various individuals or committees should be the same as they relate to procuring services from the i) Actuary and ii) Actuarial Auditor. (The first draft had an inconsistency.)

While the 5-step process remains unchanged (from **Conduct Due Diligence** to **Appoint**), a few terms have been clarified by describing the actions involved, as noted below.

- **“Interview” was removed in Step I (“Identify Interview Candidates”)**, to become “Identify Candidates” at staff’s suggestion, because there may not always be a finalist “interview” during a procurement process.
- **Step F (“Interview Finalists”) was renamed Step E (“Evaluate Finalists”)**, consistent with the change above.

Various notes were also added to make the diagram consistent with the current *Policy Regarding Roles in Vendor Selection*.

3. ROLES AND RESPONSIBILITIES OF THE “RESPONSIBLE EXECUTIVE”

The first draft of the Policy described the roles and responsibilities of a “Responsible Executive”, where the intent of defining this term (instead of referring to the “CEO” and/or “CIO” as the case may be) was simply to reduce the length of the Policy. Please note that:

- the CEO and CIO have certain **unique responsibilities** (e.g., CEO is authorized to sign contracts, while the CIO may not); and
- the CEO and CIO might have certain **common responsibilities** related to some aspects of the due diligence process (e.g., for the CIO, these responsibilities would be for investment-related services).

Also, ORS staff indicated that certain responsibilities may be performed by a **non-executive**, rather than an **executive**. As a result, we introduced an additional person (“Responsible **Employee**”) and have assigned some responsibilities to this person. (This person would be an ORS employee, such as a manager or analyst). These terms are defined in the Policy’s glossary (repeated below).

Responsible Executive: The Executive who manages the budget category for the funds being committed under the contract. For greater clarity, the Responsible Executive may be the CEO or CIO (depending on the goods or services).

Responsible Employee: The ORS employee who has been assigned one or more responsibilities under the Policy related to the procurement and contracting of goods and services. ***For greater clarity, the Responsible Employee is the Responsible Executive when responsibilities under the Policy are not delegated to a Responsible Employee.***

The second draft of the Policy, therefore, shows changes related to certain responsibilities throughout the Policy (e.g., from Responsible **Executive** to Responsible **Employee**).

The Policy’s Appendix 1 (Roles) has been updated, as shown below, to clarify the roles when the Responsible **Executive** (❶) decides to re-assign a responsibility to a Responsible **Employee** (❷).

The Responsible Executive (❶) or Responsible Employee (❷) (if the role is re-assigned):		
Role	Responsible Executive	Responsible Employee
• ensures that budget authority exists for the goods or services;	❶	❷
• selects the procurement process to be used (e.g., RFP) and participates in the preparation of the solicitation documents;	❶	
• keeps the CEO apprised of all significant contract actions for which the Responsible Executive <u>or</u> Responsible Employee is responsible;	❶	❷
• negotiates terms and conditions of contracts for the purchase of goods and services for which the Responsible Executive <u>or</u> Responsible Employee is responsible;	❶	❷
• approves the purchase of goods and services for which the Responsible Executive is responsible under the Policy; and	❶	
• binds or commits the Plan for the purchase of goods or services as set forth in this Policy, except in an Emergency and as may be otherwise authorized by the Board.	❶	

The table below summarizes the responsibilities of the CEO and CIO related to vendor selection, per their respective Charters. Note, for example, that the CEO (but not the CIO) is responsible for executing contracts with vendors.

CEO	CIO
<p>The CEO is responsible for:</p> <ul style="list-style-type: none"> a) Ensuring all necessary due diligence is performed by staff or advisors in connection with vendors to be appointed by the Board; and furthermore that the Board is provided staff recommendations concerning such appointments; b) <u>Selecting and appointing all vendors</u> for which the Board has not retained selection or appointing authority, ensuring all appropriate due diligence is performed in connection with such decisions; c) <u>Executing contracts</u> with vendors of the Plan; and d) <u>Supervising and directing all vendors</u> on a regular basis. 	<p>The CIO shall:</p> <ul style="list-style-type: none"> a) <u>Conduct or oversee all due diligence associated with vendors involved in the investment of Plan assets including, but not limited to, investment managers (public and private markets), the custodian, and investment consultants.</u> b) <u>Recommend the appointment and termination of custodians, investment consultants, and investment managers to the Investment Committee and the Board for approval.</u> c) Advise the CEO, the Board, and the General* Counsel with respect to the needs of the Investment Division for legal services.

* "General" may be deleted in the CIO Charter, referring only to "Counsel".

4. INCREASES IN CONTRACT VALUE

We propose to reduce the maximum allowable increase in the Contract Value to 15% (down from 25% in draft 1 of the Policy). The changes are shown below.

Contract Feature	Parameter and/or Requirement
Maximum initial contract term	Six (6) years
Contract term extension	Board must approve any contract term extension beyond the above maximum contract term that do not require a new competitive procurement process, with the exception of Unilateral Contracts.
Contract amendments <u>Value increases</u>	Contract Value may be increased up to twenty-five-fifteen percent (2515 %) of the original Contract Value or \$100,000 (\$50,000 for each plan), whichever is less. For contracts that span multiple years, the Total Contract Value may be increased up to twenty-five-fifteen percent (2515 %) or \$200,000 (\$100,000 for each plan), whichever is less.
Minimum review frequency of Designated Service Providers	Three (3) years
Minimum review frequency of ongoing subscriptions or licenses	Six (6) years
Evergreen clause ⁴	Prohibited
Service Level Agreement ("SLA")	SLAs are to be included in Written Agreements related to: <ul style="list-style-type: none"> • services provided by Designated Service Providers, unless an exception is granted by the Board; and • service contracts whose Contract Value exceeds the Threshold Amount.

² An evergreen clause in an agreement relates to the automatic renewal of the agreement for some period of time unless one party to the agreement provides the other party with notice before the end of the current term that it does not wish to renew the term of the agreement.

5. PROTESTS REGARDING PROCUREMENT DECISIONS

We propose to adopt the City's rules related to any protests regarding procurement decisions under the Policy. Paragraphs 44 and 45 (below) are new.

C. Other Policies

Protest Regarding Procurement Decision

- 44) Any protest regarding procurement decisions under this Policy shall comply with the City's rules as stated in SJMC §§ 4.12.410 to 4.12.460 using the Threshold Amount in this Policy (\$50,000) rather than the Informal Procurement Threshold (\$250,000) in the City's rules.
- 45) Protests of decisions regarding procurements having a value equal to or less than the Threshold Amount may be governed by procedures promulgated by the CEO.

The City's rules are stated in San José Municipal Code ("SJMC") §§ 4.12.410 to 4.12.460, shown in the box below, using the Threshold Amount in this Policy (i.e., \$50,000 per plan) rather than the Informal Procurement Threshold (i.e., \$250,000) in the City's rules.

4.12.410 Right to protest.

Any interested party may file a protest regarding the procurement decisions authorized under this chapter. (Ord. 27980.)

4.12.415 Formal and informal protest procedures.

The remaining sections of this Part shall govern protests of decisions regarding procurements having a value greater than the Informal Procurement Threshold. Protests of decisions regarding procurements having a value equal to or less than the Informal Procurement Threshold shall be governed by an administrative procedure promulgated by the Director. However, until such time as this administrative procedure is promulgated, the protest procedures in this Part shall apply to procurements having a value equal to or less than the Informal Procurement Threshold, except that for such procurements, the Procurement Authority's decision shall be final. (Ords. 28802, 30955.)

4.12.420 Notice of decision.

After a decision regarding a procurement having a value greater than the Informal Procurement Threshold has been made, the Procurement Authority shall send a notice of intended award to all persons who submitted a response to a City solicitation. (Ords. 27980, 28802, 30955.)

4.12.430 Time to file notice.

All protests must be filed in writing with the director within ten (10) calendar days after the sending of the notice of intended award. (Ord. 27980.)

4.12.440 Form of protest.

All protests shall be in writing and shall state the grounds for the protest as well as all of the facts relevant to the protest. All protests shall be filed in accordance with the instructions contained in the solicitation which is the subject of the protest. (Ord. 27980.)

4.12.450 Procurement authority's decision.

The procurement authority shall issue a written decision on the protest. The procurement authority may base the decision on the written protest alone or may informally gather evidence from the person filing the protest or any other person having relevant information. (Ords. 27980, 28802.)

4.12.460 Appeal of decision.

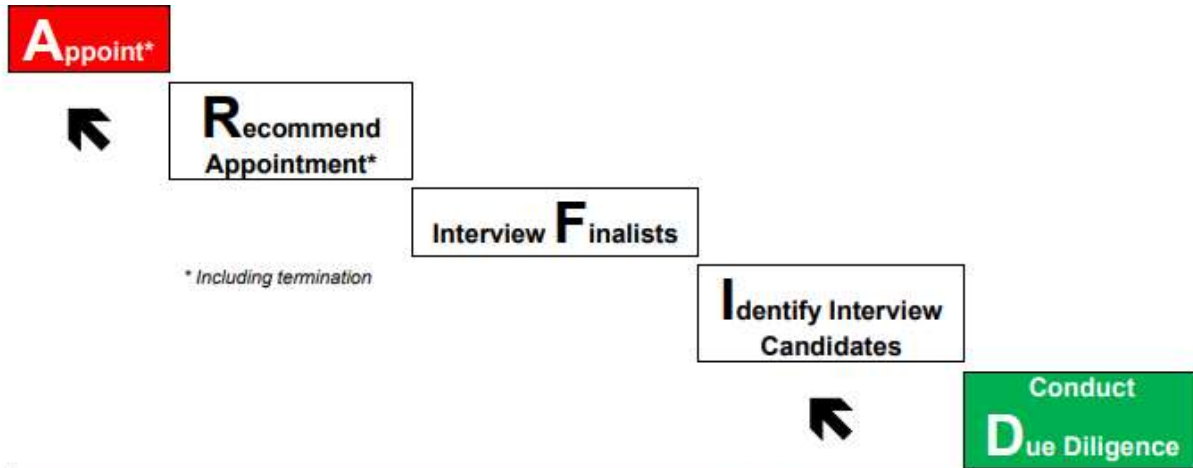
An appeal of the procurement authority's decision may be filed with the city council. All such appeals must be in writing, and shall be filed with the city clerk within ten calendar days of the sending of the procurement authority's decision. (Ords. 27980, 28802.)

5. OTHER CHANGES

Paragraph	Change	
7)	Non-Professional/ Non-Critical	“ non- ” was added to clarify when the City’s policies apply. i.e., The City’s policies apply when services are not professional/ not critical.
17) and Glossary of Terms	RFQ	We will not use the “RFQ” acronym (for Request for Qualifications) to reduce any potential confusion because the City uses “RFQ” when referring to Request for Quotes .
Appendix 2	Small Purchase Amount	Small Purchase Amount was increased from \$1,000 to \$10,000.
Appendix 4	Mandatory Procurement Requirements and/or Parameters	We increased the maximum period to provide written responses to questions submitted by potential bidders to 3 business days (from 2).
Appendix 6	Posting Solicitations	We changed the responsibility for posting solicitation requests (e.g., RFP) to the City’s Bidding System (should be ORS , not the City).

A few other minor changes were made in the Policy. e.g., Instead of referring to “consulting services”, the term “professional services” is used.

APPENDIX: PREVIOUS DRAFT OF GENERAL PROCESS OVERVIEW



Goods and Services	Internal										External	
	BD	AC	JAC	IC	JPC	POC	CEO	CIO	S	CA	GIC	
AUDIT & ACTUARIAL												
Counsel	A		RFI						RFID			
Actuary	AF		RF						RID			
Actuarial Auditor	A		RF						RID			
INVESTMENTS												
Custodian	A			R				R	FID		FID	
General Investment Consultant	A			RFI				R	FID			
Proxy Voting Services	A			RFI				R	FID			
HUMAN RESOURCES & LEGAL												
HR Consultants (CEO-related projects)	A				RF				ID			
OPERATIONS												
IT Consultants (contracts with a value > \$50,000)	A		F				R		FID			

	Internal and Counsel	
Committees	BD	Board
	AC	Audit Committee
	JAC	Joint Ad Hoc Committee
	IC	Investment Committee
	JPC	Joint Personnel Committee
	POC	Plan Outside Counsel
Individuals	CEO	
	CIO	
	S	Staff

External	
CA	City Auditor
GIC	General Investment Consultant

- A** | *Appoint/Terminate*
- R** | *Recommend Appointment/Termination*
- F** | *Interview Finalists*
- I** | *Identify Interview Candidates*
- D** | *Conduct Due Diligence*