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**MEMORANDUM**

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**TO:** BOARD OF SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN  
**CC:** JOHN FLYNN, BARBARA HAYMAN  
**FROM:** VALTER VIOLA (CORTEX)  
**SUBJECT:** INTERNAL ORS POLICY REGARDING THE PROCUREMENT AND CONTRACTING OF GOODS AND SERVICES  
**DATE:** SEPTEMBER 5, 2024

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An earlier draft of the attached Policy was presented at the June 2024 Board meeting.

On the following pages, we summarize the proposed **changes** relative to that earlier draft Policy, which reflects additional feedback from staff, Counsel, and both the P&F and Federated Boards.

The Federated Board reviewed the attached draft Policy (“Version 3”), along with a supporting memo which is comparable to this memo. The Federated Board:

- provided no additional feedback related to the draft Policy at its August 2024 Board meeting; and
- gave ORS staff and Cortex direction to share the Draft Policy with the City for review and comments.

If approved, the final version of the Policy would:

- replace the current 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.)*

## CHANGES

The table below summarizes the changes, which are tracked in the attached 3<sup>rd</sup> version of the draft Policy.

Page	Change vs Prior Version
5	<p>We added <b>“Other Vendors (determined by Board)”</b> in the table that summarizes roles and responsibilities, for completeness. i.e., The list of goods and services governed by the Policy includes item 10) i) – other vendors as the Board may determine in consultation with the CEO.</p> <p>Roles and responsibilities for other vendors would be based on the goods or services in question, which are unknown today, after considering the roles and responsibilities for other goods and services described in parts of the table (e.g., similar in nature or circumstances).</p>
10, 23	<p>We replaced the word <b>“department”</b> with <b>“division”</b>, to be consistent with terms used by the City (for departments) and ORS (for divisions).</p>
15	<p>We added <b>“governed by this Policy”</b> to clarify the Policy’s communication requirements when there is a need for services as a result of an emergency. (There is a process in place for emergencies for goods and services governed by the <b>City’s policies/rules</b>, which may be different from those drafted in the Policy.)</p>
18	<p>We described <b>Counsel’s role</b> more succinctly, simply stating that Counsel reviews contracts before they are executed. We removed details (i.e., “for compliance with legal requirements and to provide an assessment of risk to the Boards”).</p>
19	<p>We replaced the term “contract size” with <b>“Contract Value”</b> to clarify the basis for measurement (i.e., <b>annual</b> cost, not <b>total</b> cost).*</p> <p>* <b>Contract Value</b> is a term defined as follows in the Policy’s glossary: “The value ... the Plans will be obligated to pay for <b>in one year</b> ...”  <b>Total Contract Value</b> is also defined: “The <b>sum of all Contract Values</b> that ... the Plans/ORS will be obligated to pay <b>over the entire term</b> ...”</p>
19	<p>We removed a dot (●) in Appendix 2 under <b>Small Purchase Process (“SPP”)</b>, which was included in error.</p>
20	<p>We removed the line <b>“Execute documents”</b> because Cortex understands that only the CEO has the authority to do this (i.e., this authority cannot be delegated, and is therefore n/a in the table).</p>
20	<p>We added “CIO*” to the authority table, noting that:</p> <ul style="list-style-type: none"> <li>• the power to delegate a responsibility applies only if the CEO or CIO (as the case may be) has been granted the authority for that responsibility; and</li> <li>• generally, the CIO has authority over investment-related goods and services.</li> </ul>

## ADDITIONAL FEEDBACK FROM STAFF

Staff provided other comments to Cortex, but some of them are not reflected in this draft of the Policy for one or more of the following reasons:

1. the issue will be addressed in the Procedures <sup>(see note 1)</sup>, rather than the **Policy**, noting that the Procedures will be developed after the Policy is approved by the Boards (or when the draft Policy is sufficiently advanced);
2. the issue will be addressed in Phase III (OVERSIGHT AND MONITORING), which we agreed to draft after Phases I and II (PROCUREMENT AND CONTRACTING) of the Policy are approved by the Boards (or when the draft Policy is sufficiently advanced);
3. the issue's resolution would benefit from the City's feedback <sup>(note 2)</sup> on the draft Policy, noting that the plan is to give the City a draft to review in September 2024; or
4. the issues were deemed to be relatively minor <sup>(note 3)</sup> by Cortex, but not unimportant, and could be incorporated in the Final Draft presented to the Boards.

The notes on the next page provide more details related to the issues listed above.

## FLEXIBILITY DURING TRANSITION/IMPLEMENTATION

Finally, staff recommends having some flexibility during the transition/implementation period, noting that our plan has been to:

- develop a **Policy** as a priority; and then
- develop the related **Procedures** as a next step (rather than concurrently with the Policy).

For example, "Contract Templates" are presumed to exist in the draft Policy, but they may not exist today. (When Procedures are developed, one of the outcomes will be a set of Contract Templates.)

Staff and/or Cortex can elaborate on the nature and type of flexibility that would be needed.

## NOTES

The notes below are cross-referenced to the memo. They provide more detail, primarily for the benefit of staff, Cortex, and the City, to support further discussions.

<sup>1</sup> Some examples of issues identified by staff that will be addressed in **Procedures**, rather than the Policy, are listed below.

- a) ORS **contract templates** need to be developed, which would also support the development of solicitation documents (e.g., RFP). Contract templates would reflect the mandatory requirements and/or parameters outlined in Appendix 4 as well as any preferred terms and conditions (e.g., recommended by Counsel). In the case of Subscription Services, for example, a vendor may not accept the terms and conditions that ORS might want to include in a contract (which may or may not be the same as the terms and conditions that the City might include for services governed by the City's Policies/Rules).
- b) Certain procurement processes described in the Policy do not have a comparable "City process" for goods or services governed by the City policy/rules (e.g., the term "Invitation for Bid" or "IFB" is not used by the City). The Procedures should clarify the steps in the IFB process ("how"), for example, by describing how the universe of potential bidders might be identified and how the opportunity is to be communicated to them.
- c) In the case of RFPs, the Procedures and/or any education material may describe how the RFP procurement steps differ between the goods and services governed by the Policy (vs those governed by the City's requirements).
- d) Item 29 (**Quiet Period**) may require a procedure that would communicate the names of "specified vendors" during vendor evaluation periods so that trustees can comply with the Policy (i.e., to not communicate with the specified vendors, except during board meetings or committee meetings").
- e) The Procedures may describe the process for routing contracts (Policy item 38).

<sup>2</sup> Some examples of issues that would benefit from the **City's feedback** are listed below.

- a) Does the City have any issues or concerns in the draft Policy's "procurement" or "contracting" phases that would cause the City to **not** pay a vendor once a contract that is governed by the Policy is signed?
- b) While Cortex does **not** propose to include any language related to **PAYMENT PROCESSING** in the **Policy**, the **Procedures** could include steps related to PAYMENT PROCESSING if staff requires clarity on how PAYMENT PROCESSING will be different for contracts governed by the Policy as compared to contracts governed by the City's policy regarding **Procurement of Non-Professional Services (5.1.8)**. Staff/Cortex can meet with the City to discuss any procedural differences compared to City policy 5.1.8, and document the steps to be followed (or the **differences** vs policy 5.1.8 in the Procedures).
- c) We should discuss the **procedures** (as distinct from Policy) that ORS should consider related to the Sole Source procurement method. (A discussion about the **Policy** in this area is also welcome.)
- d) We should discuss the Policy's requirement and/or parameters related to **insurance** (Appendix 4). Some subscriptions, for example, may not need to have insurance in place.

<sup>3</sup> Some examples of **minor issues** that might require changes are listed below (for staff and Cortex to consider).

- a) Consider reversing the order of the Overview diagram, which now shows the Board's role on the left (highest level of authority), so that the bottom-up "process" reads from left to right.
- b) Consider removing the word "Goods" in the title "Goods and Professional Services Governed by this Policy" before item 10) on page 3 of the draft Policy.
- c) In the Policy or Procedures, consider stating a preference (or requirement) that the City's required contract language will be reflected in the ORS contract template, subject to Counsel's input. Also, consider adding "Contract Template" to the glossary, where the definition may describe how/when the City's contract language will be incorporated in the ORS contract template.
- d) Staff questioned whether the policies related to any Small Purchase Process ("SPP") were required in the Policy, noting that small purchases could be addressed under the City's policies/rules. (Staff/Cortex will consider this after reviewing the draft Policy with the City and discussing this with Counsel.)
- e) Staff recommends adding "**other investment related vendors**" to the list of service providers in Appendix 1, where the CIO's role is to make recommendations regarding the appointment and termination of custodians, investment consultants, and investment managers. (This would require a change to the CIO Charter to make the language consistent.)
- f) We may distinguish between **general** and **fiduciary** counsel, rather than simply referring to "counsel".