Privatization Practices
Performance Audit

June 2015

Office of the Auditor
Audit Services Division
City and County of Denver

Dennis J. Gallagher
Auditor

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City and County of Denver

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Dennis J. Gallagher
Auditor

June 18, 2015

Honorable Michael Hancock, Mayor
City and County of Denver

Dear Mayor Hancock:

Attached is the Auditor's Office Audit Services Division's report of their audit of privatization practices at the City and County of Denver. The purpose of the audit was to assess the use and effectiveness of privatization as a service delivery method by all City agencies and departments. To accomplish this, auditors reviewed the governance structure in place to support the privatization process from the initial decision to privatize a government function to performance monitoring requirements used to determine the success of a privatized function. The audit also focused on a series of case studies to understand the City's varying approaches to privatization.

The audit found that the City lacks complete guidance for agencies and departments when determining the most effective method for providing services to its citizens, whether it be privatized or not. Additionally, performance monitoring of services is inconsistent, leaving the citizen to wonder whether the City is effectively spending their tax dollars. We encourage the Mayor to share his strategy on the use of privatization by drafting comprehensive and studied policies and procedures. In doing so, citizens can be confident that decisions regarding service delivery at the City are made with cost, quality, transparency, and accountability in mind.

If you have any questions, please call Kip Memmott, Director of Audit Services, at 720-913-5000.

Sincerely,

Dennis J. Gallagher
Auditor

DJG/am

cc: Honorable Members of City Council
Members of Audit Committee
Ms. Cary Kennedy, Deputy Mayor, Chief Financial Officer
Ms. Janice Sinden, Chief of Staff
Mr. David P. Edinger, Chief Performance Officer
Ms. Beth Machann, Controller

Mr. Scott Martinez, City Attorney
Ms. Janna Young, City Council Executive Staff Director
Mr. L. Michael Henry, Executive Director, Board of Ethics

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Dennis J. Gallagher
Auditor

AUDITOR'S REPORT

We have completed an audit of the City and County of Denver's approach to privatizing functions and services. The purpose of the audit was to assess privatization practices currently undertaken by City agencies and departments.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, *General Powers and Duties of Auditor*, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit found that the City and County of Denver does not have a comprehensive policy in place to support agencies and departments for privatization activities. Without clear and consistent guidance for decision makers, the City cannot readily demonstrate or assess whether privatization as a service delivery strategy is effective from both a citywide perspective and from the perspective of individual agencies. As such, the City should develop a framework that integrates best practices into the privatization process. This framework should include comprehensive guidance to assist agencies when considering privatization as a service delivery strategy and once a function or service has been privatized, thus allowing the City to determine whether the privatized function is meeting its intended goals.

We extend our appreciation to the Mayor's Office and the personnel who assisted and cooperated with us during the audit.

Audit Services Division

K. Memmott

Kip Memmott, MA, CGAP, CRMA
Director of Audit Services

City and County of Denver – Office of the Auditor
Audit Services Division

REPORT HIGHLIGHTS

Privatization Practices
June 2015

The audit reviewed privatization practices across the City and County of Denver.

Background

Privatization practices vary across all levels of government, and include asset sales, public-private partnerships, and outsourcing. Proponents believe that privatization can provide higher quality goods and services at a lower cost, but this assertion is still under debate. President Reagan championed privatization as a service delivery method in the 1980s, and its use has fluctuated since. The success of privatized functions hinges on several key characteristics, including high levels of market competition, well-defined service quality measures, transparency and accountability of private sector service providers, and the protection of employees. At the City and County of Denver, several agencies and departments have privatized functions – whether it be in whole or in part. Any guidance for these agencies and departments can be found within Executive Order 8 and the City's budget process.

Purpose

The objective of the audit was to evaluate citywide practices regarding privatization, including the decision-making process and performance monitoring techniques.

Highlights

Due to a lack of clear guidance at the City and County of Denver (City), the audit team could not assess the magnitude or cost effectiveness of privatization practices at the City. Agencies and departments are inconsistent, both when making the initial decision to privatize a government function and when conducting performance monitoring for a privatized function. The lack of a sound privatization framework leads to potential risks including increased costs, improper monitoring and oversight, and ultimately, irresponsible use of tax dollars at the City.

There are a myriad of resources examining aspects of privatization from all levels of government, trade and advocacy organizations, and academia. The audit team found that best practices support a robust decision-making process, including a comprehensive cost-benefit analysis, prior to privatizing a government function. Subject matter experts also advocate for performance monitoring to be used to inform future privatization decisions. Through our audit, we found that agencies and departments often do not follow these best practices. For example, Public Works privatized a portion of its Critical Sanitary Sewer Replacement program. Based on a cost comparison conducted on a sample of invoices, the audit team found that Public Works spent an additional $73,407 utilizing a private sector company rather than completing work in house. Other privatization examples include janitorial services, employee assistance programming, and the Better Denver Bond Program.

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INTRODUCTION & BACKGROUND

Privatization

Privatization is commonly defined as the shifting of functions and responsibilities, in whole or in part, from the government to the private sector. The practice of privatization stems from the desire of federal, state, and local governments to reduce their size and costs while still delivering high-quality goods and services. Its use has ebbed and flowed over the past thirty years, and the fundamental arguments surrounding the benefits and consequences of privatization are still under debate today.

According to the U.S. Government Accountability Office (GAO), privatization takes the form of different activities, including asset sales, managed competition, outsourcing, and public-private partnerships as described in Table 1.

Table 1: Types of Privatization

Type	Definition
Asset Sale	An asset sale is the transfer of ownership of government assets, enterprises or functions to the private sector. Once the transaction occurs, the government has no financial responsibility, oversight, or management role on the sold asset.
Managed Competition	A public sector agency competes with private sector firms to provide public sector services under a controlled process. The agency submits a cost estimate, which is then compared to the private sector bid.
Outsourcing	Through outsourcing, also known as contracting out, a government entity remains fully responsible for the provision of a service, including financing, management, and policy control over the type and quality of services, while the private sector is contracted to execute the service.
Public-Private Partnership	Public-private partnerships entail a contractual agreement established between a public entity and a private sector partner and can include a variety of activities involving the private sector in the development, financing, ownership, and operation of a public facility or service. Public and private resources are pooled and their responsibilities divided so that each partner's efforts complement one another.

Source: United States Government Accountability Office, "Privatization: Lessons Learned by State and Local Governments," 1997.

For the purposes of this audit, we are using the broad definition of privatization to include any method to privatize a government function in whole or in part.

Historical Perspective on Privatization

Privatization as a service-delivery strategy was championed at the national level by President Ronald Reagan in the 1980s. President Reagan's administration sought to shrink

public sector spending and to take advantage of the efficiencies that are normally achieved when services are provided by a competitive marketplace. President Reagan's economic motives to privatize government functions took on a political tone through his outspoken anti-government stance, addressing the need to curb the influence of "lazy bureaucrats" and unleash America's true entrepreneurial spirit. In 1987, the first major privatization effort was implemented through the asset sale of Conrail, a freight rail service in the eastern United States. Later in 1987, President Reagan established a commission to identify additional services to be considered for privatization.[1]

Subsequent government reforms of the 1990s and 2000s called for private sector practices to be adopted into the public sector in order to increase efficiency. President Bill Clinton adopted the Reinventing Government initiative, which was inspired by the book of the same name by David Osborne and Ted Gaebler.[2] When launching this initiative in 1993, President Clinton stated,

> "Our goal is to make the entire federal government less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement toward initiative and empowerment."

Reinventing Government spawned 1,200 recommendations and ninety pieces of legislation including the Government Performance and Results Act of 1993, which helped to change management practices at the federal level by requiring results-based decision making.

In 2001, President George W. Bush instituted the President's Management Agenda, which focused on five core management issues:

- Strategic management of human capital
- Competitive sourcing, also known as managed competition
- Improvement of financial performance
- Expansion of e-government
- Budget and performance integration

Through his competitive sourcing initiative, President Bush required federal agencies to reassess any positions defined as commercial in nature to see if those positions should be outsourced to the private sector. By 2006, 46,825 positions were evaluated competitively against the private sector, with 90 percent remaining in the public sector.[3]

President Barack Obama did not continue many of President Bush's initiatives; instead he opted for a broader strategy that addressed performance and efficiency through a

[1] Jeffrey R. Henig, "Privatization in the United States: Theory and Practice," *Political Science Quarterly* 104, no. 4 (1989): 659-664.
[2] David Osborne and Ted Gaebler are experts and consultants for performance-based initiatives within the public sector. Both have co-authored a series of books and have conducted lectures for all levels of government in the United States and abroad.
[3] Jonathan D. Breul and John M. Kamensky, "Federal Government Reform: Lessons from Clinton's "Reinventing Government" and Bush's "Management Agenda" Initiatives," *Public Administration Review* 68, no. 6 (2008): 1010-1020.

variety of initiatives. These initiatives included job placement tracking through the American Recovery and Reinvestment Act, identifying and eliminating low-performing programs, requiring agencies to establish performance goals with the Office of Management and Budget, and providing funding for traditional program evaluations for federal agencies.[4]

While privatization and its derivatives are no longer on the forefront of the national agenda as they were during previous administrations, privatization still greatly impacts service delivery throughout all levels of government. The question is not if government will employ the use of privatization, but to what extent. In fact, *The Atlantic* reported that nearly $1 trillion of the $6 trillion spent annually by federal, state, and local governments goes to private companies.

> *Annually, $1 trillion of the $6 trillion spent by federal, state, and local governments goes to private companies.*

Characteristics of Privatization

While there are many types of privatization activities that a government can undertake, several key characteristics of privatization guide its use as a service-delivery strategy.

Competition—Governments choose to privatize because it brings competition into public service delivery which would otherwise have a monopolistic configuration. Competition inherently forces costs down and encourages higher performance from vendors. According to the National League of Cities (NLC), privatization is founded on the principle that market competition can offer a more efficient and cost-effective way to provide services.

Service Quality—When privatizing a government function, government officials must ensure the same or greater quality of services. Quality of service is generally defined through vendor performance measures within a contract. Poorly designed contract requirements can create the wrong incentives that lead to poor performance. To avoid this risk, government entities can implement safeguards through effective monitoring of vendor performance. Services with readily available and easily measurable outcomes within competitive markets tend to be more successful at delivering high-quality goods and services.

Accountability and Transparency—Transparency of public sector services ensures that decision making is accountable to its citizens. Once a service is privatized, transparency should still be guaranteed. When deciding to privatize a government function or service, full information regarding decision making should be accessible to citizens, as well as any information regarding service quality and costs after privatization. Citizens should be provided with opportunities to comment on all aspects of service delivery, including planning and design, through forums and other means of outreach.

[4] Philip Joyce, "Obama's Performance Measurement Agenda," *Governing*, March 23, 2011, http://www.governing.com/columns/mgmt-insights/obama-performance-measurement-agenda.html.

Human Capital—Privatization can have repercussions on local economies and employment conditions due to changes in employment, wages, and benefits for impacted individuals. While proponents of privatization state that privatization leads to a more efficient and cost-effective labor allocation, critics argue that it threatens public sector workers' job security and wages. Once a function is privatized, GAO states that it is important to create a safety net for displaced workers, including early retirement, severance pay, or a buyout. Other strategies include placing workers in other government functions and offering job transition assistance, such as career planning and training.

Advantages and Disadvantages of Privatization

Proponents of privatization have long held the belief that the private sector can provide high quality goods and services at a lower cost than the public sector. Research has shown mixed results for this perspective. Cost savings have been found in markets with high levels of competition and innovation in service delivery. However, researcher Mildred Warner found that in 2012, urban markets supply an average of two private sector service providers for most services.[5] This lack of competition can stem from complex service requirements of a diverse population in urban communities. Additionally, cost savings have been shown to erode as competition diminishes over time, due to lock-in with the initial private sector service provider.

While utilizing private sector innovation and specialized expertise are benefits of privatization, they also carry consequences for the public sector. The public sector can gain service delivery efficiencies through private sector innovation, but researchers caution against a heavy reliance on the private company for information. Government officials may not be able to effectively manage private companies, and could lose institutional knowledge over time. Further, a study of outsourcing in the public and private sector conducted by Deloitte Consulting found that managing contractor relationships was more difficult, expensive, and time consuming than anticipated.[6] Participants in the study also underestimated the amount of resources needed to manage the vendor because of a lack of due diligence when monitoring privatized functions.

Harnessing economies of scale is an important benefit of privatization. Homogeneous suburban and rural communities have been shown to gain more than urban markets, as they usually require the same service over a large geographic area. Some urban cities have addressed this barrier by placing artificial boundaries for services to promote competition among potential private sector service providers during the contracting process.

Arguments for and against privatization illustrate a goal incongruence between the public and private sectors. As researcher Mildred Warner articulated in 2008, the public sector is structured to ensure equity through civic engagement and transparency, and

[5] Dr. Mildred Warner is a professor at Cornell University and specializes in issues affecting local government service delivery and planning with over a hundred publications to her credit.

[6] Deloitte Consulting, "Calling a Change in the Outsourcing Market: The Realities for the World's Largest Organizations," April 2005, http://www.deloitte.com/dtt/cda/doc/content/us_outsourcing_callingachange.pdf.

the private sector seeks to ensure competitiveness through risk-taking and secrecy. Therefore, the motivations of public and private sectors are often in conflict, requiring the public sector to take proper actions to safeguard service quality and costs for citizens and taxpayers. Successful use of privatization as a service delivery tool is, consequently, dependent on the existence of a competitive market to ensure low costs and the ability of local government to enforce accountability of program performance to ensure high quality service delivery.

Privatization and Local Government

Mirroring the trend of privatization at the federal level, local government privatization practices increased noticeably during the 1980s and 1990s, but have decreased over the last decade. To assess privatization practices, the International City/County Management Association (ICMA) began distributing a survey to local governments in the early 1980s. The survey, known as the Profile in Local Government Service Delivery Choices, is administered every five years which enables ICMA to analyze privatization trends over time.[7]

Based on these surveys, ICMA can demonstrate that fewer municipalities—49.6 percent in 2007 compared to 65.7 percent ten years earlier—are studying the feasibility of adopting private sector service delivery. Further, evaluation practices have not changed over the same period; specifically, less than half of all municipalities execute systematic evaluations of privatized functions. The surveys also show that city geography also plays a role in privatization. In 1997, urban cores had higher levels of privatization than rural communities. The opposite is true today where rural communities show higher levels of privatization than urban cores.

Less than half of all municipalities execute systematic evaluations of privatized functions.

Examples in Local Government—Across the United States, privatization has taken on many different forms with varying degrees of success. Recent examples illustrate this variability.

- Sandy Springs, Georgia, was incorporated in 2005 as a 'contract city.' This suburb of Atlanta has approximately 94,000 residents, and only directly provides police and fire protection. The rest of the city's services are contracted out to the private sector. In order to sustain competition among vendors, the city writes contracts with the runner-up bidder in the circumstance that the winning contractor cannot provide high quality services at reasonable cost.
- In 2008, Chicago, Illinois' Mayor Richard Daley leased 36,000 of the city's parking meters for seventy-five years for $1.2 billion. Quality of service diminished quickly

[7] Founded in 1914, the International City/County Management Association's mission and vision is to create excellence in local governments by developing and fostering professional management to build sustainable communities that improve the lives of people worldwide. They publish information resources ranging from textbooks and survey data to newsletters and other publications.

once the contract was signed, some meters jammed when coins were not collected regularly and new electronic meters would not work. Prices also escalated. This led to backlash among citizens, and city aldermen proposed a policy to require more transparency and a comprehensive economic analysis of any future privatization considerations.

Privatization in Denver

The City and County of Denver (City) utilizes privatization in a variety of areas throughout the City, which is in alignment with the Mayor's 2015 priority to "deliver the highest quality service at the lowest possible cost."[8] The City privatizes functions such as construction, janitorial and security services, grant writing, and professional services by contracting with vendors for goods or services. Some examples include:

- City Attorney's Office—Contracts with outside law firm when cases present a conflict of interest
- Public Works—Contracts for various professional services, pothole repair, and sanitary sewer critical repair
- Denver Parks and Recreation—Contracts with non-profit organizations to manage three City recreation centers

In 2014, the City executed over 2,000 contracts and other written instruments, exceeding $2 billion.[9] When an agency wishes to privatize all or a portion of a government function or service, decision-makers must adhere to various City policies, guidelines and processes, including Executive Order 8, City Charter, Career Service Rules and Policies and the budget process.

In 2014, the City and County of Denver executed over 2,000 contracts and other written instruments, exceeding $2 billion.

Executive Order 8—Executive Order 8, which governs the City's contracting process, is the most closely related policy to govern the privatization process. Specifically, Executive Order 8 governs the following contracts and written instruments:

- Contracts and Amendments
- Leases
- Grants
- Easements
- Intergovernmental Agreements

[8] City and County of Denver Mayor's 2015 Budget page 3.

[9] Contract details were provided by the City Attorney's Office and include all contract types: booking agreement, capital improvement project, concessions, construction, DIA concessions and revenue, grant, intergovernmental agreement, land use, master on-call, memorandum of understanding, non-financial agreement, operations & maintenance, professional service, real estate revenue, standard expenditure, standard revenue, state paid service, and temporary employment.

- Cooperative Agreements
- Licenses
- Purchase Orders

Amended in May 2011, Executive Order 8 stipulates the procedures for initiating, procuring, and executing contracts for the City. Specifically, Executive Order 8 provides definitions pertinent to the contracting process, identifies the agencies that play an integral role in the contracting process for the City, and describes common contracting processes as well as other processes for specific types of contracts and other written instruments such as construction contracts, concession agreements, and intergovernmental agreements.[10] Executive Order 8 also includes a brief insert regarding contract monitoring expectations after executing the aforementioned agreements.

Under certain circumstances, City Council has oversight responsibility related to the privatization process through the contracting procedures outlined by Executive Order 8. According to Executive Order 8, certain contracts must be approved by City Council if contracts require the City to expend or receive $500,000 or more. If an agency wishes to enter into a contract for goods or services provided by the private sector for less than $500,000, it will not receive City Council scrutiny.

City Charter—In addition to Executive Order 8, City Charter provides guidance for the Executive Directors of Public Works and General Services regarding the contracting process. Specific to Public Works, City Charter, §2.3.3, mandates that all construction contracts be awarded to the lowest, responsive, qualified bidder, and let through a competitive selection process. City Charter, §2.9.3, confers to the Department of General Services' Manager,

> "Exclusive management and control of the purchasing of all supplies, equipment and personal property and services for the City and County and for all departments, agencies, boards and commissions, and authorities thereof, except the City Council, and the power to establish and control standards and specifications for such supplies, equipment and personal property after consultation with the requisitioning department, agency, board or commission."

Career Service Rules and Policies—City employees are provided protection through the Career Services Rules and Policies (Rules). According to the American Bar Association, public employee's property right in employment does not come from the U.S. Constitution but from state law and other mechanisms.[11] The Colorado Constitution established safeguards to protect public employees with vested rights. A vested employee cannot be deprived of employment for reasons that have no rational connection with the employment requirements or goals, and that are so arbitrary as to offend notions of fairness.[12]

[10] Executive Order 8 has been in place in the City since 1978 and has periodic updates.
[11] The American Bar Association, Individual Rights in Public Sector Employment, 2008. http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2008/ac2008/143.authcheckdam.pdf.
[12] Colorado Constitution, Art. II, Section 25 (2014).

In alignment with the State Constitution, the City has established safeguards to protect its employees' rights, privileges, and benefits of employees who have passed a probationary period. These safeguards are specified in Rules 5 and 14.[13] For example, a career service employee is entitled to appeal any decisions regarding his or her employment, to lay-off protection, and to the full benefit of paid leave.

Because of the safeguards that have been established to protect public employees, the City cannot arbitrarily abolish positions and replace them with contractors. However, the City has used attrition to modify the number of positions in a specific area.[14] For example, when the Wellington Webb Municipal Building was built, the City decided not to hire new janitorial positions for the building. Instead, the City waited for subsequent retirements and resignations and then contracted out for the needed janitorial work.

Denver's Budget Process—According to the Budget and Management Office (BMO), the initial step when an agency is planning to procure goods or services from the private sector is to submit a form that includes details on what the agency perceives to be the budget increase for a new contract.

During the annual budget process, any agency can submit a change request to BMO to change their base budget.[15] According to the 2016 Budget Manual, change requests must include any changes in full-time equivalent employees, non-discretionary increases, substantial budgetary changes to maintain the current level of services, specialty pay changes, revenue stream modifications, and base budget increases. Change requests for the upcoming year must be submitted by June. Between July and August, BMO reviews the operating and capital improvement budget proposals with each agency and submits recommendations to the Mayor who then reviews and approves the budget. At the end of October, the Mayor submits a proposed budget to City Council; upon their approval, the budget will be adopted in November. On or before the fourth Monday in November, City Council then enacts an ordinance that authorizes the necessary fund appropriations for the incoming year.

Insourcing City Functions

In a few instances, the City has implemented insourcing, which is the reverse action of privatization. Insourcing occurs when a government entity decides to reinstitute a function that was once performed by a third party vendor. In 2007, local government insourcing across the United States nearly

In 2007, local government insourcing across the United States nearly matched privatization, 11.9 percent to 11.6 percent, respectively.

[13] Career Service Rule 5—Appointments and Status provides guidance for appointments and Career Service status for appointees and career service employees. Rule 14—Separation Other than Dismissal defines the circumstances and processes by which an employee may be separated from employment.

[14] The Merriam Webster dictionary defines attrition as the reduction in the number of employees that occurs when people leave because they retire, resign, etc. and are not replaced.

[15] Base Budgets consist of all personnel costs, supplies and materials, and internal service fund charges needed to maintain the agency's current level of service within the agency's existing programs. New FTEs, service enhancements or expansions, increase in overtime and on-call hours, new equipment and extensions of limited FTE are not part of the base.

matched privatization, 11.9 percent to 11.6 percent, respectively.[16] Examples of insourcing at the City include the Office of the Municipal Public Defender and professional and non-professional services at the Denver International Airport (DIA).

The Office of the Municipal Public Defender—In 2015, the City decided to bring the Office of the Municipal Public Defender in house after having previously contracted the function out with three firms. The County Court Presiding Judge spearheaded the initiative with the support of all the county court judges. The motivation in moving this function in-house was based both on a policy decision and an inherent conflict of interest. When the City contracted out this function, the Presiding County Court Judge was charged not only with the oversight of these firms, but also had to deal with the firms' attorneys that appeared in front of him in court. Because this decision needed to be discussed with City Council, the County Court Presiding Judge prepared a cost-benefit analysis and researched best practices. The cost-benefit analysis showed that the decision would be cost-neutral. Best practices research showed that governments such as the State of Texas and the City of Seattle, Washington, were moving to an in-house public defender office.

Denver International Airport—Over the past several years, DIA's Airport Infrastructure Management (AIM) Division has brought both professional and non-professional services in house, as their internal analyses showed its cost effectiveness. As a result, 50 full-time employees specializing in project management, engineering, and architecture were hired; some of the new positions were filled by individuals who had previously been contract workers for AIM. Capital equipment for ramp scrubbing and sweeping was also internalized with three full-time employees hired to conduct cleaning work. Costs for capital equipment were projected to take two years to earn back. Finally, a horticulturalist position was rehired on a permanent basis.

AIM management has found that by conducting a cost-benefit analysis and determining a function's return on investment, they are able to make informed decisions on service delivery.

AIM management has found that by conducting a cost-benefit analysis and determining a function's return on investment, they are able to make informed decisions on service delivery, whether it be in house or privatized through a contract. They are also able to see advantages from insourcing, including enhanced employee ownership of work and improved span of control.

[16] Mildred Warner, "Insourcing and Outsourcing," *Journal of the American Planning Association* 78, no. 3 (2012): 315.

SCOPE

The scope of the audit was to assess privatization practices across the City and County of Denver.

OBJECTIVE

The audit objective was to review the structure that is in place for governing privatization decisions and activities within the City and County of Denver. The audit objective included reviewing current governance for evidence of cost-benefit analysis, performance measurement and monitoring, as well as assessing the impact of these decisions on employees.

METHODOLOGY

We applied various methodologies during the audit process to gather and analyze information pertinent to the audit scope and to assist with developing and testing the audit objectives. The methodologies included the following:

- Interviewed City employees that participate in and approve privatization of government functions to gain an understanding of the approaches used throughout the City.
- Conducted research to identify best practices and strategies regarding the approach and oversight of privatizing government functions.
- Conducted research of academic and professional literature regarding the framework necessary when privatizing government functions.
- Identified other municipalities that have established guidance for privatizing government functions.
- Reviewed and analyzed contracts associated with privatization to determine how the City monitored the contract to ensure quality service delivery including cost of services.
- Reviewed other City policies associated with contracting practices to understand to what extent the City has provided adequate guidance to employees when privatizing government functions.
- Reviewed and analyzed human resources data to determine the effect of privatizing government functions.
- Reviewed 2014 contracts, other written instruments, and contract expenditures to determine the magnitude of privatization activities at the City.

- Conducted a cost comparison for a sample of Public Works' Wastewater Management Division invoices to determine potential cost savings by completing work using City resources.

Because the audit focused on privatization practices across the City, we selected a series of case studies on privatized activities to understand how the City approached and monitored private sector service providers based on contractual agreements. Our studies included the following areas within the City:

- Denver International Airport
- Denver Municipal Courts
- Department of Finance
- Department of General Services
- Department of Public Works
- Mayor's Office
- Office of Human Resources

FINDING

The City Lacks a Sound Privatization Framework and Cannot Demonstrate the Benefit of Privatized Functions and Services

The City does not have an overall strategy or framework for determining whether an agency should privatize a specific function or service or whether a privatized function or service is meeting its intended outcomes. There are many resources available from government, trade, advocacy organizations, and academia that provide guidance regarding privatization considerations and decisions. In general, best practices can be divided between two core elements: the initial decision to privatize and the implementation and evaluation of a privatized function or service. The audit compares and contrasts privatization best practices for these two core elements to City governance and practices. The analysis revealed that the City has not adhered to best practices for either of these two core privatization decision elements. As a result, the City should develop a privatization strategy and framework, and communicate and implement the approach citywide.

Best practices can be divided between two core elements: the initial decision to privatize and the implementation and evaluation of a privatized function or service.

Although the City has established guidance to govern the contracting process, governance over privatization activities is incomplete. The City's existing policies are limited in providing robust guidance for agencies when considering privatization as a service delivery strategy. Further, those same policies do not provide guidance regarding monitoring and performance evaluation once a function has been privatized. As such, agencies cannot make informed decisions regarding whether the proposed privatization of a function will result in beneficial outcomes or whether privatized functions and services have generated the expected results. Additionally, City elected officials and operational management cannot effectively monitor and report the results of privatization decisions to the public in a transparent manner. In the absence of a clear privatization strategy and framework from City leadership, agencies have instituted their own practices, which have been inconsistent and are not aligned with best practices. The audit also revealed that some privatized functions and services could have been performed by the City at a lower cost.

The City's Existing Policies Provide Inadequate Guidance for City Agencies Considering Privatization

Neither Executive Order 8 nor the City Charter establish guidance for agencies to use when deciding whether to privatize a function or service. While Executive Order 8 establishes the requirements for the City's contracting procedures, it does not provide

guidance or requirements regarding the decision-making process for privatizing a function or service, such as the need to conduct a thorough cost-benefit analysis.

Executive Order 8 clearly establishes policy for the preparation and execution of contracts which are legally binding and enforceable obligations of the City. According to Executive Order 8, the contracting process begins when "a Department Manager, Agency Head or his/her designee determines that a contract is necessary to do a job or provide a service that the City requires." We found that there are several reasons that an agency might contract with a third party to provide a service. For example, an agency's motivation to privatize could be based on cost, convenience, or a policy decision. Without policies in place that provide a basis for privatization decisions, we found that agencies have utilized inconsistent practices in determining whether privatization will be beneficial and cost effective.

We examined best practices issued by a variety of organizations and sources, such as the National League of Cities (NLC) and the U. S. Government Accountability Office (GAO).[17] Several core elements should be included in a government entity's governance framework when considering whether to privatize a function or service including: identifying needs and objectives for privatizing, conducting a thorough cost-benefit analysis, utilizing a competitive-selection process, and ensuring a transparent transition for impacted employees.

Needs and Objectives for Privatization Must Be Consistently Identified—When governments are deciding whether to privatize a function or service, the NLC suggests that entities define the needs and objectives to be accomplished by the project and confirm the availability of resources to support the project through its full life cycle. In addition, according to a report published by the Indiana University School of Public and Environmental Affairs, governments should establish initial motivations for outsourcing that are explicit, clear, and transparent.[18] Because the decision to privatize can be made for many different reasons, including cost savings, policy enhancements, and/or increased efficiency, elements critical in the decision-making process cannot be properly assessed without clarity of purpose.

Cost-Benefit Analyses Should Be Performed—A wide variety of sources suggest that governments should perform a thorough cost-benefit analysis prior to moving forward with privatizing a function or service. This analysis allows entities to not only identify current costs but also to estimate and budget for future costs and savings. GAO and the Government Finance Officers Association recommend that the decision-making process include a consistent approach to evaluating the costs of government activities utilizing the full cost of the different services provided. This is especially important for government functions and services that rely on capital equipment, due to the high cost to repurchase this infrastructure if privatization fails. In addition, privatization decisions should take into

[17] The National League of Cities is a membership-based organization comprised of over 2,000 municipalities from across the United States dedicated to helping city leaders build better communities.
[18] "Government Outsourcing: A Practical Guide for State and Local Governments," Indiana University School of Public and Environmental Affairs, January 2014.

account the cost of transition, as well as any monitoring or oversight costs that are expected to result from a change in service provider.[19]

Other cities across the United States have adopted policies requiring agencies to incorporate results from cost-benefit analyses when deciding to privatize. For example, the City of Honolulu, Hawaii, has established a process that requires the agency requesting to privatize an internal function or service to complete a cost-benefit analysis to inform decision making. Washington, D.C. has taken it a step further by adopting policies that require agencies to complete a cost comparison between the government and the private contractor. If cost savings of 5 percent can be achieved over the life of the contract, the contract can be executed as long as appropriate performance measures and reporting requirements are included in the scope of work.

Utilize Competitive Bidding—The NLC, among other organizations, advises that governments evaluate proposals using several criteria such as contractor capacity, experience, and reputation, and that proposals should be competitively bid. Although the City's current guidance establishes that the vendor selection process utilize competitive bidding, it does not provide guidance to ensure competitive selection when a single proposal is received.[20]

Ensure Transparent Workforce Transition—The decision-making process should also take into account employees who may or will be impacted by privatization. According to GAO, the government entity should establish strategies such as training to provide the skills necessary to compete against private sector employees, creating a safety net for displaced employees. For example, Mecklenburg County, North Carolina, instituted a privatization policy that requires an agency to minimize the impact of privatization on current employees by conducting an assessment of the effect that privatization will have on employees along with recommendations for handling human resource issues.

Once an agency has decided to privatize a government function, best practices suggest that proper monitoring, oversight, and reporting should occur.

Existing Policies Do Not Provide Sufficient Monitoring and Oversight Guidance For Privatized City Functions and Services

Not only do City policies and rules fail to provide guidance to agencies considering whether or not to privatize a function or service, but they also lack thorough guidance for agencies to follow once a function or service has been privatized. In fact, monitoring and reporting on the performance of privatized functions or services is left solely to the agency's discretion.

According to Executive Order 8, the agency requesting the contract is required to implement policies and procedures that establish specific individuals to monitor

[19] Transition costs include any costs required to transfer a service from the public sector to the private sector. Transition costs may include capital assets, technology, and employee severance packages.

[20] As stated in Executive Order 8, "All construction contracts must be competitively bid or competitively selected through public advertisement. Except for those cases where sole source contracts are appropriate, it is the City's policy to advertise for professional services contracts by issuing a Request for Qualifications, Request for Proposal, or other variation of these procurement methods."

contracts, ensure compliance, monitor contract expiration dates, and ensure that the contractor is paid on time. When monitoring performance, Executive Order 8 requires that the following happen over the life of the contract: contract terms are met, bonding and insurance terms are met, close-out activities are completed, and monitoring and deliverables are documented. Executive Order 8 also states that contract performance should be reported if required. City Charter does not mention contract monitoring as a part of the contract, purchasing, and conveyances process.

Although Executive Order 8 requires some level of contract monitoring, agencies are not required to define performance measures, conduct robust performance monitoring, or evaluate final performance and cost before deciding on future awards. In addition, agencies are not required to report the results and benefits of the privatization decision internally or publicly, which hinders transparency and accountability. When implementing and evaluating a privatized function, best practices emphasize several concepts: defining performance measures, monitoring contractor performance, evaluating performance and cost of the contract at key points to inform future decisions, and reporting on the outcomes of privatization decisions.

Define Performance Measures—When defining performance measures, a variety of federal, state, and local agencies provide guidance. The Office of Federal Procurement Policy (OFPP) calls for cost-effective measurement of contractor performance through clear and concise performance measurement definitions, as articulated through statements of work. The National State Auditors Association calls for specific measures and reporting requirements like due dates within the contract. Additionally, Washington, D.C. requires that all contracts be executed with appropriate performance measures and reporting requirements within the scope of work.

Monitor Contract Performance—Performance measures should then be applied to evaluate contractor performance through robust monitoring and oversight strategies. According to research utilizing data from the International City/County Management Association, contract monitoring has a higher impact on privatization outcomes than fiscal or market characteristics, including competition and financial pressures. Researchers also state that monitoring should involve many procedures to mitigate risk, including monitoring citizen complaints, implementing citizen satisfaction surveys, analyzing vendor performance data, and auditing vendor activities in the field. The NLC also calls for forums for community input.

Contract monitoring has a higher impact on privatization outcomes than fiscal or market characteristics, including competition and financial pressures.

Monitoring should also be carried out by properly trained staff knowledgeable of service requirements. The OFPP suggests that a training and certification program for contract monitoring should be put into place to strengthen staff skills. Job requirements should also be well defined for a technically competent

staff to administer. When monitoring, the NLC suggests that a municipal department familiar with the service should carry out these activities. These monitoring procedures will ensure that the public sector's interests are fully protected.

Evaluate Cost and Quality to Inform Future Decisions—At important contract phases and at the end of a contract term, performance and cost information should be compiled and utilized for decision making for future awards. For example, the City and County of San Francisco, California, requires an annual review of fiscal, compliance, and governance of all contracts with non-profit organizations, while Los Angeles County, California, requires performance evaluations for all contracts annually.[21] The City of Austin, Texas, implemented a citywide vendor performance evaluation program in 2014. Evaluations are to be conducted upon completion of each project phase and upon completion of the project. Records of contractor performance are to be retained for consideration of future awards.[22]

Report on the Outcomes of Privatization Decisions—In order to ensure transparency within the privatization process, local government leadership should report on the outcomes of contractor performance to their governing bodies and citizens. This allows citizens to hold decision makers accountable for poor performance. For example, in Los Angeles County, severe deficiencies in performance must be reported to the Board of Supervisors, a practice recommended by the NLC. In fact, the importance of transparency is recognized by Mayor Hancock through the Transparent Denver initiative, which provides access to important City documents and avenues for citizens to hold decision-makers accountable.

Without a Sound Privatization Framework, City Agencies Cannot Ensure That Privatization Decisions Result in Beneficial Outcomes

City agencies do not have a clear understanding of the administration's approach and philosophy regarding privatizing government functions. As such, decisions to privatize functions within the City have been applied inconsistently. This has yielded some negative results including increased costs, improper monitoring and oversight of contracts, and, ultimately, an irresponsible use of tax dollars.[23]

Overall, we found that the City cannot determine whether its current use of public service delivery combined with privatization have yielded positive outcomes as illustrated through the following case studies of selected privatized functions.

[21] The City and County of San Francisco Nonprofit Contractor Review-Standard Monitoring Form can be found in Appendix A.
[22] The City of Austin Contractor Evaluation form can be found in Appendix B.
[23] The Auditor has issued previous recommendations regarding important components of the privatization process. General Services Contract Administration Performance Audit recommended that GS develop a contract monitoring framework for Citywide service contracts; Citywide Contract Procurement Performance Audit recommended that Executive Order 8 should be enhanced to facilitate a centralized function including providing clear direction for selection, sole source requirements, required documentation of selection processes to be retained, and amendment term requirements, among others.

Public Works Outsources Some Sewer Repair Projects—In 2011, the Department of Public Works' Wastewater Management Division (WMD) entered into a contract with Brannan Construction for the Critical Sanitary Sewer Replacement program allowing the contractor to charge a 48 percent markup consisting of labor (16%), materials (8%), equipment (6%), and subcontractor (18%) charges.

The City was charged $73,407 more on four of 113 invoices related to the Critical Sanitary Sewer Replacement contract than if City crews had performed the same work.

The audit team compared four out of the 113 jobs already completed by Brannan to WMD's cost estimates. We found that the City was charged $73,407 more on those four invoices related to the Critical Sanitary Sewer Replacement program than if WMD crews performed the same work. Table 2 demonstrates the cost savings if the work was completed by WMD.

Table 2: Wastewater Management Division – Project Cost Estimates

Project Number	Project Description	WMD Total Costs**	Contractor's Total Costs*	Cost Diff. (overcharge)
1	Two 20'x 6' x 9" Asphalt Patch Repairs @ Lipan & Exposition	$600	$9,378	$8,778
2	Critical Sanitary Sewer Replacement @ 48th & Quitman	$22,585	$41,588	$19,003
3	Critical Sanitary Sewer Replacement @ 47th & Raleigh	$29,207	$52,140	$22,933
4	8" Main Critical Sanitary Sewer Replacement @ 46th & Quitman	$7,648	$30,341	$22,693
Total Costs		**$60,040**	**$133,447**	**$73,407**

Source: Wastewater Management Division
* Contractor total costs include labor, equipment, material, and subcontractor costs.
** WMD total costs include labor, equipment, material, and an additional 40 percent for benefits and 30 percent for overhead.

As a result, Public Works failed to understand the cost savings associated with completing the repairs by utilizing public employees, resulting in poor use of tax dollars.

Privatization of Custodial Services—A 2014 performance audit of the Department of General Services' contract administration completed by the Auditor's Office found that General Services was not effective in overseeing its Citywide service contracts, which included custodial services.[24] General Services decided to privatize custodial services in 2009 and selected North American Property Services as its service provider. General Services' lax monitoring of the five-year contract resulted in repeated prevailing wage violations uncovered by the Auditor's Office Prevailing Wage Division, including an underpayment of approximately $60,000 by the vendor to their employees for staff overtime, parking, and other required payments including payroll deficiencies.

In 2014, General Services chose to solicit bids for a new contractor. Although contract negotiations between General Services and the new vendor were under increased scrutiny by City Council, General Services failed to complete a cost-benefit analysis and instead, relied on cost proposals and analyses provided by the vendor. As such, General Services is unable to determine if the new contract will provide cost-effective outcomes.

Privatization of the Office of Employee Assistance—In 2013, the Mayor's Office and the Office of Human Resources (OHR) privatized the Office of Employee Assistance (OEA), and not only failed to identify the needs and objectives during the decision-making process to privatize OEA, but also failed to effectively define performance measures and monitor the private sector vendor.

Prior to privatizing, OEA's main responsibilities included providing counseling services, managing the Denver Employee Emergency Program, and serving as workplace violence coordinator for employees. During the Request for Qualifications (RFQ) process, the Mayor's Office and OHR failed to compile these services provided by OEA to compare to private sector bidders. Figure 1 shows the RFQ summary, which stated OEA's current services as "Unsure." Due to this omission of current services, the Mayor's Office and OHR lacked a clear basis for making an informed service comparison between OEA and private sector bidders.

[24] Office of the Auditor, "General Services' Contract Administration Performance Audit," August 2014, https://www.denvergov.org/Portals/741/documents/Audits%202014/General_Services_Contract_Administration_Audit_Report_08_15_14.pdf.

Figure 1: Request for Qualifications Summary for Employee Assistance Programming

City and County of Denver
Employee Assistance Program - Effective January 1, 2013

BENEFIT FEATURES	Current	ComPsych Option 1	Mines and Associates Option 2
Basic Services included in PEPM fee			
24-Hour Toll-Free Access *(Guidance Consultants over the phone)*	Unsure	Yes	Yes
Short Term Counseling & Referral *(Number of face to face visits)*	6 visits per incident	6 visits per incident	6 visits per incident
Management Consultation *(Clinical expertise and policy-based consultation)*	Unsure	Yes	Yes
Critical Incident Response *(Consultation with Managers in regards to catastrophic event)*	Unsure	Yes	Yes
Initial Supervisory Training	Unsure	Bank of 50 on-site hours	TBD
Initial Employee Orientations	Unsure		
Training Seminars (brown-bag sessions)	Unsure		
Communication Materials	Unsure	Yes	Yes
Statistical Reports	Unsure	Yes	Yes
On-line Services	Unsure	Yes	Yes

Source: Office of Human Resources

In October 2013, OHR entered into a contract with ComPsych to provide employee assistance program services including counseling, legal support and financial guidance. The contract's scope of work stated that the "service provider will prepare and provide to the City, customary statistical management reports without disclosure of the identity of any participant utilizing the program services." However, no performance measures or reporting requirements were included in the contract. As such, OHR took on the potential risk of not having the ability to adequately evaluate the contractor's performance.

Further, ComPsych provides performance reports on a monthly, quarterly, and annual basis. OHR reviews these reports to evaluate the contractor's performance, which takes OHR staff approximately ten hours a year. Additionally, one performance measure included within the reports is "satisfaction," and is tracked through surveys sent out by ComPsych. This measure is only reported as the total of all of ComPsych's business, not specifically for the City. By relying solely on reports prepared by the contractor and failing to independently analyze key performance measures such as "satisfaction," OHR is limited in determining the effectiveness of the contractor's ability to meet the needs of employees.

The Mayor's Office and OHR failed to understand the needs and objectives of current service delivery, which would have allowed the agencies to make an informed comparison to private sector provision. Additionally, OHR did not define performance measures within the contract and monitor contractor performance through multiple techniques, impacting OHR's ability to demonstrate the effectiveness of the contractor.

Public Works Outsources Project Management—In 2008, Public Works entered into a four-year contract with CH2M HILL for the management of the Better Denver Bond Program (BDBP) for $12.6 million. CH2M HILL was responsible for managing the bond projects in addition to providing the City with the expertise and infrastructure to manage its own capital projects in the future. Specifically, the expertise that CH2M Hill would provide

included two main components: the Primavera System, a database to track the BDBP project progress and any changes to the projects, and the Program Resource Office (PRO).[25] The PRO was established within Public Works to manage capital projects not only for Public Works but also for other agencies such as the Department of Parks and Recreation and the Department of General Services.

Since the end of the original contract, three amendments have been signed to increase CH2M HILL's contract amount by 65 percent to $20 million. These amendments allowed the consultant to manage residual bond projects that were added to BDBP because of bond savings.[26] Even though CH2M HILL already transferred program management expertise to the PRO, Public Works has decided to retain the consultant's services through June 2016. In addition, Public Works management stated that evaluations are not conducted at the end of a project or contract. Without conducting an evaluation of cost and performance, Public Works cannot demonstrate whether decisions to outsource or insource program management are fully informed and can result in increased costs and duplication of project management efforts.

Without a Privatization Framework in Place, City Agencies Cannot Ensure That Privatization Will Result in Beneficial Outcomes

Due to a lack of a privatization framework, City leadership may be subjecting itself to inherent risks already associated with privatizing, such as increased costs, lower service quality, decreased accountability and transparency, and negative impacts on employees.

Without the clear guidance of a privatization framework that includes elements such as conducting a cost-benefit analysis and monitoring performance to inform both initial and future decisions to privatize, City agencies cannot ensure that decisions to privatize will result in beneficial outcomes. However, in the absence of clear guidance, some agencies have proactively assessed the need for privatized functions and services. For example, the Office of the Municipal Public Defender and Denver International Airport have insourced previously privatized functions after conducting thorough analyses.

In an effort to provide added clarity for agencies, the Mayor should develop a framework for privatization activities that includes the following elements:

- Cost-benefit analysis completed prior to making the decision to privatize
- Qualitative and quantitative performance measurements to be included in contracts
- Contract monitoring requirements that include annual cost and performance evaluation

[25] The Primavera System is a proprietary product offered by CH2M Hill and the City is dependent upon CH2M Hill for any updates, upgrades, and maintenance to the system thus incurring additional future costs once the contract term expires.
[26] Authorized in 2008, the Better Denver Bond Program (BDBP) was created to fund $550 million in construction, improvement, and renovation projects of Denver roads, libraries, parks, recreation centers, child-care sites, hospitals, public safety, City buildings and cultural facilities. The BDBP program started with 215 bond projects and by the third quarter of 2009, the number of BDBP projects had increased to 283. As of February 2015, the BDBP grew to a total of 372 projects—forty-one are still in progress and one has not started.

- Reporting requirements for contractor performance
- Training for agency personnel involved in the contracting process

In addition, the Mayor should leverage the Budget and Management Office (BMO) to ensure that agencies are implementing the privatization framework and ensure they are reporting on privatization activities. BMO should receive the annual contract evaluations to inform future budgetary decisions and to demonstrate if the privatized function provided the City with the intended benefits. Finally, the Mayor should report annually on the activities of privatized functions to City Council, in alignment with the Mayor's 2015 priority to deliver the highest quality service at the lowest possible cost and the goals of the Transparent Denver initiative. Such reporting will ensure a greater level of transparency and accountability for these decisions.

RECOMMENDATIONS

We offer the following recommendations to assist the City in developing a privatization strategy.

1.1 **Privatization Framework**—The Mayor should develop a framework for all City privatization activities that includes the following elements:

- 1.1.1 Cost-Benefit Analysis completed prior to making the decision to privatize
- 1.1.2 Establishing qualitative and quantitative performance measurements to be included in contracts
- 1.1.3 Contract monitoring requirements that include annual cost and performance evaluation
- 1.1.4 Reporting requirements to monitor and evaluate performance
- 1.1.5 Training for agency personnel involved in the contracting process

1.2 **Reporting and Evaluation**—The Mayor should leverage the Budget and Management Office (BMO) to ensure that agencies are implementing the privatization framework and ensure agencies are reporting on privatization activities. BMO should receive the annual contract evaluations to inform future budgetary decisions and to demonstrate if the privatized function provided the City with the intended benefits.

1.3 **Transparency**—The Mayor should report annually on the activities of privatized functions to City Council, in alignment with the Mayor's 2015 priority to deliver the highest quality service at the lowest possible cost and the goals of the Transparent Denver initiative.

APPENDICES

Appendix A: City and County of San Francisco Nonprofit Contractor Review-Standard Monitoring Form: Fiscal & Compliance

Citywide Non-profit Fiscal and Compliance Monitoring

NONPROFIT CONTRACTOR REVIEW

STANDARD MONITORING FORM: FISCAL & COMPLIANCE

Contractor Name:	
City Contracts Reviewed:	
Department / Program	**Contract Name and Description**

For City Staff Use Only – Please indicate how this form is being used:

☐ **Self Assessment Submitted by Contractor:** *Send form to Contractor to complete and submit to the City for review; maintain file copy with lead department.*

Submit by: _____ *Submit to:* _____
(Due Date) (Name, Title, Department)

☐ **Site Visit Conducted by City Staff:** *Complete this form for use in writing up Monitoring Report Letter; maintain file copy with lead department.*

Date of Visit: _____ *Time Started:* _____ *Time Ended:* _____

	Name	**Dept/Division**

Assigned lead for this monitoring	
Additional staff (if applicable)	

1. Fiscal Review	
Tasks	**Comments**
1A. Agency-wide Budget ☐ a. Current (fiscal or calendar year) ☐ b. Shows income and expense by program ☐ c. Shows allocation of shared and indirect costs by program ☐ d. Shows fundraising separate from program expense ☐ e. Clearly identifies all revenue sources (City, state, federal) ☐ f. 15% of funding from non-City sources *(Guidance to City staff: request and review the agency-wide budget to certify above items; ask Contractor if there is any missing information.)*	
1B. Cost Allocation Procedures ☐ **a.** Process for cost allocation procedures and plan for shared costs is documented in a written narrative or in the footnotes of the current approved agency-wide budget ☐ **b.** Process for allocating shared program costs is consistent and reasonable ☐ **c.**. Process for cost allocation procedures and plan for indirect costs is documented in a written narrative or in the footnotes of the current approved agency-wide budget ☐ **d.** Process for allocating indirect costs is consistent and reasonable *(Guidance to City staff: request and review the agency-wide budget or written cost allocation narrative to certify the above.)*	

1C. Audited Financial Statements ***As Applicable (Per Departmental Requirements):*** ☐ a. Complete: all sections and statements included; opinion and other audit letters are signed ☐ b. Unqualified opinion ***For Organizations which received a Management Letter:*** ☐ c. Management letter has been signed by the audit firm ☐ d. For any prior year findings, the Contractor has provided you with a reasonable explanation of how the Contractor has corrected all the findings ***For Organizations which had A-133 Audit:*** ☐ e. No material weaknesses mentioned ☐ f. No current findings and/or questioned costs ☐ g. For any prior year findings, the Contractor has provided you with a reasonable explanation of how the Contractor has corrected all the findings *(Guidance to City staff: Check departmental requirements to determine applicability. If applicable, request and review the Contractor's external audit, including the management letter if available (a-d); an A-133 audit should have been conducted if the Contractor spent over $500,000 in federal funds (e-g).)*	

1. Fiscal Review	
Tasks	**Comments**
1D. Tax Form ☐ **a.** Federal 990 return filed for most recent tax year or request for extension submitted on time *(Guidance to City staff: "on time" is 4.5 months after the close of the fiscal period, although extensions are allowed; date of submission is on page 9.)*	

1E. Fiscal Policies & Procedures ☐ **a.** Current (updated within the past two calendar years or to reflect monitoring/audit recommendations) In writing, contains at a minimum: ☐ b. Internal controls (safeguarding of assets, authorization of transactions, reconciliation of accounting records) ☐ c. Financial reporting ☐ d. Accounts payable ☐ e. Accounts receivable ☐ f. Petty cash ☐ g. Payroll *(Guidance to City staff: request and review fiscal policy and procedures to certify above items.)*	
1F. Financial Reports **Balance Sheet (a.k.a. Statement of Financial Position):** ☐ a. Current (as of the last four months, at least) ☐ b. Overall cash balance is positive ☐ c. Current assets exceed current liabilities by 2 to 1 ☐ d. Current bank reconciliation (as of the last four months, at least) ☐ **Profit and Loss Statement (a.k.a. Statement of Activity):** ☐ e. Current (as of the last four months, at least) ☐ f. Shows year-to-date (YTD) income and expense by program/ contract/ funding source, including indirect costs g. Year-to-date net income is either a positive number or the Contractor provides a sound explanation of how it will be positive by the end of the fiscal year *(Guidance to City staff: request and review the Contractor's most recent balance sheet, bank reconciliation, and profit and loss statement to certify the above items. Note that item 1Fb is strongly recommended but not required for City monitors to complete.)*	

1. Fiscal Review	
Tasks	**Comments**

1G. Invoices **Expenses:** ☐ **a.** Expenses tested on invoices have supporting documentation: credit card charges and/or petty cash expenditures are all documented with an original receipt and reasonably tie to the cost allocation plan. ☐ **b.** Contractor follows its policies for writing checks, credit card use, petty cash use, and/or reimbursement for expenses tested on invoices ☐ **c.** Tested expenses on invoices appear to be reasonably associated with the program budget **If Units of service contract (usually DPH contracts only):** ☐ **d.** Units of service provided are documented and agree with invoices **If payments to subcontractors are included on invoices:** ☐ **e.** Subcontractor authorized by contract ☐ **f.** Contractor paid its subcontractors' invoices per the schedule established in the subcontracting agreement and/or prior to receiving City reimbursement for the services delivered ☐ **g.** Subcontractor invoices show basis for work billed as performed (units of service, hours, reimbursable costs) *(Guidance to City staff: test selected expenses on selected invoices, requesting documentation and explanation from Contractor as needed (a-d); request and review subcontracting agreement & invoices as needed for select months (e-g).)*	
1. FISCAL REVIEW	
Tasks	**Comments**

1H. Payroll ☐ **a.** State (DE 9 and DE 9C) and federal (941) payroll tax returns were filed by the end of the month following the end of the quarter for monitoring months under review ☐ **b.** Employees paid with City funds listed on invoices checked in Section 1G above are listed on the DE 9 and DE 9C for the quarter(s) that includes the monitoring months under review ☐ **c.** Documentation that payroll taxes due were actually paid **Timesheets:** ☐ d. If employee time is paid by more than one source, it is recorded by funding source or program on timesheets ☐ e. Employee & supervisor signatures on timesheets in ink (etimesheets are acceptable) ☐ f. All changes to timesheet are initialed by supervisor and employee in ink (e-timesheets are acceptable) ☐ g. Timesheets of employees paid with City funds listed on invoices checked in Section 1G above list hours worked that are consistent with invoices *(Guidance to City staff: request and review the Contractor's DE 9, DE 9C, and 941 returns, payroll tax verification, bank statements, select employee timesheets, and payroll register/ journal for the months under review.)*	

2. COMPLIANCE REVIEW	
Tasks	**Comments**
2A. Board Minutes ☐ **a.** Minutes show that if a paid City employee or City commission member is on the Board, he or she did not vote on items related to City contracts with their affiliated City department (excluding vote on Agency-Wide Budget) ☐ b. Minutes show that if the Executive Director is a member of the ☐ Board, he or she is a non-voting member ☐ c. Minutes show current agency-wide budget approved d. Minutes show that financial reports are shared with the Board on a regular basis *(Guidance to City staff: request and review the Board roster and minutes.)*	

Does the Contractor receive at least $250,000 in City funds? YES NO If *YES*, the Sunshine Ordinance applies and monitor should answer 2B, 2C and 2D below. **If *NO*, Monitor should skip 2B, 2C and 2D below and proceed directly to 2E.**

2B. Board Meetings ☐ a. At least two meetings with quorum status are open to the public each year ☐ b. These two meetings are announced to the general public at least 30 days in advance through the SF Public Library and the Clerk of the Board of Supervisors *(Guidance to City staff: request Contractor to show minutes and other relevant documents to certify above items.)*	
2C. Public Access to Records ☐ **a.** Contractor acknowledges that, per the Sunshine Ordinance, it must maintain and make available for public inspection (1) most recent budget, (2) most recently filed State and federal tax returns, and (3) any financial audits and performance evaluations performed by or for the City pursuant to a City contract *(Guidance to City staff: confirm Contractor's adherence to the above requirements.)*	
2D. Client Representation on Board ☐ **a.** By-laws include requirements for client representation on Board, or Contractor makes other good –faith efforts to ensure client representation *(Guidance to City staff: it is sufficient to ask Contractor to disclose information.)*	

2. COMPLIANCE REVIEW	
Tasks	**Comments**

2E. Subcontracts (includes fiscal sponsors & fiscal intermediaries) ☐ **a.** Documentation that procurement procedures in the Contractor's fiscal policies and procedures were followed by Contractor to select subcontractors (if applicable) ☐ **b.** Legally binding agreements between Contractor and subcontractors are valid and current, and include scope of work/deliverables ☐ **c.** Documentation that contractor regularly monitors fiscal and programmatic performance of subcontractor (e.g. copies of subcontractor's fiscal documents and invoices) *(Guidance to City staff: request Contractor to explain using specific examples and documents in order to certify the above items.)*	
2F. Licenses ☐ a. Site licenses required by City contracts are available, verified and current ☐ b. Staff licenses required by City contracts are available, verified and current *(Guidance to City staff: request to see copies of licenses to certify above items.)*	
2G. Personnel Policies ☐ **a.** Written and current personnel/employee manual, including: - Equal Employment Opportunity - Harassment and Discrimination - Reasonable Accommodation - ADA - Grievance Procedures ☐ b. Evidence that staff were trained regarding personnel policies c. Documentation of the following is maintained on file: - Job description - Employment application or résumé - Employment confirmation or letter of hire - Salary information including adjustments - Verification of employee orientation - Annual TB clearance (required for some City contracts; Check with funding departments) - Fingerprinting (required for children's services) *(Guidance to City staff: request to see manual, documentation that staff have been trained, and check personnel files to certify above items.)*	
2. COMPLIANCE REVIEW	
Tasks	**Comments**

2H. Emergency Operations Plan ☐ a. Written emergency operations plan ☐ b. Plan contains contingency planning, including an alternate site, if needed ☐ c. Staff and volunteers were trained within the last year on the emergency plan ☐ d. At least one fire drill and one earthquake drill have been conducted in last year ☐ e. Elevator permit is current (if building owned by the Contractor) ☐ f. All sites have received fire inspections (if required) *(Guidance to City staff: request and review plan, permits, and inspection certifications if required; it is sufficient to ask Contractor to disclose information regarding training and drills (c and d).)*	
2I. Americans with Disabilities Act (ADA) ☐ a. Written policies and procedures to allow people with disabilities to benefit from services and containing an agency-wide ADA grievance procedure ☐ b. Staff is trained regarding Contractor's ADA policies and procedures *(Guidance to City staff: request to see policies and procedures to verify item a; it is sufficient to ask Contractor to disclose information regarding b.)*	
2J. Data Universal Numbering System (DUNS) ☐ a. Demonstration of registered DUNS number	

3. GOVERNANCE REVIEW	
For FY 13-14, monitoring staff will review governance best practices with contracted agencies, identifying areas of strength and areas for improvement. Deviation from these best practices will not be considered monitoring findings in the Monitoring Report Letter; however as important indicators of healthy nonprofits, they will be tracked in a separate section of the report. Monitoring staff should review and discuss with agency representatives.	
Tasks	**Comments**

3A. Board of Directors Best Practices ☐ **a.** Assist with the raising of funds ☐ **b.** Participate in annual giving to agency ☐ **c.** Achieve quorum at every meeting ☐ **d.** Conduct an Executive Director performance review annually ☐ **e.** Bylaws define term limits, quorum, committee structures, and voting/decision-making process ☐ **f.** Board leadership positions filled **g.** Conduct recruitment (including identifying and recruiting potential board members) at least once in the past year	

SIGNATURES	
Lead Department Monitor Signature & Title	**Date**
FOR SELF ASSESSMENTS ONLY: *I, the authorized representative for the contractor mentioned above, state that the information provided is true and correct to the best of my knowledge.*	
Contractor Representative Signature & Title	**Date**

Appendix B: City of Austin Vendor Evaluation Form

CONTRACTOR PERFORMANCE EVALUATION (P/S/D*)

Contract Management Department
City of Austin, Texas

I - Contract / Project Data

Project Name:			
CIP ID Number:			
Contract Number:			
Contractor:			
Contractor's Primary Contact:			
Contractor's Address:			
Contractor's Email Address:			
Inspector:			
Project Manager:			
Initial Contract Amount:		Final Contract Amount:	
Original Contract Time:		Final Contract Time:	
Number of Change Orders:		% Change Order Costs:	
Liquidated Damages Assessed:			

II - Performance Evaluation Summary

Evaluation Criteria	Available	Score
1. Quality of Work Performed	1	0
a) The Contractor performed and completed the work in a good and workmanlike manner in accordance with the contract documents.		
b) Changes in the Work were performed under applicable provisions of the Contract Documents.		
c) Contractor maintained a record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. Upon substantial completion of the Work, these record documents, samples, and shop drawings were promptly delivered to the Owner's Representative.		
2. Timeliness of Performance	1	0
a) The Contractor successfully completed the Work within the Contract Time and by the Contract completion date.		
b) Contractor successfully coordinated the preparation and processing of submittals with performance of construction activities; and transmitted each submittal sufficiently in advance of performance of related construction activities to avoid delay.		
3. Wage Compliance & Required Job Postings	1	0
a) The contractor paid workers no less than the wage rates established in Section 00830, and maintained weekly payroll reports as evidence thereof, in accordance with the requirements of Chapter 2258 of the Texas Government Code.		
b) The Contractor posted all required postings and notices in English and Spanish at one or more conspicuous locations on the job site.		
4. Compliance with Minority and Women-Owned Business Procurement Program	1	0
The Contractor complied with the City of Austin's MBE/WBE Procurement Program requirements; including but not limited to utilization of subcontractors identified to perform work and adherence to requirements associated with post-award changes, approved substitutions, and terminations.		

Evaluation Criteria	Available	Score
5. Invoicing and Payments	1	0
a) Applications for payment were accurate and complete, covering the Work completed as of the date of the Application, inclusive of all required attachments and backup data, and submitted on a timely basis reflective to the contract requirements		
b) General Contractor made payments to its subcontractors within 10 days of receipt of payment from the City		
6. Compliance with Laws and Regulations	1	0
a) (*** GENERAL ***) The Contractor gave notices and complied with all laws and regulations applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof.		
b) (*** ENVIRONMENTAL***) The Contractor planned and executed its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution complied with laws and regulations applicable to furnishing and performing the work specified in the contract.		
c) (*** TRAFFIC CONTROL***) The Contractor conducted his Work to interfere as little as possible with public travel whether vehicular or pedestrian. Whenever it was necessary to cross, obstruct or close roads driveways and walks whether public or private, the Contractor provided and maintained suitable safe bridges, detours or other temporary measures to accommodate public and private travel.		
d) (*** LIMITS OF CONSTRUCTION (LOC) ***) The Contractor confined construction equipment, the storage of materials and equipment and the operations of workers to the site and land areas identified in and permitted by the contract documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements.		
e) (*** TX HISTORICAL COMMISSION ***) The Contractor took reasonable precaution to avoid disturbing primitive records and antiquities of archeological, paleontological or historical significance. No objects of this nature were disturbed without written permission of Owner and Texas Historical Commission.		
7. Safety and Protection	1	0
a) The Contractor took all necessary precautions for the safety of and provided the necessary protection to prevent damage, injury or loss.		
b) The Contractor initiated, maintained and supervised all safety precautions and programs in connection with the Work.		
c) Contractor complied with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and erected and maintained all necessary safeguards for such safety and protection.		

**Note: All evaluation criteria are subject to Probation, Suspension, and Debarment action for failure to adhere to stipulations of the contract.*

Composite Assessment *0*

Comments: *[Please notate any narratives (i.e., project diaries, inspectors' reports, other pertinent information, etc.) used in determining performance level per Evaluation Criteria]*

PLEASE NOTE: CONTRACT REFERENCES IN THIS DOCUMENT ARE NOT INTENDED, AND SHOULD IN NO MANNER, PRE-EMPT OR TAKE THE PLACE OF, THE CURRENT CONTRACT. PLEASE REFER TO THE CONTRACT DOCUMENTS FOR SPECIFIC STIPULATIONS.

Evaluation Criteria	Available	Score
COA Project Manager (Signature/Date) _____		
COA Project Manager's Supervisor (Signature/Date) _____		
COA Inspector (Signature/Date) _____		
COA Inspector's Supervisor (Signature/Date)		

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
1	**Quality of Work Performed**			PM & CID	
	(This section evaluates the Contractor's adherence to the contracted quality requirements; and compliance with minimum standards of material and workmanship in order to insure the performance of the facility according to the design, the management of changes in the Work, and the successful fulfillment of contractual requirements associated with Record Documents.) ***Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract, requiring the execution of the Performance Bond - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010*** Evaluation Measure(s) / Criteria:				
(a)	**The Contractor performed and completed the work in a good and workmanlike manner in accordance with the contract documents *[Sec. 00700 - 6.13.2]***			PM & CID	
	An affirmative answer requires that the Contractor successfully completed all contract requirements associated with quality, including but not limited to: ■ All materials and equipment was of good quality and new (including new products made of recycled materials, pursuant to Sec. 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. [Sec. 00700 - 6.2.3] ■ Work conforms to the plans & specifications. [Sec. 00700 - 6.13.1] ■ Work was performed in a good and workmanlike manner in accordance to the contract documents. [Sec. 00700 - 6.13.1] ■ Work is not defective. [Sec. 00700 - 6.13.1] ■ The Contractor promptly corrected any defective work or submitted a plan of action, detailing how the deficiency will be corrected within the time frame identified in the notice of defective work. [Sec. 00700 - 13.6] ■ Contractor paid all claims, costs, losses and damages caused by or resulting from correction or removal of defective work (including but not limited to all costs of repair or replacement of work of others). [Sec. 00700 - 13.6] ■ All materials and equipment was applied, installed, connected, erected, used, cleaned and conditioned in accordance with instruction of the applicable Supplier, except as otherwise provided in the Contract Documents. [Sec. 00700 - 6.2.3] ■ If required by Owner's Representative, Contractor furnished satisfactory evidence reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. [Sec. 00700 - 6.2.3]				
(b)	**Changes in the Work were performed under applicable provisions of the Contract Documents. *[Sec. 00700 - 10.1.2]***			PM, CID & CMD	
	An affirmative answer requires the contractor successfully performed all contract requirements including but not limited to: ■ Unless Owner's representative granted an extension, Contractor's proposals for changes in the Contract Amount and/or Contract Time were submitted within ten (10) business days of request by Owner's Representative, including impacts to the approved Progress Schedule. [Sec. 00700 - 10.1.2]				

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
(c)	**Contractor maintained a record copy of all Drawings, Specifications, Addenda, Change orders, Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. Upon Substantial Completion of the Work, these record documents, samples and shop drawings were promptly delivered to the Owner's Representative.** ***[Sec. 00700 - 6.10]***			PM, CID & CMD	
2	**Timeliness of Performance**			PM & CID	
	(This section evaluates the Contractor's successful completion of the Work within the contract completion date/time; and performance with regard to adherence to contract schedule requirements, as well as the Contractor's preparation and timely submission of necessary documents.) [Sec. 00700 - 2.4.2 , 2.6 Initially Acceptable Schedule & 6.3 Progress Schedule & Sec. 1300 - Submittals] ***Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract, requiring the execution of the Performance Bond - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010*** Evaluation Measure(s) / Criteria:				
(a)	**The Contractor successfully completed the Work within the Contract Time and by the Contract completion date.** An affirmative answer requires that the Contractor successfully completed all contract requirements associated w/ timeliness, including but not limited to: ■ Contractor submitted to the owner for review & approval, or acceptance as appropriate, a Baseline Schedule using Microsoft Project software to confirm that all Work will be completed within the Contract Time. (******* due no later than five working days prior to the preconstruction meeting *******) [Sec 00700 - ■ The Baseline Schedule contained sufficient detail to indicate the contractor properly [Sec. 00700 - 2.4.2]: a) identified required work elements and tasks b) provided sufficient and proper workforce and integration of subcontractors c) provided sufficient resources and considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract Time. ■ Commenced work on the date specified in the written "Notice to Proceed" issued by the Owner. [Sec. 00700 - 1.30] ■ Consistently advanced the progress of the Work in accordance w/ the Critical path of the Work and the Contract Time and Milestones. [Sec. 00700 - 6.3] ■ Adhered to the adjusted baseline schedule. [Sec 00700 - 6.3] ■ Contractor efficiently scheduled and coordinated the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor in order to avoid any delays or inefficiencies in the prosecution of the Work. [Sec. 00700 - ■ Reached Substantial Completion within the timeline required in the contract. [Sec. 00700 - 1.40, 6.3] ■ Reached Final Completion within the timeline established in the contract. [Sec. 00700 - 1.24, 6.3] ■ Contractor or its Surety did not have to pay liquidated damages for the failure of the Contractor to timely complete the Work or any portion thereof within the Contract time. [Sec. 00700 - 6.18]			PM & CID	
(b)	**Contractor successfully coordinated the preparation and processing of submittals with performance of construction activities; and transmitted each submittal sufficiently in advance of performance of related construction activities to avoid delay.**			PM & CID (w/ A/E support as needed)	

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
	An affirmative answer requires that the Contractor provided all contracted submittals according to contract timelines and without adversely impacting the project cost or schedule. Submittals may include: *(*** Note: This list is provided as an aid to the evaluator(s), but it is not intended to be all inclusive. The PM shall refer to the Technical Specifications for additional requirements.***)* ■ Contractor's Construction Schedule [Sec. 01300 - 3.2] ■ Submittal Schedule [Sec. 01300 - 3.3] ■ Construction Sequence Plans [Sec. 01300 - 3.4] ■ Shop Drawings [Sec. 01300 - 3.5 & Technical Specifications] ■ Product Data [Sec. 01300 - 3.6 & Technical Specifications] ■ Samples [Sec. 01300 - 3.7 & Technical Specifications] ■ Quality Assurance and Quality Control Submittals [Sec. 01300 - 3.8 & Technical Specifications] ■ Design data, certifications, manufacturer's instructions, manufacturer's field reports, materials test results, field testing and inspection reports, and other QC submittals as required under other sections of the specifications. [01300 - 3.8.A] ■ Certifications [01300 - 3.8.B] *(where other sections of the specifications require certification from the manufacturer or responsible engineer that a product, material, or installation complies with specified requirements)* ■ Calculations [01300 - 3.8.C] *(prepared and stamped by a Professional Engineer registered in the State of Texas)* ■ Concrete, Controlled Low Strength Material (CLSM), Asphalt Stabilized Base and Hot Mix Asphaltic Concrete Mix Designs and Substantiating Test Data. [01300 - 3.8 D] *(Each separate batch plant supplying ASB, HMAC and/or concrete shall submit mix designs for review)* ■ Technical Submittals [Sec. 01300 - 3.9 & Technical Specifications] ■ Construction Record Drawings [Sec. 01300 - 3.11] ■ Construction Diaries [Sec. 01300 - 3.12] ■ Temporary Facilities Plan, if applicable [Sec. 00700 - 2.4.2; Sec. 01300; Sec. 01500 - Temporary Facilities] ■ Texas Registered Professional Land Surveyor assignment letter, if applicable [Sec. 00700 - 2.4.2]				
3	**Wage Compliance & Required Job Postings and Notices**			CMD & CID	
	(This section evaluates the Contractor's compliance with applicable prevailing wage stipulations and requirements, and evaluates the Contractor's performance with regards to providing information to their employees and the public in posting required documents at the job site.) [Sec.830, Wage Rates and Payroll Reporting (Texas Government Code 2258); Sec. 830; Sec. 810, Article 6, 6.7.4; Div. 1 GCs, Sec. 1500 - 3.21] ***Note: Wage determination requirements are imposed by city, state, and federal regulations in accordance with the Davis-Bacon Act.*** ***Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract relative to the approved schedule - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010*** Evaluation Measure(s) / Criteria:				
(a)	***[Findings captured/noted at point-of-occurrence]*** **The contractor paid workers no less than the wage rates established in Section 00830, and maintained weekly payroll reports as evidence thereof, in accordance with the requirements of Chapter 2258 of the Texas Government Code. *[Sec. 00700 - 6.2.1]***			CMD	
	The following criteria will be considered by CMD in the measurement of the Contractor's performance in the area of Wage Compliance: - Wage dollar amount discrepancy - Timeliness of response and diligence to resolve (responsiveness in mitigating) - # of VCAPs, severity, type of VCAP (administrative vs. wage compliance), cause, Prime vs. Sub, and historical record (trends)				

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
(b)	**The Contractor posted all required postings and notices in English and Spanish at one or more conspicuous locations on the job site.** (In the case of projects with multiple sites, the notices and postings must be displayed at each site.) [Sec. 01500 - 3.21]			CMD & CID	
	An affirmative answer requires that the Contractor posted all required notices on the job site, including: ■ Baseline Schedule for project identifying when all subcontractors will be used ■ Wage Rates as required under Section 00830 ■ Texas Commission on Environmental Quality (TCEQ) "Construction Site Notice", if applicable, as required or the required Texas Pollution Discharge Elimination System (TPDES) information ■ OSHA poster "Job Safety and Health: It's the Law" ■ City of Austin Rest Break Ordinance Sign [Sec. 00700 - 6.11.6.3] ■ Texas Payday Law Poster ■ Texas Workers Compensation (TWC) notice ■ TWC Employer's Notification of the Ombudsman Program to Employees ■ Department of Labor (DOL) - The Uniformed Services Employment and Reemployment Rights Act (USERRA) ■ EEOC Equal Employment Act and the Americans with Disabilities Act (ADA) ■ Fair labor Standards Act (FLSA) Minimum Wage Poster - Employment Standards ■ If applicable: Employee Rights for Workers with Disabilities/Special Minimum Wage Poster - Employment Standards ■ "Your Rights Under the Family and Medical Leave Act (FMLA)" Additional Postings Required for Federally Funded Projects: ■ "Employee Rights Under the Davis-Bacon Act" ■ Applies to U.S. Department of Transportation (USDOT)/Federal Highway Administration (FHWA) funded projects: "Notice of False Statements Concerning Highway Projects" ■ Applies to USDOT/FHWA funded projects: "Contractors EEO Policy"				
4	**Compliance with Minority and Women Owned Business Procurement Program** *(This section evaluates the Contractor's compliance with the Austin City Code, Chpt. 2-9A, MBE/WBE Procurement Program - Construction Services)* ***Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract, requiring the execution of the Performance Bond - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010*** Evaluation Measure(s) / Criteria:			PM & SMBR	
	The Contractor complied with the City of Austin's MBE/WBE Procurement Program requirements; including but not limited to utilization of subcontractors identified to perform work and adherence to requirements associated with post-award changes, approved substitutions, and terminations.			PM & SMBR	
	An affirmative answer requires that the Contractor successfully performed all contract requirements associated with the City of Austin's MBE/WBE Procurement Program for Construction Services, including but not limited to: ■ The Contractor presented a work schedule of when the MBE/WBE subcontractors shall be utilized at the job site. [Austin City Code, 2-9A-22-B-1, Post Award Compliance Procedures] ■ Contractor provided subcontractor payment information with each request for payment submitted to the City. [Austin City Code, 2-9A-22-C]				

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
	■ The Contractor secured SMBR Director's written approval prior to making changes to the compliance plan that includes additions, deletions, contract changes and/or substitution of a subcontractor listed in the compliance plan. [Austin City Code, Chpt. 2-9A-23, Post Submission Changes to the Compliance Plan] ■ The Contractor followed the procedures set forth in the ordinance for post-award changes to the scope of work. [Austin City Code, Chpt. 2-9A-23 Post Submission Changes to the Compliance Plan, 2-9A-24, Post Award Changes to the Scope of Work]				
5	**Invoicing and Payments**			PM & PWD Accounts Payable, CID / Complaints	
	(This section evaluates the Contractor's performance with regard to submission of accurate and complete payment applications; prompt payment of subcontractors at all levels, and adherence to contract requirements associated with compensation.) [Reference Sec. 00700, Article 14]. Evaluation Measure(s) / Criteria:				
(a)	**Applications for payment were accurate and complete, covering the Work completed as of the date of the Application, inclusive of all required attachments and backup data, and submitted on a timely basis reflective to the contract requirements** *[Sec. 00700 - 14.1.1 and 14.1.6]*			PM & PWD Accounts Payable, CID	
	Applications for payment shall include: ■ Updated Progress Schedule ■ Monthly subcontractor report ■ any other documentation required under the Supplemental General				
(b)	**General Contractor made payments to its subcontractors within 10 days of receipt of payment from the City** *[*Tx. Prompt Payment Law*; Sec. 00700 - Article 6, 6.4.7; Texas Govt. Code, Title 10 - Ch. 2251, Sec. 2251.022]*			PM & PWD Accounts Payable, CID / Complaints	
6	**Compliance w/ Laws and Regulations**			PM, CID & PDR (w/ A/E support as needed)	
	(This section evaluates the Contractor's compliance with all laws and regulations applicable to furnishing and performing the work specified in the contract.) [Sec. 00700 - 6.7] ***Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract, requiring the execution of the Performance Bond - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010*** Evaluation Measure(s) / Criteria:				
(a)	**(*** GENERAL ***) The Contractor gave notices and complied with all laws and regulations applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. [Sec. 00700 - 6.7.1]**			PM & CID (w/ A/E support as needed)	

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
(b)	**(*** ENVIRONMENTAL***) The Contractor planned and executed its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution complied with laws and regulations applicable to furnishing and performing the work specified in the contract. [Sec. 0700 - 6.7.2]**			PM, CID & PDR (EV Inspection)	
	An affirmative answer requires that the Contractor gave all notices and complied with all laws and regulations regarding clean water, air, and earth ■ The contractor fulfilled their contractual obligations with regards to compliance with the Texas Pollution Discharge Elimination System (TPDES) permitting requirements, for the installation and maintenance of temporary and permanent erosion and sediment controls, and storm water pollution prevention measures throughout the construction period. [Sec. 00810 - 6.7.4]				
(c)	**(*** TRAFFIC CONTROL***) The Contractor conducted his Work to interfere as little as possible with public travel whether vehicular or pedestrian. Whenever it was necessary to cross, obstruct or close roads driveways and walks whether public or private, the Contractor provided and maintained suitable safe bridges, detours or other temporary measures to accommodate public and private travel. [Sec 01500 - 3.20, Sec. 01550]**			PM, CID & ATD (ROW Mgmt)	
(d)	**(*** LIMITS OF CONSTRUCTION (LOC) ***) The Contractor confined construction equipment, the storage of materials and equipment and the operations of workers to the site and land areas identified in and permitted by the contract documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements. [Sec 00700 - 6.9.1, Use of Premises]**			PM, CID & PDR (EV Inspection)	
(e)	**(*** TX HISTORICAL COMMISSION ***) The Contractor took reasonable precaution to avoid disturbing primitive records and antiquities of archeological, paleontological or historical significance. No objects of this nature were disturbed without written permission of Owner and Texas Historical Commission. [Sec. 00700 - 4.2.4]**			PM & CID	
7	**Safety and Protection**			PM & CID (+ Risk Mgmt/ ROCIP staff as needed)	
	(This section evaluates the Contractor's performance in being responsible for initiating, maintaining, and supervising all safety precautions and programs associated with the Work.) [Sec. 00700 - 6.11; Sec. 01500 - 3.7] *Note: Contractor is subject to Probation, Suspension, Debarment action for failure to adhere to stipulations of the contract, requiring the execution of the Performance Bond - administered in accordance with COA Purchasing Office Probation, Suspension, Debarment Procedures for Vendors, 4/02/2010* Evaluation Measure(s) / Criteria:				
(a)	**The Contractor took all necessary precautions for the safety of and provided the necessary protection to prevent damage, injury or loss to:**			PM & CID (+ Risk Mgmt/ ROCIP staff as needed)	

Contractor Evaluation Worksheet	
Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
■ all persons on the work site or who may be affected by the Work [Sec. 00700 - 6.11.1.1] ■ all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and [Sec. 00700 - 6.11.1.2] ■ other property at the site or adjacent thereto, including but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction. [Sec. 00700 - 6.11.1.3]				
(b) **The Contractor initiated, maintained and supervised all safety precautions and programs in connection with the Work.** ***[Sec. 00700 - 6.11.1]***			PM & CID (+ Risk Mgmt/ ROCIP staff as needed)	
An affirmative answer requires that the Contractor complied with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss, and that the Contractor erected and maintained all necessary safeguards for such safety and protection. Safety measures may include but are not limited to: ■ Contractor designated in writing a qualified and experienced safety representative at the site whose duties and responsibilities include safety training, identifying and mitigating hazardous conditions and unsafe work practices; and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the project. [Sec. 00700- 6.11.3] *(***Note: The Safety Representative shall report directly to a company executive, not an on-site project manager. Additional requirements associated w/ the safety representative are shown in Sec. 00700 & 00810 6.11.3.***)* ■ The Safety representative verified that all construction workers on the site, whether employed by the Contractor or subcontractors, completed the OSHA 10-Hour Construction Industry Training Outreach Program, and ensured that workers completed all OSHA specific or other training needed to perform their job assignments. [Sec. 00700 - 6.11.3.2 & 6.11.3.3] ■ Contractor complied with all provisions of the Project Safety Manual / Plan and Site Security Plan. [Sec. 00810 - 6.11.2 & Sec. 00700- 6.11] ■ The Contractor and all of its subcontractors are familiar with and complied with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") [Sec. 00700 - 6.11.2] ■ Before commencing any excavation which will exceed a depth of 5 feet (5'), the Contractor provided the Owner with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications included a certification from a Texas licensed professional engineer indicating full compliance with the OSHA provisions. [Sec. 00700 - 6.11.2] ■ Hazard Communication Programs: Contractor coordinated any exchange of material safety data sheets (MSDS) or other hazard communication information required to be made available to or exchanged between or among employees at the site in accordance with laws and regulations [Sec. 00700 - 6.11.4] ■ Emergencies: The Contractor complied with the applicable contract requirements in emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto. [Sec. 00700 - 6.11.5] ■ Rest Breaks: Contractor complied with the City of Austin's Rest Break Ordinance. [Sec. 00700 - 6.11.6 & Ordinance No. 20100729-047] ■ Contractor did not load nor permit any part of any structure to be loaded in any manner that will endanger the structure. [Sec. 00700 - 6.9.3]				

Contractor Evaluation Worksheet

Project Name:	0
CIP ID#:	0
Contract Number:	0
Contractor Name:	0

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

	Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
(c)	**Contractor complied with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and erected and maintained all necessary safeguards for such safety and protection. *[Sec. 00700 - 6.11.2]***			PM & CID (+ Risk Mgmt/ ROCIP staff as needed)	
				TOTAL	***0***

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses,*

If any answer is "No," or any additional details are needed to support responses, provide explanation below.

Comments:

*****NOTE: Reference to contract sections shown in this worksheet are based on the City of Austin's Standard Construction Bid Documents / Contract as of April 22, 2013. General areas of interest being evaluated may be located in other sections of the contract. This document represents the evaluation of the totality of performance.**

Evaluation Performed by:

(Signature) :	
(Printed Name, Title & Date) :	

PLEASE RETURN FINAL EVALUATION TO:

Contractor Evaluation Worksheet				
Project Name:	0			
CIP ID#:	0			
Contract Number:	0			
Contractor Name:	0			

***Note: For evaluation criteria that is "Not Applicable (N/A)" to project, type **"N/A"** in "Yes or N/A" column, 1 pt.; for "Yes," and "No" responses, type **"X"** in appropriate column.*

Evaluation Criteria	Yes or N/A** (1 point)	No (0 points)	Reviewing Party	Score
CONTRACT MANAGEMENT DEPARTMENT 505 BARTON SPRINGS RD., 10TH FLOOR, STE #1045 AUSTIN, TEXAS 78704				

AGENCY RESPONSE

DENVER
THE MILE HIGH CITY
Michael B. Hancock
Mayor

DEPARTMENT OF FINANCE
CARY KENNEDY
CHIEF FINANCIAL OFFICER

201 W. Colfax Avenue, Dept 1010
Denver, CO 80202
p: (720) 913-1514
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June 9, 2015

Mr. Kip R. Memmott, MA, CGAP, CRMA
Director of Audit Services
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. Memmott:

The Office of the Auditor has conducted a performance audit of Privatization Practices.

This memorandum provides a written response for each reportable condition noted in the Auditor's Report final draft that was sent to us on May 19, 2015. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 1
The City Lacks a Sound Privatization Framework and Cannot Demonstrate the Benefit of Privatized City Functions and Services

RECOMMENDATION 1.1
Privatization Framework—The Mayor should develop a framework for all City privatization activities that includes the following elements:

1.1.1 Cost-Benefit Analysis completed prior to making the decision to privatize
1.1.2 Establishing qualitative and quantitative performance measurements to be included in contracts
1.1.3 Contract monitoring requirements that include annual cost and performance evaluation
1.1.4 Reporting requirements to monitor and evaluate performance
1.1.5 Training for agency personnel involved in the contracting process

Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 60 to 90 days)	Name and phone number of specific point of contact for implementation
Agree	90 days	Brendan Hanlon

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Narrative for Recommendation 1.1
The Mayor's Office in conjunction with the Department of Finance will develop a structure to review specific functions and services and determine if it is in the best interest of the City to contract with an external party. We will develop thresholds and criteria that include dollar levels and duration that will inform when a proposed function or service should be reviewed for outsourcing or privatization. Not all contracts will fall in this category. This structure will be incorporated into the annual budget process and will include a cost-benefit analysis, establishment of qualitative and quantitative performance measures, contract monitoring, reporting and training where applicable.

RECOMMENDATION 1.2 **Reporting and Evaluation**—The Mayor should leverage the Budget and Management Office (BMO) to ensure that agencies are implementing the privatization framework and ensure agencies are reporting on privatization activities. BMO should receive the annual contract evaluations to ˙nform future budgetary decisions and to demonstrate if the privatized function provided the City with the intended benefits.		
Agree or Disagree with Recommendation	**Target date to complete implementation activities (Generally expected within 60 to 90 days)**	**Name and phone number of specific point of contact for implementation**
Agree	Structure in 90 days, but reporting would be annually, during the budget cycle.	Brendan Hanlon

Narrative for Recommendation 1.2
As stated above, the structure will be incorporated into the annual budget process including reporting.

RECOMMENDATION 1.3 **Transparency**—The Mayor should report annually on the activities of privatized functions to City Council, in alignment with the Mayor's 2015 priority to deliver the highest quality service at the lowest possible cost and the goals of the Transparent Denver initiative.		
Agree or Disagree with Recommendation	**Target date to complete implementation activities (Generally expected within 60 to 90 days)**	**Name and phone number of specific point of contact for implementation**

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Agree	September 2015 (for some), but most September 2016.	Brendan Hanlon

Narrative for Recommendation 1.3
As stated above, the structure will be incorporated into the annual budget process, including reporting to City Council. While we will complete the structure and process this year, we have already kicked off the 2016 budget process. We will attempt to incorporate some reporting into the 2016 budget, but anticipate the entire structure, including training and reporting would be complete for the 2017 budget process.

Please contact Brendan Hanlon at 720-913-5510 with any questions.

Sincerely,

Cary Kennedy
Deputy Mayor and Chief Financial Officer

cc: Janice Sinden
Evan Dreyer
Gretchen Hollrah
Dave Edinger
Brendan Hanlon
Beth Machann
Scott Martinez

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