

*City of San José, California*

**COUNCIL POLICY**

<b>TITLE</b> PUBLIC PRIVATE COMPETITION POLICY	<b>PAGE</b> 1 of 10	<b>POLICY NUMBER</b> 0-29
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**BACKGROUND**

Over the years, the role of government as a monopolistic provider of public services has evolved into a role as a partner with the private and non-profit sectors in the delivery of public services. Government has chosen to involve others in service delivery due to limited resources, increased demands, and to the recognition that partnerships can leverage the quality and cost-effectiveness of services delivered to the public. At the same time, government continues to deliver many services competitively in-house and also retains the responsibility for core services that require a certain level of government control and accountability.

With an overarching goal of providing quality services to the public in a cost-effective manner, the City of San José mirrors government-wide trends in service delivery. In addition, city employees continue to provide high quality, cost-effective services and to use Continuous Improvement practices to enhance the efficiency and cost-effectiveness of City services. Recognizing the value and quality performance of City employees, Council Policy 0-29 sets forth a preference for using City employees to deliver City services.

In San José and other government agencies, the delivery of public services by private firms has resulted typically from private competition processes, in recognition of the fact that competition challenges private firms to provide better services at lower costs. The current economic recession and the City's responsible actions to address the structural deficit necessitate that the City apply the concept of competition more broadly to determine the most cost-effective method for delivering City services. It is within this context that alternative service delivery options including subjecting services to a competition process in which, City employees themselves, are a competitor, if and when cost effective be considered.

In order to evaluate changes to existing models to deliver services, the City has developed a new Policy to provide a decision-making framework for evaluating a variety of service delivery models, such as City employees, non-profit organizations, private enterprises, or other governmental agencies to identify the most cost effective method for delivering quality public services (Service Delivery Evaluation Policy 0-41). If it is determined that managed competition involving City employees and private contractors will be pursued as a result of the evaluation, this policy will guide the competition process.

The underlying assumptions of this public-private competition process are that government should be competitive in cost and quality with the private sector and that competition provides an incentive to enhance quality and lower costs. To support the City's goal to deliver high quality services to the public in a cost-effective manner, San José seeks to update Council Policy 0-29

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to define the competition process once a service has been selected for competition, while continuing to retain the preference for City employees to deliver City services and other applicable services.

## **PURPOSE**

The purpose of this policy is to set forth the goals and guiding principles for the public-private competition process and guidelines for conducting a competition process.

## **POLICY**

### **Overview**

It is the policy of the City of San José to deliver quality services in the most cost-effective and efficient manner, within the context of other public policy goals and interests. In conjunction with Council Policy 0-41, Service Delivery Evaluation, the City shall use a public-private competition process to determine the most competitive service delivery method.

The public-private competition process shall consist of a competitive assessment (1) of the in-house service selected for competition prior to issuing requests for proposals (RFP) (2) and a managed competition process (3) during which RFPs are issued. In the competitive assessment, City employees providing the service shall be given an opportunity to implement readily achievable improvements, if necessary, prior to the decision to pursue managed competition. The City shall continue to deliver the service in-house if it is deemed competitive according to the measures set forth later in this policy. The public-private competition process shall be carried out in accordance with the goals and guiding principles set forth in this policy.

A glossary of key terms used in this policy is included in Attachment A.

### **Goals of Competition**

The overall goal of the competition process is to ensure competitive service delivery, regardless of which delivery method is selected ultimately. The goals of the competition process shall reflect the breadth of qualities necessary to be competitive and the broader public interest, rather than simply focus on costs. Accordingly, the goals of the competition process are to:

- Increase responsiveness to customers through flexible service delivery.
- Reduce costs and/or avoid costs.
- Increase efficiencies of service delivery.
- Improve and/or sustain quality and levels of service provided.
- Encourage creativity and innovation in the delivery of services.
- Identify opportunities to leverage resources.
- Ensure the City's mission and scope of services evolve with the changing environment.

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**GUIDING PRINCIPLES**

The following principles shall guide the development and implementation of the public-private competition process.

**Application of Competition Process:** The premise of the public-private competition process is that competition in the marketplace produces value for customers and that either in-house or alternative service delivery methods may produce superior value for customers; therefore:

- The City may subject services that are currently provided in-house to the competition process.
- The City may subject services that are currently contracted out to the competition process.
- The City may also propose to provide services to other government agencies and, when it properly furthers an appropriate public purpose, and to the private sector.

The City shall continue to utilize Continuous Improvement practices to enhance in-house service delivery outside of this process. The City shall also continue to use the current private competitive procurement processes in which the City is not competing and/or other alternative delivery methods without utilizing the public-private competition process, in situations such as when the benefits to the City of alternative service delivery are clear and/or delivery of the service is time-sensitive.

**Employee Partnerships:** Fair and respectful treatment of employees shall be a cornerstone of the public-private competition process. To achieve the participation and acceptance of City employees, the City shall involve employees and unions (3) throughout the development and implementation of the public-private competition process. The City shall establish appropriate structures to ensure on-going participation of the employees and unions, including, but not limited to, labor and management teams.

**Employment Stability:** The City's commitment to employment stability for City employees affected by the public-private competition process shall be dependent upon employee and union commitment to flexible redistribution of resources, such as alternative career paths, broadened class specifications, and other measures to allow employees to assume greater and/or different responsibilities in a cost-effective manner.

**Consistency with City Policies, and Local, State and Federal Laws:** The implementation of the competition process shall be consistent with other City policies and public policy goals, such as the small and local business preference policy, prevailing and living wage policies, community employment standards, and the non-retaliation policy. Employees of private contractors will also have an obligation to meet the requirements of the State Whistleblower Protection Act, <http://www.bsa.ca.gov/hotline/protections>, and the City's Non-Retaliation Policy (Policy 1.1.4) <http://www.sanjoseca.gov/employeeRelations/fraudAudit.asp>.

Furthermore, state law requires that some contractors disclose potential conflicts of interest by filing a statement of economic interest (Form 700) (Political Reform Act under Government Code §§ 81000 et seq.).

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**Level Playing Field:** The competition process shall not favor or disadvantage any competitor in the process. The following principles shall apply:

- Request for Proposals (RFP) shall require competitors to provide prevailing wages (1) to their employees when it is deemed to be in the best interest of the City in obtaining the services requested.
- The RFP evaluation process shall include the “Third Tier Review” in accordance with the City’s Living Wage Policy. Specific for this policy Third Tier review shall also include the review of the City’s and contractors’ employee benefits, employee complaint procedures, compliance with state and federal workplace standards, and history of litigation related to breach of contract, or situations in which there is documented evidence of breach of contract. Information should be limited to information that is publicly available.
- Methods for comparing costs shall be reasonable and unambiguous, shall ensure objectivity and integrity of the data, and shall ensure that all direct and indirect (such as those costs which would be avoided if the service is not provided in-house) internal costs and gains associated with outside contracts are captured. Specifically it shall include: transition costs, monitoring and enforcement costs, effects on overhead costs, costs of training and equipment, and projections of future costs.
- Performance standards, deliverables, and corresponding payment schedules shall be outlined in the RFP and quality measures shall be reasonable, quantifiable and unambiguous. Based on the nature of the service contracted for, the RFP will include disclosure of relevant contractor employment standards such as training, screening, and personal background checks.
- Reasonable outreach efforts are to be made to secure a minimum of three proposals on RFPs. In instances where the outreach for a Request for Proposal results in less than three fully responsive proposals, the Administration will determine whether to proceed with the evaluation of the proposals. The Council report shall examine the situation to ascertain the reasons for the small number of responses.
- Contractors Records: All RFP’s conducted pursuant to this Policy and any contract and subcontracts resulting from such RFP’s shall have the following requirements with respect to public records:
  1. Keep and maintain records that ordinarily and necessarily would be required by the City in order to perform the service or activity.
  2. Provide public access to these records as identified in the RFP through requests to the City under the same terms and conditions that the City provides records and at the same cost.
  3. Include specific language in any RFP that identifies initial records to be kept. Any request for additional record keeping will be done on a yearly basis through review of the contract.
  4. Ensure that confidential and exempt records are not disclosed except as authorized by City ordinance or policy.

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**Internal Competitiveness:** The City shall make every reasonable effort to enhance the ability of employees to compete successfully on an on-going basis. Actions to accomplish this objective shall include:

- Continuing to utilize Continuous Improvement practices to enhance in-house effectiveness and efficiency on an on-going basis.
- Providing competitiveness training to employees and unions, through a collaborative effort to define needs and select trainers. Training shall include components such as unit cost accounting, development of performance standards, benchmarking, preparation of Requests for Proposals, preparation of proposals, and general business principles.
- Involving internal support functions in competitiveness training and in competition processes for which their operations are a cost factor.
- Removing internal barriers to competitiveness, such as outdated or unnecessary procurement, legal, personnel, financial and other operational procedures.
- Providing alternative rewards (e.g., gainsharing, bonus programs, etc.) for successful employee efforts to reduce service costs and enhance service quality.

**Competitive Assessment:** Reflecting the preference for in-house service delivery, the competition process shall begin with a competitive assessment of the in-house service function prior to issuing requests for proposals. City employees providing the service shall be given an opportunity to develop and implement readily achievable efficiency and effectiveness improvements prior to the decision to pursue managed competition. Efficiency and effectiveness improvements shall include actions affecting both line staff and management, such as reducing management layers balanced with broadening class specifications to encompass other responsibilities.

In general, the City shall continue to deliver the service in-house in those cases where effectiveness and efficiency is equivalent to or greater than alternative means and where the potential savings for an outside service delivery are less than ten percent (10%) for the same level of service provided in-house, which is the general percentage used in business to account for the cost of contract administration and basic transition costs. Based on the recommendation of the competitive assessment team, the City Manager shall decide if the service will remain in-house or be subjected to managed competition. The decision to keep a service in-house shall be subject to City Council approval.

In situations involving currently contracted-out services and new services, a similar process will be used to determine if the City can deliver the service competitively. In this situation, the assessment will be based on the expected costs of the City providing the service rather than the actual costs. The assessment should also take into consideration the abilities of service delivery models that can create and sustain partnerships that would leverage the quality and cost-effectiveness of services delivered to the public.

**Core Capacities and Resources:** As part of the decision-making process, the City shall consider the level of core capacities, if any, which should be maintained within the City to enable the City to compete for service delivery in the future and/or to provide the service in the

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event of a contractor default, changed circumstances, or future non-competitive proposals. Measures to maintain core capacities may include retaining a portion of the service in-house and/or maintaining comparable skills in other units of the City. Where City funds are invested in equipment, real property or other capital assets, the City shall identify appropriate measures to ensure the ability to resume operations in the case of default, changed circumstances, or future non-competitive proposals.

In recognition of the importance of the quality and responsiveness of services that protect public health and safety, core public safety services, including sworn police patrol, fire, and disaster response would not be subject to competition. This policy in no way prevents the augmentation of City services by contractors in the case of a disaster or state of emergency.

**Long-Term Competitiveness:** To ensure the delivery of competitive services to the public over the long-term, the City shall avoid actions that result in the creation of a “private monopoly” in which only one private firm is likely to be viewed as a tenable provider of a particular service. If the creation of a private monopoly is likely, the City shall consider contracting out only part of the service or not contracting out any of the service. The City shall also monitor contract costs over the long-term to ensure on-going cost competitiveness.

**Fair and Reasonable Process:** During the competition process, the City shall maintain high ethical standards and avoid any actual or perceived conflict of interest in selecting service providers. The City’s existing Code of Ethics (SJMC 16.46.010) and the Procurement Integrity and Conflict of Interest Policy (Council Policy 0-35) shall apply.

**APPROACH FOR PUBLIC-PRIVATE COMPETITION PROCESS**

Following is the general approach for conducting the public-private competition process.

Competitive Assessment (1)

1. Select service for competition and identify target dates for completion in Administrative Work Plan.
2. Conduct competitive assessment of in-house service.
3. Implement effectiveness and efficiency improvements as needed.
4. Determine next step based on competitiveness of in-house service.

Managed Competition Process (if decision is made to continue the competition process)

1. Develop Request for Proposal (RFP).
2. Issue RFP.
3. Conduct RFP process.
4. Select provider.
5. Conduct a financial analysis and risk assessment
6. Monitor performance and costs

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### Competition Training

The training plan will be a collaborative effort with employees as called for in the “Employee Partnerships” principle. The City may seek assistance from consulting firms with hands-on experience in preparing employees for competition. A general training module will be available to all City employees. Specific skills needed to successfully participate in the competition process will be provided to employees participating in the competition process. The general and specific training modules will focus on the following general areas; however the modules will be customized based on an assessment of employee training needs.

1. Introduction to competition to discuss the need to be more competitive in this changing environment as well as increased awareness of possible ethical conflicts during the competition process.
2. Benchmarking to assess where we are and what we need to do to improve.
3. Flowcharting the service delivery process to understand how the current process works.
4. Data collection methodologies to collect relevant information on costs, performance measures and customer satisfaction.
5. Continuous Improvement principles, tools, and techniques for streamlining work processes and implementing improvements.
6. Writing effective RFPs.
7. Responding to RFPs.
8. Identifying and implementing opportunities for improvement.
9. Contract development and management.

## **EMPLOYMENT OPTIONS**

### **Outside Contractor Employment**

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall facilitate the transition of employees to the successful contractor, if the contractor and the employees elect to pursue this option. Contractors are not required to hire displaced employees. Actions to facilitate the transition to private employment with the successful contractor shall include, but not be limited to:

Requiring outside contractors that create new jobs or have currently existing job vacancies to deliver a City service to first consider displaced city employees for new jobs.

Providing one-time incentives to employees that accept employment offers from the successful contractor.

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### **“No-Lay-Off” Provision”**

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall provide any person displaced with other employment opportunities within the City to totally avoid the need for lay-offs. Appropriate lay-off procedures under the Memorandum of Agreement or Civil Service Rules shall apply. When the “bumping” procedures are used, City employment will be offered to affected employees.

“No Lay-Off” means no separation from City employment, unless the employee is hired by the successful contractor or chooses lay-off in-lieu of internal placement. If the employee remains with the City, the employee will not experience a reduction in current pay, although the employee may be transferred, assigned to a different classification, have salary Y-rated, or have other opportunities for employment. The no lay-off provision shall not apply in situations other than reductions in positions resulting from the public-private competition process.

In addition to the obligations in the Civil Service Rules and the City’s Memoranda of Agreement, the City shall mitigate the impacts of the change in service delivery with actions including, but not limited to, the following:

- Notifying the unions, the Office of Employee Relations, and the Department of Human resources (HRD) of the impending competition process.
- Committing to full partnerships with the employees and unions and meeting and conferring with unions as the sole representative of the employees, as appropriate in accordance with state statute.
- Banking appropriate vacancies to prepare for the impending competition.
- Identifying opportunities for moving displaced personnel into other City positions with comparable benefits and salary levels without compromising current job standards.
- Assisting employees in transition by offering training and cross-training.
- In the event an affected employee elects not to accept a position within the City, the employee shall separate from City employment within 30 days and the City shall provide outplacement support services for the employee for 60 days following separation from the City.

### **Meet and Confer Provision**

For purposes of this policy, the meet and confer process shall incorporate the following principles:

- The process shall consider the competing interests of other stakeholders beyond the affected employees.

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- Flexibility in redistribution of resources is necessary to guarantee employment protection.
- The process shall attempt to coordinate solutions city-wide, not just in one bargaining unit.

(1) See Attachment A “Glossary” for definition of term

(2) Requests fro Qualifications (RFQs) and Requests for Information (RFI) may also be a apart of the managed competition process.

(3) “Unions” and “bargaining units” are used interchangeably throughout this policy.

**Attachment:**

A. Glossary of Terms

**ATTACHMENT A**  
**GLOSSARY OF TERMS**

The following definitions shall apply within this policy and to related actions:

**Service delivery evaluation** refers to an evaluation of a range of methods of delivering services to the public via City employees, non-profit organizations, private enterprises, or other governmental agencies for providing community services on behalf of the City.

**Competitive Assessment** refers to a process used to determine the competitiveness of in-house delivery of a particular service. A competitive assessment team conducts the assessment including identification of costs and performance measures, comparisons to industry standards, and development of benchmarks. The department providing the service subsequently implements readily achievable improvements in effectiveness and efficiency.

**Contracting out** refers to the City entering into an agreement with a private firm, governmental agency or non-profit organization, to manage a public program, provide a service or construct a public project with public funds.

**Managed Competition** refers to a process whereby City employees as well as other public and private entities may propose for the right to deliver specific services over a specified period of time.

**Prevailing Wage** refers to the California Labor Code definition, which defines prevailing wages as the basic hourly rate being paid to a majority of workers engaged in a particular classification within a given area. If there is no single rate being paid to the majority, then the prevailing wage is defined as the single rate being paid to the greatest number of workers in the given classification. Prevailing wage includes per diem payments for fringe benefits such as health, pension, vacation and travel time.

**Privatization** refers to a broad range of arrangements through which public services are delivered in whole or in part by the private sector.

**Public-private Competition** is a process whereby the City determines the optimum method for delivering public services. The process includes a competitive assessment of in-house delivery of the service. If the decision is made to issue a request for proposals, the city participates in a managed competition process. Public-private competition is distinguished from "private competition wherein the City is not a competitor.