



## COUNTY LACKS FIRM BASIS FOR OUTSOURCING WORK; CHARTER REVISION RECOMMENDED

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### SUMMARY

Until 1978, the San Mateo County (County) Charter contained a provision that explicitly permitted the County Manager to contract for services outside the County workforce. During a Charter revision that same year, however, the provision was deleted. Since then, with no clear legal footing for outsourcing work, the County must comply with California Government Code, Section 31000, which limits outsourcing to “special services.”

With the County now proposing a significant new approach to its workforce that it calls the “Agile Organization,” the San Mateo County Civil Grand Jury (Grand Jury) looked into the need for a Charter revision that would allow unhindered outsourcing at the County Manager’s discretion. Currently, the two unions representing the majority of County employees are generally opposed to outsourcing work to private contractors.

The Grand Jury considers the ability to outsource to be a critical management tool that in the interests of efficiency and cost savings allows County management to hire contract workers as needed.

The Grand Jury finds that the County’s authority to outsource work to contractors is a point of contention with unions representing County employees, and that a Charter amendment is needed to put the County’s outsourcing right on firmer legal footing.

The Grand Jury recommends that the Board of Supervisors (Board) approve and submit a Charter amendment to the voters that would provide the County with the unequivocal ability to outsource.

### BACKGROUND

The County’s first Charter was adopted in 1932 and then amended 16 times over the next 46 years until June 1978 when the Charter was completely revised and renumbered for the first time since its adoption. In the course of that revision process, a provision that specifically permitted the County Manager to outsource work was deleted. The provision, found under Article V, Section 2 (f), read in pertinent part:

*In addition to other power and duties herein provided, it shall be the Duty of the County Manager, and he shall have the power: ...to employ, by and with the approval of the Board of Supervisors, experts and consultants to perform work and advise, in connection with any of the functions of the county, when economically advantageous.*

In a footnote regarding the dropped outsourcing provision, the 1978 Charter Review Committee vaguely noted that the aforementioned provision was already covered under the Charter’s Article V - Personnel section. While Article V contains provisions concerning classified and unclassified

employees, as well as provisions concerning the County's Civil Service Commission, it does not detail any provisions concerning outsourcing or the use of independent contractors to perform work that could otherwise be performed by County employees.

In an effort to clarify these issues, the Grand Jury investigated how the outsourcing provision was dropped from the original Charter and whether a new amendment should be adopted to grant the County Manager authority to outsource work if deemed economically and/or operationally beneficial.

## METHODOLOGY

In gathering information for this report, the Grand Jury referenced the following sources:

### Documents

- County Charter and amendments prior to 1978
- County Charter as revised in 1978
- Current County Charter
- Creating An Agile Organization, February 2013
- Various County media reports
- Joint letters from American Federation of State, County and Municipal Employees (AFSCME) and Service Employees International Union (SEIU) to the County

### Interviews

- The Grand Jury conducted interviews with representatives from the County Manager's Office, and the following County departments: Employee and Labor Relations, Public Works, Sheriff's Office, and Information Services Department (ISD).
- The Grand Jury conducted interviews with union representatives from AFSCME and SEIU.

### Board of Supervisors Meeting

- The Grand Jury attended a Board meeting where a presentation was made on the Agile Organization plan.

## DISCUSSION

### What is a Charter County?

The County is a charter county, meaning that its method of governance stems from a voter-approved charter unique to the County. Thus, the County's charter, rather than state law, defines its governing system for those matters specifically covered by the Charter.

The foreword to the 2010 County charter revision states:

*The general purpose of a county charter is to provide a measure of home rule to the counties of the state. Authority to adopt charters is conferred upon counties by Article XI, Section 7 1/2, of the Constitution of the State of California.*

*Such charters, when ratified by the voters of the county and accepted and filed by the Secretary of State, become the organic law of the counties relative to matters therein which are authorized by the State Constitution, and supersede all laws inconsistent therewith.*

## Role of the Charter Review Committee

A Charter is also a contract between the voters and the elected officials. The 1978 Charter Review Committee, in written comments during the review, said the charter is considered a “document where both government officials and citizens can find the ground rules clearly stated and logically organized.”

The Charter provides that it must be completely reviewed every eight years, with amendments made as needed if approved by a majority of the electorate. To this end, the Board convenes a 17-member review committee formed from appointees named by the Board and various county organizations. Upon the completion of its term, this Charter review committee submits proposed Charter revisions to the Board for consideration. Following public meetings and its consideration of the proposals, the Board may place all, some, or none of the proposed revisions on the ballot for voter approval.

The current Charter, first ratified in 1932, was last amended in 2012. Since 1978, however, no Charter review committee has recommended the adoption of a provision specifically permitting the County to outsource work when deemed financially beneficial. Nor has the Board approved placing any such measure before the voters.

## California Government Code

Without an explicit Charter outsourcing provision, the County has adhered to California Government Code, Section 31000, which states:

*The board of supervisors may contract for special services.... Such contracts shall be with persons specially trained, experienced, expert and competent to perform the special services.... The special services shall be in financial, economic, accounting, engineering, legal, medical, therapeutic, administrative, architectural, airport or building security matters, laundry services or linen services. They may include maintenance or custodial matters if the board finds that the site is remote from available county employee resources and that the county's economic interests are served by such a contract rather than by paying additional travel and subsistence expenses to existing county employees.*

Although the County already outsources certain work in various departments, ranging from ISD to the Health System to Public Works, the real problem is that because the language of Section 31000 does not expressly allow unchallenged outsourcing many government officials are more conservative in their use of contractors than they otherwise would be. The statute, for example, does not specifically mention information services work, which is constantly evolving, requiring the latest high-tech input. Rather, Section 31000 limits outsourcing to “special services” which lacks sufficient definition.

Now, however, through its proposed Agile Organization plan, to be discussed below in more detail, the County is actively seeking to expand its use of contractors. The decision is fueled in no small part because of anticipated financial savings to the County. For example, in discussing the advantages of using independent contractors, the Agile Organization plan concludes that hiring contractor workers will reduce “County short and long-term liability costs due to lack of benefit payments and pension contributions.”

## The Agile Organization

Arguing that rapid innovations in technology and communications are creating changing demands on the workplace, County management is calling for a dramatic overhaul in its workforce. To this end, the County Manager’s office has developed a plan entitled “Creating an Agile Organization.” Central to the plan is a reorganized and more flexible workforce, one designed in significant part to expand the use of fixed-term employees and outside contractors.

This plan, however, is opposed by two key unions that represent thousands of County employees. The union positions are detailed later.

A fundamental aspect of the Agile Organization plan calls for services to be provided through one of seven models:

1. Regular Employee
2. Term Employee<sup>1</sup>
3. Temporary/Extra-Help/Fellowships/Interns
4. Contractors
5. Volunteers
6. Self-Help<sup>2</sup>
7. Shared Services

Outsourcing work to independent contractors, euphemistically referred to as “external entities,” is detailed in the Agile Organization Plan under *Background/Criteria*:

*The Contractor work delivery option is presently used by County departments. The category consists of Community Based Organizations, Independent Contractors, and Freelancers. Depending upon the requirements of the assignment, the work performed may be done onsite or virtually. Due to the increase in connectivity and available technology, experts predict a steady increase in the number and type of knowledge workers who prefer the flexibility and independence of working as a contractor as opposed to an employee. The model would be used when:*

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<sup>1</sup> Limited term employment, with benefits (similar to regular) except a defined contribution retirement plan, rather than a defined benefit pension.

<sup>2</sup> Web-based/on demand services that connect the public to County services conveniently and efficiently, e.g., vote by mail.

- *Work requires unique expertise that is available in the private market; or*
- *Amount of work needed is more effectively/efficiently managed by a contracted entity or individual for which/whom the County's needs can be combined with other clients in a shared services model; or*
- *External entities are better positioned than the County to deliver work in an effective and efficient manner (i.e. rapid pace of changing technologies or skills); or*
- *External entities have developed a unique competence with a target population or service area that the County is unlikely to be able to achieve*

Among the advantages the plan cited in using outside contractors were expanded flexibility, external perspectives, limited supervision, the use of virtual workers to commute online anywhere in the world, and the financial benefits gained by using a contractor to reduce County liability costs by not paying employee benefits and pension contributions.

Disadvantages listed included less commitment to the job, lack of availability when needed, less collaboration with virtual workers due to lack of contact and, significantly, the lack of a legal provision in the current Charter:

*Limitations and/or restrictions may be contained in the current County Charter, Civil Service Rules, County Ordinance, and County Employee/Employer Relations Policy.*

While “limitations and/or restrictions” in using contractors were not spelled out, this phrase points to the need for a Charter revision that specifically permits the County to outsource work as deemed necessary and financially beneficial. Indeed, the Agile Organization plan states unequivocally that the County will need to “Seek Charter Amendments to implement recommendations.”

The Agile Organization plan proposes to set this outsourcing process in motion through the use of contractors in various pilot programs. The County plans to develop various strategies, such as participation in “targeted professional organizations,” to expand its pool of qualified contractors.

Regardless of any perceived limitations on outsourcing, the Agile Organization plan says a survey of County departments showed that more than 70% said they have previously hired contractors for various purposes at one time or another. Additionally, the departments stated they were interested in more flexibility, additional sharing of resources and additional technology options “that require less staff assistance.” In a precise link to County plans for increased outsourcing, the departments replied they desired “more contractors to assist with projects as needed.”

## **Union Opposition**

County management has one outlook on how the proposed Agile Organization will be implemented; the unions have another. Most County employees, with the exception of managers, belong to a union. The two unions with the largest membership among County employees are the American Federation of State, County and Municipal Employees (AFSCME), and Service Employees International Union (SEIU).

Both unions are opposed to the Agile Organization plan as currently proposed. In a strongly worded letter to the County on April 17, 2013, the AFSCME and SEIU representatives criticized officials for “the meager discussion labor has had with the County on this matter....”

The letter added:

*The Union has repeatedly asked which job classifications you believe would benefit from your proposal; the answer has been that you don't know yet, but that the County would like the flexibility to pursue this option. From our viewpoint it is ambiguous and not fully formed.*

In a follow up letter to the Grand Jury on May 8, 2013, representatives of AFSCME and SEIU further opposed plans to outsource work that County employees could otherwise perform.

The joint union statement said it did not have sufficient information yet to take a position on the County's proposed use of term employees, but said it did not support “contracting out of services provided by dedicated county employees....”

The letter added that the unions have traditionally not objected to contractors being used to provide services with specialized equipment or to access “unique expertise” such as physicians, certain healthcare specialists, and public work projects.

The unions, however, specifically objected to the County outsourcing work to contractors on grounds it is saving money. Instead, the statement urged the County to increase in-house employee training:

*The government gets a purported cost reduction, less responsibility and supposedly more efficiently delivered, and cheaper services. In reality, privatization can lead to deteriorating services, hidden costs, and loss of public control and transparency. A better use of resources is to invest in employees who are invested in the county. By providing education and training to current employees, the County receives the desired product, and accountability of the workforce to County Management is maintained. Our members care about the quality of their work and about having a positive impact on our community.*

In response, County management noted that the County was increasing the amount of training being offered to employees, particularly in fast-changing areas such as information services and related fields. However, union representatives countered that these retraining programs do not always work as planned. The union official said jobs were contracted out with the understanding that the contractors would train County employees to eventually take over the work, but the training was not carried out. The union official cited work in Health System medical records as one example.

Still, the unions do not appear entirely opposed to outsourcing. One union representative said they particularly objected to outsourcing to private contractors as opposed to non-profit contractors:

*Public workers give the best service, those who are dedicated to public service. The private sector is geared first to making money and that can get in the way of providing good service.... But this is not a blanket condemnation; not all private sectors are bad.*

## County Negotiations

Negotiations with the unions are handled primarily by the County's Human Resources department. According to County management, the County and unions have a good working relationship and outsourcing is not presently a significant source of conflict. If a department requests work be outsourced, this information is communicated to the union involved and the union is given 60 to 90 days to respond. County management estimated that 75 percent of outsourcing requests are implemented.

## High Approval Rate

Part of this high rate of approval may be in the County's approach to dealing with outsourcing requests, which appears aimed at avoiding union conflict. One County representative familiar with union negotiations told the Grand Jury that departmental proposals that might be problematic to the unions were often set aside for further study rather than immediate implementation.

No statistics were available to show what types of outsourcing requests were made and which ones were rejected.

When considering department outsourcing requests, the County representative said, the priorities were the costs involved, the product quality, and the timeliness. Can it be done faster and better? The response was: Quality is the top consideration, not merely what the union is arguing for or against. The representative said the County was aware that the unions were a for-profit business, but that the County felt it had forged collaborative relations with the unions, so much so that strikes were rare.

## County Departments Utilize Contracting

Several County department managers, in expressing support for the Agile Organization plan, said contracting out work was not uncommon. As evidence of this, a county official "guesstimated" that 75 percent of department outsourcing requests were implemented. The official did not have specific numbers or the departments involved. The manager noted, however, that several departments handled their own outsourcing, including the Health System, Sheriff's Office, and Public Works.

A County departmental head said a key factor when debating whether to use a contractor was the hiring response time. Because the workload can fluctuate dramatically, outsourcing to a contractor is faster than completing the civil service hiring requirements and then possibly laying that person off in two months. Contracting a job out, the department manager said, allows the County to hire contractors as needed during critical peak workload periods. Using contractors, the manager said, was a means to bridge shortages when the capacity to run old programs was lacking.

One obstacle to contracting, a County representative said, is calculating the true costs involved, meaning determining if contracting is really cheaper. For this, good data is essential to ensure that one is not contracting out the problem rather than the job.

## Pilot Programs

The ISD is scheduled to be included in the Agile Organization plan to develop pilot programs, with the focus initially on outsourcing the design and management of the County payroll system. This is expected to require a two-year contract to get the program up and running. During this period, a County official said, ISD would run the old program while contractors installed and implemented the new one. After an interim period, plans call for the ISD staff alone to run the program.

## Conclusion

Understanding and utilizing the latest information, communication, and technical skill sets are crucial to the success of any business, whether public or private. Because technology is seemingly out of date by the time it is installed and workloads in many departments can fluctuate significantly, the County should have the legal right that it once had, which is to utilize outside contractors when the County Manager deems it economically and/or operationally necessary. As such, the Board should submit for voter approval a Charter provision granting the County an unrestricted right to outsource.

For a comparative reference, the Board can consider the following provision in the Los Angeles County charter:

*Nothing in this Article shall prevent the County, when the Board of Supervisors finds that work can more economically or feasibly be performed by independent contractors, from entering into contracts for the performance of such work. The Board of Supervisors shall adopt an ordinance specifying criteria for entering into contracts, and specifying competitive bidding procedures for the award of such contracts, if appropriate.*

## FINDINGS

- F1. Outsourcing is a point of contention between the County and the two leading unions representing County employees.
- F2. A Charter revision that clearly authorizes the County Manager to contract out work when deemed economically and/or operationally beneficial would provide improved legal standing for outsourcing.
- F3. Outsourcing flexibility would give the County another management tool to use when determining how best to deliver services.
- F4. Communication among the County and the two unions representing the majority of County employees appears less than optimal.



## RECOMMENDATIONS

The 2012-2013 San Mateo County Civil Grand Jury recommends that the *Board of Supervisors* do the following:

- R1. Submit to the voters for approval a Charter amendment that would allow outsourcing at the County Manager's discretion.
- R2. Establish clear lines of communication among all parties involved in making the County function as a unit, from managers to employees to unions.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests the Board of Supervisors to respond to the foregoing Findings and Recommendations, referring in each instance to the number thereof.

The County Board of Supervisors should be aware that its comment or response must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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