

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 02-13-03
Department Name: CA
Department No.: 012
Agenda Date: 02-25-03
Placement: Departmental
Estimate Time: 1 Hour
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: Jim Laponis
Deputy County Administrator 568-3400

SUBJECT: Privatization Criteria

Recommendation:

That the Board of Supervisors:

Receive the report on privatization criteria and determine whether to adopt criteria requiring contractors to take specified actions when there is a loss of County employees due to contracting.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1: An Efficient Government Able to Respond Effectively to the Needs of the Community

Executive Summary and Discussion:

This report is sent to the Board on behalf of the Labor-Management Collaborative.

Background

On November 12, 2002, the Board adopted Privatization Criteria (Attachment A) without the section dealing with what happens when privatizing results in employee layoffs. The board directed staff to work with management and labor organizations to clarify and attempt to reach agreement on that section. The Board further directed staff to research other jurisdictions' experience with Internal Competition Teams (the adopted criteria allow ICT's to compete with private contractors when a County service is considered for privatization). Finally, the Board asked to be informed as to the County's current major service contracts.

When Privatization Results in Layoffs

Staff and labor representatives worked to clarify and reach agreement on this section. Although clarifying language was added and some compromises were reached, there is no agreement. The Collaborative is forwarding the new wording (Attachment B) to the Board asking for policy determination. The new section has three components of which (a) and (b) were amended to provide clarity and (c) remained the same.

The newly worded components are summarized as follows: (a) Requirement of contractor to offer employment to affected County employees in good standing when it would not mean layoffs to contractor. (b) Requirement of contractor (in the original contract and subsequent renewals), to offer wages, health insurance and retirement, which when aggregated, are equivalent in cost to that incurred by the County. Contractor could vary the amounts paid in each category so long as the total is equivalent to the County's cost; and, the contractor may, in lieu of a retirement plan, offer higher wages. (c) Requirement of contractor to remain neutral in any attempt by labor to seek election allowing employees to unionize.

The Department Directors continue to state that the provisions are not in the best interest of efficient management and would be so burdensome as to effectively prevent privatization. Further, they believe that the requirement to pay salaries and major benefits equal to what the County pays, adds costs that the County would otherwise not have to pay eliminating funding that could be saved and/or used for needed services. The Directors also expressed concern that the provisions would discourage vendors, particularly non-profits, from seeking contracts thereby reducing the provision of services to the public. Finally, the Directors believe that due to the financial challenges regarding the State budget crisis (illustrated in a report presented to the Board last week), the County needs to have all its options available to minimize potential public service reductions.

The Labor organizations continue to state that the provisions would not prevent privatization and are necessary to ensure that, when privatization occurs, affected employees would be offered placement by contractors, be given wages and critical benefits which in the aggregate effectively equal those provided by the County. They also cited concerns about replacing existing jobs with lower paying ones lacking health insurance and/or retirement benefits. Labor also believes public policy should encourage these benefits in the private sector since in their absence, the cost of providing resulting public assistance falls on County agencies anyway. Finally, Labor stated that public monies should not be used to shift tax revenues from our community's wage base to irresponsible forms of employment.

Internal Competition Teams (ICT's) In Other Jurisdictions and How ICT's Might Be Implemented

A number of cities such as Phoenix, Philadelphia, Indianapolis, Charlotte and New York have implemented managed competition. The only County staff found that has experience with managed competition is San Diego. San Diego County implemented a managed competition process in 1998, and has evaluated a number of programs including fleet maintenance, worker's compensation claims administration, pre-arraignment services (alternate public defender), correctional facilities medical services and collections and recovery. All programs were "won" by the in-house teams except correctional medical services, which was outsourced.

Potentially, the first step in implementing ICT's here might be the preparation of a procedural guide. Such a guide could be prepared with input from various departments and labor unions. The County of San Diego uses a ten-step process laid out in their "Managed competition Guide." The process involves a matrix of tasks, with roles and responsibilities involving numerous departments, labor organizations, the Purchasing Agent and a Source Selection Committee. Each task is clearly defined, as are lead roles and responsibilities.

County staff will work with the collaborative and department directors to determine how best to implement ICT's here.

Current SB County Contracts for Services

Santa Barbara County currently contracts for a host of services which total over \$100 million ranging from training to construction to hospital/medical to telephone services. The General Services Department recently reported to the Board that the Local Vendor Outreach program alone is responsible for awarding local businesses close to \$90 million per year in contracts of which approximately \$70 million are service contracts and the other \$20 million are commodity contracts. The following are some notable examples of current County service contracts with private sector vendors:

- Hospital Medical Services
- Computer Training
- Facility Construction
- Automobile Services
- Jail Medical
- Central Stores
- Risk Management/Workers Compensation
- Annual Countywide Audit
- Road Paving
- Flood Control Channel Work
- Telephone Services
- Numerous Non-Profit Services particularly Public Health, Social Services and Alcohol, Drug and Mental Health Services

Mandates and Service Levels:

Privatization criteria are not mandated.

Fiscal and Facilities Impacts:

There may be future fiscal and/or facility impacts associated with requiring contractors to take the actions indicated in the privatization criteria regarding "When Privatizing Results In a Loss (Layoff) Of Current County Employees"; however, such impacts could only be determined at the time a specific privatization proposal is being considered.

- Cc: Department Directors
Employee Organizations
Labor-Management Collaborative

SANTA BARBARA COUNTY

PRIVATIZATION CRITERIA

INTRODUCTION AND SUMMARY

In fiscal year 1995-96, the County Board of Supervisors identified privatization of government services, primarily contracting out of public services into the private sector, as an area of interest to consider in meeting the County's strategic plan. Key to this approach was an adopted value and commitment to collaboration and partnering within the County organization and with the private sector to meet community needs.

The 1995-96 Santa Barbara Grand Jury analyzed positive and negative developments in the field of privatization both conceptually and in actual practice at that time within County departments. In addition, the Grand Jury performed an investigation of the feasibility of privatization in Santa Barbara County. The Grand Jury concluded that policies and procedures for privatization should be developed and adopted by the Board of Supervisors. They further recommended a County task force be formed to develop policies for consideration while seeking advice from various representative community interests and experts on the subject.

In 1996-97, the Board of Supervisors adopted a set of proposed privatization criteria that would serve as a starting place to begin a collaborative process between Labor and Management to refine and ultimately implement privatization policies in Santa Barbara County government.

In 1998, individuals from the county's labor organizations and management came together to create a Labor-Management Collaborative in order to anticipate, identify, and resolve issues of common concern to ensure the best possible work environment for County employees and the best possible services for our communities. Development of the fundamental tenets of privatization in Santa Barbara County government become an initial study, discussion and development area for the Collaborative.

The following policy criteria for privatization of Santa Barbara County government services are the result of several years of collaborative research and discussion amongst Labor and Management representatives. These criteria shall serve as building blocks to development of a comprehensive procedural guide for use in evaluating and implementing privatization proposals for government services.

Privatization of a service or function can be through a variety of options such as:

- > *Contracting out*, through an executed agreement, with a private agency, including non-profits or other public agency;
- > *Joint Powers agreements* with state or cities for the provision of a service;
- > *Volunteer Programs; and*
- > *Asset sales* to private firms or individuals that operate the facility or service as a private business whereby the County receives one-time and on-going revenue.

Privatization, as defined in the context of establishing a program within Santa Barbara County, is the outsourcing of government services while retaining either direct or pass through funding responsibility.

As a general law county, Santa Barbara County has less flexibility than a Charter County to contract for services typically performed by permanent civil service employees. Santa Barbara County does have the flexibility to contract for “special services” to provide specialized assistance or advice, which is not ordinarily available from the County work force.

In determining whether to privatize a County function or service through an executed agreement to contract out, the following criteria must be utilized by County departments. Each proposal should be evaluated on the merits of the total proposal and benefit to the public integrating the privatization criteria in the decision making process and in development of a system to evaluate the performance of a contractor.

PRIVATIZATION CRITERIA

1. Satisfaction with Current Service

Activities or functions for which concerns exist about quality of service, speed of delivery or operations costs could be considered for privatization.

2. Legal Authorization to Contract Out

Programs considered for outsourcing or competition must be free from statutory or case law prohibitions. Statutory changes, modifications to existing MOU’s with recognized employee organizations, and/or the Civil Service rules and procedures shall be considered prior to implementing privatization.

3. Core County Function

Departmental services, which involve a core County function essential to the overall mission of the County, may not be suitable for outsourcing because of the high degree of control

inherent with in-house performance. Activities arising from the County's regulatory control and authority may also not be suitable candidates for outsourcing to private vendors and therefore suitability factors should be analyzed carefully.

4. Measurement of Service Delivery and Comparative Costs of Service

In evaluating the costs of in-house services for future comparison for outsourcing, accurate, verifiable cost information is needed. A methodology to monitor and measure the service must be developed in order to determine the existing costs of providing the service.

A service must also be measurable in order to convey the terms of service delivery in a contract. Contracts shall contain qualitative and/or quantitative performance measures to hold the provider accountable for performance of contracted services. Effectiveness, efficiency and outcome measures shall be identified as part of consideration for privatization and shall include impact and accountability to the public or service recipient.

Measurement of service delivery shall also be used to identify the associated unit cost and determine if competition would yield increase savings or a better work product. The approach for comparing costs shall be clearly specified in any departmental proposal to outsource. The information shall be developed in a consistent and fair manner, allowing for the flexibility required due to the difference from one department or type of service to another. The cost analysis shall include developing and pursuing legislation or policy if privatization effects statutory changes, modifications to existing MOU's, or Civil Service rules and procedures and the cost of monitoring contract or program performance.

When evaluating bids in response to a request for proposal to outsource, a cost comparison shall be completed to assist departments in determining whether the cost of contracting for services would actually be less or more than the cost of providing the services using County staff.

5. Availability of Vendors

In order to insure a fair and equitable competition for services, departments shall consider the relative availability, experience, and past performance of numerous vendors in a particular field.

It is recognized that in instances where highly specialized skills are required or a project is of short duration, the size of the competitive vendor pool may not be a significant consideration. Contracts in service areas in which there are few competitors may not produce long-term savings for the County. A large pool of competitors may also ensure that services will not be substantially decreased in future years and if the County chooses for price or quality of service to change vendors, other firms are available to take over the contract.

6. Effects on the County Workforce and Staff

Any evaluation of privatization shall include a viable opportunity for affected employees through their recognized labor organization(s), where applicable, to submit a proposal for performing the work in-house.

Existing Employees/Positions

The applicable labor organization(s), or affected group of un-represented employees, shall be given the option to establish an Internal Competition Team (ICT) to propose an “in-house” competing proposal whenever the potential exists that privatization may result in a loss or transfer of work which could result in a layoff or reduction of hours or otherwise directly affect wages, hours or other terms and conditions of employment. The option to establish an ICT will also be extended where there is potential loss of vacant positions, which have previously performed the work in-house.

New Ongoing Programs/Services

Applicable recognized Labor Organization(s) or un-represented group shall be notified and offered the option in a reasonable time frame as determined by the Department Director of a collaborative forum to explore service delivery options when privatization proposals for new or expanded programs or services could alternatively require new ongoing positions (>\$50,000 over 12 months) to perform work traditionally performed in the affected departments or within existing job classifications.

Contract Renewals

Renewal of existing contracts is generally exempt from evaluation of an in-house competitive proposal except that a recognized labor organization may submit a specific request to enter into a collaborative forum to explore alternative service delivery options.

Grant Funded Programs/Services

In cases where grant agencies condition funding on contracting out for new programs or services, courtesy notification to the applicable Labor Organization(s) or un-represented group shall occur and an option to establish an ICT shall not be required. Examples of such grant agency contract conditions may include:

- A) Must demonstrate a public/private partnership.
- B) Requires contracting out of service.
- C) Funding depends upon a financial match from an outside service provider.

When the option to establish an Internal Competition Team (ICT) is required, the ICT shall be comprised of a reasonable number of the affected workers selected, where applicable, by the labor organization(s) representing the affected group of employees. Labor organization representatives may also be part of the Internal Competition Team.

Proposals to retain existing services in-house shall be prepared and submitted within a reasonable time frame to be designated by the Department Director. Proposals for performing new services in-house shall be prepared and submitted in accordance with the time frame specified in the external service provider request for proposal (RFP). Proposals for providing grant-funded services in-house shall be prepared and submitted in time to meet the granting agency deadline.

Nothing in the foregoing is intended to preclude contracting for “special services” as provided in Government Code Section 31000 or require an ICT proposal in the event contract services are needed on an immediate and temporary basis to prevent business interruption.

Contracts for new programs, services or mandates with urgency associated with implementation may be established not to exceed one 12-month period. Recognized labor organization(s) shall be notified of such temporary contract services.

In evaluating the competing proposals, an Evaluation Committee shall perform an objective review of all proposals submitted in response to an RFP in order to determine whether a viable vendor alternative exists and make a recommendation to the Department Director responsible for the service delivery function. The ICT or recognized labor organization(s) shall be offered an ex-officio seat on the Evaluation Committee. The ICT member shall have full access to all proposals and be able to fully participate, but not take part in the vote. In the event a viable vendor alternative is considered, the burden shall be on department management to show that an in-house proposal is not equal to or better than the privatization alternative(s).

The Internal Competition Team (ICT) shall be given paid time, within reasonable limits as determined by the Department Director, training, adequate support and resources, and full access to information necessary for them to create and submit a competing proposal.

7. Conversion to Vendor or Back to In-house

Departments shall identify and report the potential costs and other impacts of returning an outsourced service back to a County function in any evaluation for contracting. In addition to costs associated with conversion of County services to an outside vendor or the possibility of returning the service back to the County, other factors shall be considered such as: if conversion back to County is relatively high, the County must also evaluate the impact of being forced to accommodate lower than expected performance from a vendor because of the difficulties of reconversion; vendor availability and stability in market place; and County's ability to re-hire previous County staff and civil service implications.

8. Risk Assessment

The potential risk avoidance or liability exposure to the County provided by outsourcing a service or activity shall be assessed. A financial and liability risk assessment shall include: insurance costs; safety policies; financial stability of vendor; legal liabilities; and access to confidential materials or services involving security issues. Adequate controls shall be developed in any contract and considered in making the decision to contract out.

9. Contract Management\Monitoring System

The County department administering the contract shall provide both administrative and technical expertise to properly monitor contract performance measures and benchmarks to the ICT or private contractor. Performance measures shall be developed such that both the quality and quantity to the ICT or private contractor of service being provided is measurable. Monitoring shall be performed on a routine basis and involve both analysis of performance data and on-site review of vendor operations. Methods to recognize and respond to accountability to the public should be included in the management and monitoring system.

10. Proclamation of Local Emergency or State of Emergency

ATTACHMENT A

The privatization provisions contained herein shall not pertain to a proclamation of the existence or threatened existence of a local emergency by the County Administrator as ratified by the Board of Supervisors or request by the chair of the Board of Supervisors has been made to the Governor to proclaim a state of emergency.

Conditions constituting a local emergency or state of emergency include, but are not limited to, earthquakes, natural or manmade disasters specific to the jurisdiction, or state of war emergency.

ATTACHMENT B

When Privatization Results in Layoffs

Whenever privatization is selected and where a loss of current county employees will occur, the following shall apply as conditions of the vendor's original contract and in any subsequent renewals of the vendor's contract.

- A. A requirement that the contractor offer to hire county employees laid off as a result of the contract. This requirement is limited to County employees who currently have demonstrated satisfactory performance, as indicated by at least two (2) overall satisfactory employee performance reports not less than six (6) months apart, one of which must be an annual evaluation. The condition shall also be limited to when the contractor has appropriate vacancies or will be adding staff to provide service to the County contract, and does not require the contractor to lay off or displace their existing workforce to accommodate the affected County staff.
- B. A requirement that the vendor offer their employees who are fulfilling the County contract, wages, health insurance coverage and a retirement program that, when aggregated, are equivalent in total cost to that provided by the County for comparable classifications at the time of the original contract and any subsequent renewals of that contract. For purposes of this requirement, the County's health insurance coverage cost shall be defined as County's contribution toward employee-only medical insurance and the Benefit allowance amount. The County's retirement cost shall be defined as the county's aggregate employer rate for general or safety members (as appropriate), as identified in the Retirement System's Actuarial Report. The contractor shall have the flexibility to vary the amounts paid in each category so long as (a) the total paid to employee is equivalent to the County's total costs for the three forms of compensation, and (b) the vendor in lieu of a retirement plan may offer higher wages.
- C. A requirement that the contractor remain neutral in any attempt by labor organizations to seek election allowing employees the option to unionize.