

BOARD of SUPERVISORS



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DATE: September 17, 2015
TO: Members of the Board of Supervisors
FROM: *ACC* Angela Calvillo, Clerk of the Board
SUBJECT: 2014-2015 Civil Grand Jury Report "San Francisco's City Construction Program: It Needs Work"

We are in receipt of the following required responses to the San Francisco Civil Grand Jury report released July 16, 2015, entitled: San Francisco's City Construction Program: It Needs Work. Pursuant to California Penal Code, Sections 933 and 933.05, the City Departments shall respond to the report within 60 days of receipt, or no later than September 14, 2015.

For each finding the Department response shall:

- 1) agree with the finding; or
- 2) disagree with it, wholly or partially, and explain why.

As to each recommendation the Department shall report that:

- 1) the recommendation has been implemented, with a summary explanation of how;
- 2) the recommendation has not been implemented, but will be within a set timeframe as provided;
- 3) the recommendation requires further analysis and define what additional study is needed, the Grand Jury expects a progress report within six months from the publication of the Report; or
- 4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why.

The Civil Grand Jury Report identified the following City Departments to submit responses (attached):

- Mayor's Office (consolidated response)
Received September 14, 2015, for Findings 3 through 9 and Recommendations 2 through 9
- Office of the Controller (consolidated response)
Received September 14, 2015, for Findings 4 through 9 and Recommendations 4 through 9
- Public Works (consolidated response)
Received September 14, 2015, for Findings 6 and 7 and Recommendations 6 and 7

These departmental responses are being provided for your information, as received, and may not conform to the parameters stated in California Penal Code, Section 933.05 et seq. The Government Audit and Oversight Committee will consider the subject report, along with the responses, at an upcoming hearing and will prepare the Board's official response by Resolution for the full Board's consideration.

C:

Honorable John K. Stewart, Presiding Judge
Jay Cunningham, 2015-2016 San Francisco Civil Grand Jury
Alison Scott, 2015-2016 San Francisco Civil Grand Jury
Janice Pettey, 2014-2015 San Francisco Civil Grand Jury
Philip Reed, 2014-2015 San Francisco Civil Grand Jury
Kate Howard, Mayor's Office
Chris Simi, Mayor's Office
Ben Rosenfield, Office of the Controller
Todd Rydstrom, Office of the Controller
Mohammed Nuru, Public Works
Frank Lee, Public Works
Jon Givner, Deputy City Attorney
Rick Caldeira, Legislative Deputy
Severin Campbell, Budget and Legislative Analyst
Debra Newman, Budget and Legislative Analyst
Jadie Wasilco, Budget and Legislative Analyst



September 14, 2015

The Honorable John K. Stewart
Presiding Judge
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Dear Judge Stewart:

Pursuant to Penal Code sections 933 and 933.05, the following is in reply to the 2014-2015 Civil Grand Jury report, *San Francisco's City Construction Program: It Needs Work*. We would like to thank the members of the Civil Grand Jury for their interest in the City's construction contracting and management practices.

This is an area that the City has already begun to improve. In May 2014, the Office of the Controller's City Services Auditor (CSA), issued an audit entitled "Citywide Construction: Adopting Leading Practices Could Improve the City's Construction Contractor Bid Pool," which contained a number of improvements to citywide construction contracting practices. In response to that report, CSA convened a work group to revise Chapter 6 of the Administrative Code, which governs construction contract management. The first set of changes was adopted by the Board of Supervisors in June of this year. The work group continues to meet, and anticipates proposing additional amendments in the coming months. Improvements under consideration include development of a shared database to track contractor performance.

Public Works is adopting its own changes, with the goal of developing improved construction contract management practices, which can then be introduced to the other City departments that undertake construction projects (Airport, Public Works, Port, Recreation and Park, SFMTA, and SFPUC).

A detailed response from the Mayor's Office, the Controller's Office, and the Department of Public Works to the Civil Grand Jury's findings and recommendations follows.

Thank you again for the opportunity to comment on this Civil Grand Jury report.

Sincerely,

Handwritten signature of Edwin M. Lee in blue ink.

Edwin M. Lee
Mayor

Handwritten signature of Mohammed Nuru in blue ink.

Mohammed Nuru
Director, Public Works

Handwritten signature of Ben Rosenfield in blue ink.

Ben Rosenfield
Controller

Finding 3: The complexity of the contracting environment, especially as it relates to LBEs, reduces the pool of contractors willing to do business with the City, thereby limiting vendor selection.

Disagree with finding, partially. The City’s contracting process can be difficult for new entrants. However, the City continually strives to improve the quality of the bid pool—by attracting new contractors, improving existing contractors, and shoring up processes to minimize non-responsible/non-responsive bids. Effective August 1, 2015, Mayor Lee signed legislation including more than three dozen changes to Chapter 6 of the City’s Administrative Code. The changes are intended to simplify and streamline the process for both contractors and City employees. The changes incorporate some industry best practices because updated processes are more likely to attract contractors familiar with the most recent industry innovations, allowing our competitive process to better serve the public.

Recommendation 3: The CGJ recommends that the proposed Chapter 6 amendment make past performance a construction award criterion for all future City construction contracts including LBE subcontracts.

The recommendation has not been, but will be, implemented in the future. The six Chapter 6 departments (Airport, Public Works, Port, Recreation and Park, SFMTA, and SFPUC), are committed to improving the pool of contractors who bid on City construction projects. In conjunction with the City Attorney and the Office of the Controller, the Chapter 6 departments are actively working to revise Chapter 6 to require performance evaluations and to devise procedures to consider past performance in contract awards. The departments are meeting regularly with a goal of presenting amendments to the law and associated processes to the Board of Supervisors in 2016.

Finding 4: Change orders are not managed uniformly across departments, which exposes the City to increased project costs.

Disagree with finding, partially. The jury is correct that change orders are not managed uniformly across the City. As written, Chapter 6 of the Administrative Code provides for decentralized project management for the six departments it covers (the Airport, Public Works, the Port, Recreation and Park, SF Municipal Transportation Agency, and the SF Public Utilities Commission). Though departments need to abide by their respective change order policies, having a uniform change order management policy is not feasible given the differing project types and project delivery methods citywide. While change orders are not managed uniformly across City departments, each department has its own procedures and controls in place, allowing for greater flexibility and specialization, commensurate with the various sizes and types of construction projects carried out by each department.

Recommendation 4: The Office of the Controller should implement a standardized change order management policy and require all City departments to adhere to any new change order policy.

The recommendation will not be implemented because it is not warranted. The Office of the Controller, and specifically the City Services Auditor (CSA), audits and assesses departments’ adherence to relevant construction policies and procedures citywide, and provides technical assistance to departments as needed. As presently written, the Administrative Code calls for a decentralized approach to construction management for Chapter 6 departments, leaving this authority with each department. This allows for a

segregation of duties between the Office of the Controller and the departments charged with construction management.

Given the wide variety of project types, sizes, budgets, and complexity undertaken by the Chapter 6 departments, a “one size fits all” approach is not in accordance with best practices. However, as recommended by CSA’s May 2014 audit of citywide construction practices, the Chapter 6 departments, in conjunction with CSA, are moving forward with amendments to the Administrative Code, including potential modifications related to change order management policies. Public Works has a change order management tracking system. Change orders are tracked, categorized and regularly discussed in order to inform project management decisions. This system could be tailored to other Chapter 6 department’s needs.

Finding 5: Construction contract closeout procedures are not followed, which can result in the City not receiving the services it contracted to receive.

Disagree with finding, partially. Contract closeout can vary by project complexity and staff, and results vary depending on these and other fact-specific issues; a uniform construction contract closeout policy would not necessarily ensure that the City receives its contracted services. In all cases, however, the City strives to follow the most efficient and effective best practices to close out projects as promptly and cost-efficiently as possible. The City’s use of the Controller’s City Services Auditor (CSA), in addition to other auditing mechanisms, ensures adherence to these best practices. Over the last three fiscal years, CSA has completed construction contract closeout assessments involving all six Chapter 6 departments. Based on the results of these audits and assessments of various city departments’ construction contract closeout procedures, and as noted in the Jury’s report, CSA found some internal control weaknesses related to the audited departments’ closeout procedures, including lack of sufficient documentation, adequate review or verification, and adherence to existing policies and procedures. CSA follows up on all open (unresolved) audit recommendations every six months to ensure that departments have implemented corrective actions.

Recommendation 5: The Office of the Controller should implement a standardized construction contract closeout policy and require all City departments to adhere to any new policy.

The recommendation will not be implemented because it is not warranted. The Office of the Controller, and specifically the City Services Auditor (CSA), conducts audits and assessments of departments’ adherence to relevant construction policies and procedures citywide, and provides technical assistance to departments as needed. As presently written, however, the Administrative Code calls for a decentralized approach to construction management for Chapter 6 departments, leaving this authority with each department. This allows for a segregation of duties between the Office of the Controller and the departments charged with construction management.

Given the wide variety of project types, sizes, budgets, and complexity undertaken by the Chapter 6 departments, a “one size fits all” approach is not always in accordance with best practices. However, as recommended by CSA’s May 2014 audit of citywide construction practices, the Chapter 6 departments, in conjunction with CSA, are moving forward with amendments to the Administrative Code, including potential modifications related to construction contract closeout policies. At this time, Public Works is piloting new construction contract closeout procedures; if successful, this system is designed to be shared with the other Chapter 6 departments.

Finding 6: The variety of construction projects in the City creates a mismatch between the design and engineering skills required for current projects and the skills of the staff, resulting in duplicate labor costs when outside firms are retained and excess capacity when there is a decline in construction activity.

Disagree with finding, partially. The City relies on Public Works to maintain a broad professional skillset across multiple engineering, architectural, and professional disciplines in order to perform a wide range of architectural, engineering, and construction services for many City agencies, including the Library, SFPD, and SFFD. Accordingly, Public Works staff maintain an extensive range of in-house design and engineering skills. The use of consultants gives the department flexibility to meet the needs of client departments and meet peak demands without the need to increase its staff and overall project costs.

Recommendation 6: The BOS should request the BLA or CSA to benchmark the City’s design and engineering workforce organizational structure against comparable cities and issue a report.

The recommendation requires further analysis. A benchmarking analysis could provide important and helpful insight into best practices for how to improve the organizational structure of the City’s design and engineering workforce, and merits further consideration. As the Office of the Controller’s City Services Auditor prepares its work plan, a benchmarking report will be considered, but must be weighed against other requests for that office’s resources. The departments participating in this response defer to the Board of Supervisors with respect to involvement of the Board’s Legislative Analyst, and the Office of the Controller will consult with the Board regarding which, if any, office performs the analysis.

Finding 7: The lack of integrated construction management systems and the failure to follow centralized construction management policies and procedures prevents the City from generating citywide construction reports.

Disagree with finding, partially. The Jury is correct that there is not an integrated citywide construction management system. There has not, however, been a consistent finding of Chapter 6 departments failing to follow centralized construction management policies, as the report notes. In addition, the City has developed a coordinated capital planning and budgeting process to review and prioritize capital budget requests, coordinate funding sources and uses, and provide citywide policy analysis and reporting on interagency capital planning efforts. Oversight bodies, including general obligation and revenue bond oversight committees, as well as departmental commissions, routinely review and monitor activities related to the City’s capital and construction projects under their purview.

Recommendation 7: The Mayor should allocate financial resources in the current City budget to fund the Department of Technology hiring a consulting firm with extensive construction management expertise to develop citywide system requirements for the implementation of a construction management system.

MYR: The recommendation requires further analysis. The City’s annual budget process begins in December of each year, and concludes in June the following year. As part of the Fiscal Years 2016-17 and 2017-18 budget process, Public Works, the Department of Technology, and the Mayor’s Office will consider the inclusion of financial resources to fund a consultant to meet the vision of the Jury. Any request, however, must be weighed against other citywide funding requests, so funding cannot be guaranteed at this time.

Finding 8: The City does not have an independent management group reviewing citywide construction performance reports and monitoring adherence to change orders and construction contract closeout policies and procedures.

Disagree with finding, partially. The Jury is correct that there is not an independent management group that monitors construction; instead, the City has numerous independent management groups. The Capital Planning Committee, a public decision-making body that monitors, crafts, and recommends policies related to infrastructure investments, is the lead in this area. Construction contracts and projects are further reviewed by various bodies, most notably, department commissions, the Budget and Legislative Analyst, and the Office of the Controller. Further, the Board of Supervisors may exercise its authority to hold hearings related to specific projects or contracts, or general construction closeout procedures and trends.

In addition, in its capacity as the City’s auditing body for contracts, CSA has found in previous audits and assessments of various City departments’ change order management and closeout policies and procedures that some internal control weaknesses exist. Every six months, CSA follows up on all (open) unresolved audit recommendations at a hearing at the Board of Supervisors’ Government Auditing and Oversight (GAO) Committee; all departments in question are required to publicly present updates and progress reports at these hearings.

Recommendation 8: The BOS should either request the CSA or BLA, or retain an outside firm, to benchmark the independent construction management structure of other cities and develop recommendations applicable to San Francisco.

The recommendation requires further analysis. This recommendation overlaps with recent and existing work of a workgroup of Chapter 6 departments. Legislation modernizing Chapter 6 went into effect August 1, 2015 after more than a year of collaboration. The next round of changes, including a shared database to track contractor performance, is being discussed now with a goal of implementation by summer 2016.

However, a benchmarking analysis could provide important and helpful insight into best practices for how to improve the City’s independent construction management structure, and will be considered. As the Office of the Controller’s City Services Auditor prepares its work plan going forward, a benchmarking report will be considered, but must be weighed against other requests for that office’s resources. The departments participating in this response defer to the Board of Supervisors with respect to involvement of the Board’s Legislative Analyst, and the Office of the Controller will consult with the Board regarding which, if any, office performs the analysis.

Finding 9: San Francisco City departments do not issue final reports on construction projects that are readily available to its citizens.

Disagree with finding, partially. The Jury is correct that City departments do not issue final reports on all construction projects when complete. City departments do, however, report on projects—especially those funded via the General Obligation bond program, which includes mandatory reporting procedures before, during, and after construction. In addition, Chapter 6 departments must prepare closeout and acceptance documents that must be executed per Administrative Code Section 6.22(k). All reports prepared under these regulations are posted online and publicly available.

Recommendation 9: The BOS should require all City departments to issue final project construction reports within nine months of project completion for all construction projects and for the reports to be posted on each department’s website.

This recommendation will not be implemented because it is not warranted. This recommendation is directed specifically to the Board of Supervisors. However, the responding departments welcome further discussion regarding final construction reports should the Board of Supervisors choose to pursue this recommendation. It should be noted, however, that pertinent budget and schedule information is provided in various forms to staff and oversight bodies. As per Administrative Code Section 6.22(k), Chapter 6 departments must prepare and execute closeout and acceptance documents. Upon presentation to oversight bodies (including the Citizens' General Obligation Bond Oversight Committee, the Recreation & Park Commission, Port Commission, Airport Commission, Public Utilities Commission, and the Municipal Transportation Agency Board of Directors), this information is posted online and made available to the public.