



# ADMINISTRATIVE REGULATION

Office of the City Administrator

<b>Number</b>	<b>228</b>
<b>Sections</b>	<b>1-7</b>
<b>Effective Date</b>	<b>8/4/08</b>
<b>Responsible Department</b>	<b>Finance</b>
<b>Review Date</b>	<b>8/4/08</b>

**SUBJECT: PROFESSIONAL SERVICE CONTRACTS**

1. **Purpose:** To establish the process for entering into professional service contracts.
2. **Authority:** Section 401 of the Huntington Beach City Charter and Municipal Code Section 3.03.
3. **Application:** This Administrative Regulation applies to all Departments.
4. **Definitions:** Refer to Municipal Code Section 3.03.
  - 4.1. **Consultant** - Any provider of services under Municipal Code Section 3.03, as an individual, partnership, corporation, or otherwise.
  - 4.2. **Director** - The Department Director or his/her designee as approved by City Council resolution, vested with the authority to administer the provisions of Municipal Code Section 3.03 with respect to contracting for services.
  - 4.3. **Professional Services** - Those services which involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise, or training gained by formal studies or experience or services which are not readily or efficiently procured by competitive bidding pursuant to Huntington Beach Municipal Code Section 3.02.
5. **Policy:** It is the policy of the City Council of the City of Huntington Beach to maintain integrity and avoid the appearance of impropriety when choosing Consultants. In order to accomplish these policy objectives, certain procedural safeguards must be in place to ensure unbiased decision making when choosing Consultants.
  - 5.1. This Administrative Regulation establishes procedures departments are to follow when entering into professional service agreements.
  - 5.2. Municipal Code Section 3.03 authorizes department directors to contract directly for any professional service when:
    - Procurement of such services has been budgeted;
    - Sufficient unencumbered appropriated funds are available in the budget or the cost of the contract will be fully paid or reimbursed to the city; and
    - The agreement has been generally described in the budget.
  - 5.3. If all these criteria are not met, the contract must be approved by the City Council, whatever the value.

## **6. Responsibilities:**

### **6.1. Department Heads** shall be responsible for the following:

- 6.1.1. Submit a list of all professional services per the budget manual to the Finance Director as part of the budget process.
- 6.1.2. Submit a written statement defining the necessity, scope of project, and projected cost to the Central Services Manager and City Administrator.
- 6.1.3. With the assistance of the Central Services Manager, request a written proposal from not less than three available qualified consultants.
- 6.1.4. Submit proof of three written proposals, agreement, scope of work, and payment schedule to the Central Services Manager along with the purchasing certification form. A template is available on Surfnet under the Policies & Procedures/Contracts folder. The template is listed as "Professional Service Contracts Purchasing Certification."
- 6.1.5. Prepare a Request for Council Action (RCA) for those agreements that are over \$100,000 and/or not on a pre-approved professional services list.
- 6.1.6. Assign a single department contract coordinator to ensure proper contract processing and managing of all department contracts.
- 6.1.7. Submit a Professional Service Contracts Purchasing Certification Amendment form, Request for Legal Service, and copy of original contract for those contracts that require amending.
- 6.1.8. Submit insurance certificates, waivers, and/or subsequent renewals to the Risk Manager.

### **6.2. Central Services Manager** shall be responsible for the following:

- 6.2.1 Develop and/or implement a "centralized contract management program" to oversee and ensure compliance with all codes while maintaining the safeguards to ensure budget control.
- 6.2.2 Develop an annual training program for processing agreements.
- 6.2.3. Assist department heads in developing scope of work, desired results, expected level of performance, and selection methods.
- 6.2.4. When utilizing another agency's agreement, determine if the other agency has complied with its own professional services solicitation requirements.
- 6.2.5. Determine if contracts under \$30,000 can be let without competitive bidding.
- 6.2.6. Review all documents to certify the department has complied with the municipal code, administrative regulation, and assist in preparation of agreements.
- 6.2.7. Review contract amendments to ensure scope of work and costs to be amended do not vary significantly from the original contract, the termination date does not exceed beyond three years and signature requirements are met.
- 6.2.8. Upon approval of the purchasing certification, the Central Services Manager will forward the agreements to the City Attorney's Office for review.
- 6.2.9. Coordinate audit activities, information, and training for division single point of contact.

### **6.3. City Attorney's Office** shall be responsible for the following:

- 6.3.1. Counsel and advise City officials in the implementation of the Municipal Code Chapter 3.03.

- 6.3.2. Assist in the development of agreements.
- 6.3.3. Review and approve as to form all agreements submitted by the Central Services Manager and/or Department Head.
- 6.3.4. Upon approval of professional services agreements not requiring Council approval, transmit the original agreement to the City Clerk's office and provide the originating department with a copy of the completed agreement.
- 6.3.5. Maintain a log of contracts they enter into, which will be transmitted quarterly to the City Clerk's office to ensure proper filing.
- 6.3.6. Review and approve insurance certificates waivers that are submitted by the Risk Manager and/or Department Head.
- 6.4. City Clerk's Office** shall be responsible for the following:
  - 6.4.1. Provide a log of all professional services contracts to the City Council on a quarterly basis.
  - 6.4.2. Provide a final copy of the approved contract to the originating Department after execution by the Mayor and City Clerk.
- 7. Procedures:** The following procedures shall govern when departments enter into agreements pursuant to Municipal Code Section 3.03.
  - 7.1. City Council approval of the list of professional service contracts.**
    - 7.1.1. As part of the city's budget process, departments will submit a list of the professional service contracts contained in their proposed budget to the Finance Director. The list will generally describe the purpose, the amount of the contract, and identify the account number where the contract is to be budgeted.
    - 7.1.2. During the budget process, the City Council will review the list of professional service contracts. Upon adoption of the budget, contracts that are included on the list will not require any further approval from the City Council unless the City Council directs otherwise and as required by this regulation.
    - 7.1.3. Budget resolution section four states – "That the City Administrator may transfer funds from one expenditure type to another within the same fund provided there is no increase in approved total appropriations contained in the budget" provided the City Council approved Professional Services List per section 7.1.2 does not exceed the total amount for the entire City.
  - 7.2. Consultation with the City Attorney's Office and Central Services Manager for agreements with design professionals.**
    - 7.2.1. Agreements with design professionals pose significant liability and litigation risks for the city. As such, departments shall consult with both the City Attorney's Office and the Central Services Manager during negotiations with a design professional relating to the scope of work and payment schedule.
    - 7.2.2. Departments shall submit a Request for Legal Services to the City Attorney's Office requesting a preparation of an agreement, review of the proposed scope of work, and payment schedule prior to presenting an agreement to the consultant for signature.
    - 7.2.3. Design professionals are defined as professional service consultants providing engineering and/or architectural services, including but not limited to, consultants performing services under a design-build agreement.
  - 7.3. Certification by Central Services Manager.**

- 7.3.1. Upon completing negotiations with the consultant, and prior to submitting a professional service contract to the City Attorney's Office for approval, the department will submit the Department/ Consultant signed agreement to the Central Services Manager to confirm that it has complied with the requirements of Municipal Code Section 3.03
- 7.3.2. The department's submission to the Central Services Manager will contain:
- Proof that the department requested informal written proposals from at least three qualified consultants (this requirement may be fulfilled by selecting a consultant from a pre-qualified list maintained by the Central Services Manager);
  - The consultant's scope of work;
  - The payment schedule; and
  - Any other information required by the Central Services Manager.
- 7.3.3. If the department is utilizing exempt or emergency purchasing procedures, as defined in Municipal Code Section 3.03, those procedures supercede this regulation.
- 7.3.4. If the department is utilizing another agency's existing agreement, the department will provide to the Central Services Manager the following:
- Evidence that the other agency adhered to its own professional service contract requirements, as defined in Municipal Code Section 3.03;
  - The consultant's scope of work; and
  - The payment schedule.
- 7.3.5. Upon completing the review of materials submitted by the department, the Central Services Manager will certify the selection process. The Central Services Manager will sign the Professional Service Contracts Purchasing Certification confirming the requirements of Municipal Code Section 3.03 have been fulfilled.
- 7.4. Contract preparation approval by the City Attorney's Office.**
- 7.4.1. Upon receiving certification from the Central Services Manager, the department will submit to the City Attorney's office the following:
- A standard contract, completed and signed (as required in section 7.11);
  - The consultant's scope of work (as Exhibit A of the contract);
  - The payment schedule (as Exhibit B of the contract);
  - Appropriate proofs of insurance or approved insurance/indemnification waivers; and
  - The Central Services Manager's signed certification.
- 7.5. Approval of contracts less than \$50,000.**
- 7.5.1. Professional service contracts less than \$50,000 may be entered into directly by department Directors if:
- Procurement of such services has been budgeted;
  - Sufficient unencumbered appropriated funds are available in the budget, or the cost of the contract will be fully paid or reimbursed to the city;
  - The agreement has been generally described in the annual budget;
  - All the requirements of Municipal Code Section 3.03 have been met and certified by the Central Services Manager;

- All insurance and indemnification requirements have been met or waived;
- The final agreement has been approved as to form by the City Attorney's Office; and
- The City Administrator has not directed the contract be presented to the City Council, or that the City Council participate in selecting the consultant.

**7.6. Approval of contracts between \$50,000 and \$100,000.**

7.6.1. Professional service contracts between \$50,000 and \$100,000 may be entered into by the City Administrator if:

- Procurement of such services has been budgeted;
- Sufficient unencumbered appropriated funds are available in the budget, or the cost of the contract will be fully paid or reimbursed to the city;
- The agreement has been generally described in the annual budget;
- All the requirements of Municipal Code 3.03 have been met and certified by the Central Services Manager;
- All insurance and indemnification requirements have been met or waived;
- The final agreement has been approved as to form by the City Attorney's office;
- The City Administrator has not directed the contract be presented to the City Council, or that the City Council participate in selecting the consultant.

**7.7.** Filing with the City Clerk - Upon signature by the department director or City Administrator, the complete original executed agreement, a copy of all approved insurance certificates or waivers, and the names of consultants who submitted proposals shall be filed with the City Clerk.

**7.8.** Filing with Risk Management - Upon signature by the department director or City Administrator, the original approved insurance certificates, waivers, and/or subsequent renewals shall be filed with the Risk Manager.

**7.9.** Length of professional service contracts.

7.9.1. An existing contract may be amended pursuant to Municipal Code Sections 3.02 and 3.03.

7.9.2. Agreements may not be extended beyond three years, except on a case by case basis.

**7.10. Delegation of signature authority.**

7.10.1. Department Directors may only delegate their signature authority to positions in their department that are listed on the signature delegation resolution adopted by the City Council.

7.10.2. The City Administrator or Deputy City Administrator must also sign agreements signed by department director delegates, regardless of their value.

**7.11. Acceptable contractor signatures.**

The City Attorney has established the following standards for signatures of contracts:

7.11.1. **Corporations** (including a limited liability corporation or not-for-profit):

- Two officers of the corporation (on the Board of Directors) must sign the contract. One officer from column A and one from column B must sign.

<u>A</u>	<u>B</u>
Chariman of the Board	Secretary
President	Any Assistant Secretary
Any Vice President	Chief Financial Officer
	Any Assistant Treasurer

- If the corporation cannot provide the above signatures, it may have one officer sign, but must provide a resolution from its Board of Directors authorizing the sole signature.

7.11.2. **General Partnerships** - The signature of any general partner is sufficient.

7.11.3. **Limited Partnerships** -The signature of the general or managing partner is sufficient.

7.11.4. **Sole Proprietorships** - The signature of the owner is sufficient.

7.11.5. **Trusts** - The trustee may sign and must provide a copy of the trust document evidencing authority to sell.

**7.12. Contract Amendment.**

7.12.1 Requesting department must complete and sign a Purchasing Certification Amendment and Request for Legal Services forms.

7.12.2 Submit the signed Purchasing Certification Amendment and Request for Legal Services forms along with a copy of the contract to be amended to the Central Services Manager.

7.12.3 Upon approval of the Central Services Manager, the Central Services Division will submit the signed Purchasing Certification Amendment and Request for Legal Services forms along with a copy of the contract to be amended to the City Attorney.

7.12.4 After the amendment has been drafted and returned by the City Attorney, the requesting department must obtain proper signature(s) from the consultant.

7.12.5 Requesting department must submit the signed amended agreement, signed Purchasing Certification Amendment form and a copy of the contract to be amended to the City Attorney for final review and approval.

7.12.6 The following regulations apply to amended contract limits:

7.12.6.1 Professional service contracts that will have an amended contract limit of less than \$50,000 for the entire contract may be entered into by department heads.

7.12.6.2 Professional service contracts that will have an amended contract limit within \$50,000 and \$100,000 for the entire contract may be entered into by the City Administrator.

7.12.6.3 Professional service contracts that will have an amended contract limit in excess of \$100,000 for the entire contract will require Council approval.

  
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City Administrator