

**BERKELEY CITY COUNCIL BUDGET & FINANCE COMMITTEE
SPECIAL MEETING**

**Monday, October 5, 2026
10:00 AM**

2180 Milvia Street, Berkeley, CA 94704

Teleconference Location – 1619 Edith Street, Berkeley, CA 94703

Committee Members:

Mayor Adena Ishii, Councilmembers Rashmi Kesarwani and Brent Blackaby

Alternate: Councilmember Igor Tregub

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 165 937 6831**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov. All Committee meetings are recorded.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

AGENDA

Roll Call

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 25, 2026

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager From: Councilmember Kesarwani (Author), Mayor Ishii (Co-Sponsor)

Referred: April 27, 2026

Due: October 13, 2026

Recommendation: Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than \$100,000.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual.

Financial Implications: Staff time

Contact: Rashmi Kesarwani, Councilmember, District 1, (510) 981-7110

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- None

Items for Future Agendas

- Requests by Committee Members to add items to the next agenda

Adjournment

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*Written communications submitted by mail or e-mail to the Budget & Finance Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*

### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 1, 2026.



Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.

BERKELEY CITY COUNCIL BUDGET & FINANCE COMMITTEE REGULAR MEETING MINUTES

**Thursday, June 25, 2026
10:00 AM**

2180 Milvia Street, Berkeley, CA 94704

Teleconference Location – 1619 Edith Street, Berkeley, CA 94703

Teleconference Location – 13480 Maxella Ave, Marina Del Rey, CA 90292

Committee Members:

Mayor Adena Ishii, Councilmembers Rashmi Kesarwani and Brent Blackaby
Alternate: Councilmember Igor Tregub

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 165 713 8983**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov. All Committee meetings are recorded.

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MINUTES

Roll Call: 10:03 a.m.

Present: Tregub, Ishii

Absent: Blackaby

Councilmember Blackaby present at 10:10 a.m.

Public Comment on Non-Agenda Matters: 2 speakers

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 11, 2026

Action: M/S/C (Tregub/Ishii) to approve the June 11, 2026 minutes.

Vote: Ayes – Tregub, Ishii; Noes – None; Abstain – None; Absent - Blackaby

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

2. **Adopt a Resolution Restricting Council Discretionary Spending from Personnel Budget Salary Savings**
From: Councilmember Lunaparra (Author), Councilmember O'Keefe (Co-Sponsor)

Referred: May 4, 2026

Due: October 20, 2026

Recommendation: Adopt a resolution restricting Council discretionary spending by mandating that salary savings realized from step-placement differentials remain restricted to personnel. The transfer of such savings to non-personnel categories would be prohibited, with the exception of a one-time discretionary transfer cap not to exceed \$10,000 for newly elected Councilmembers during their initial year of the first term. This item does not apply to the Mayor's budget because it operates under a different structure, rendering this recommendation irrelevant and inapplicable to their budget.

Financial Implications: See report

Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

Action: 2 speakers. Presentation made and discussion held. M/S/C (Blackaby/Tregub) to send the item to Council with a qualified positive recommendation with a request to clarify and to focus more on restrictions on external D13 relinquishments while maintaining more flexibility for Councilmembers to allocate between personnel and non-personnel spending internally.

Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

3. **Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager From: Councilmember Kesarwani (Author), Mayor Ishii (Co-Sponsor)**
Referred: April 27, 2026

Due: October 13, 2026

Recommendation: Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than \$100,000.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual.

Financial Implications: Staff time

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Items for Future Agendas

- None

Adjournment

Action: M/S/C (Tregub/Ishii) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 11:05 a.m.

I hereby certify that the foregoing is a true and correct record of the Budget & Finance Committee meeting held on June 25, 2026.

Keith Nesbit, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.



Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
May 12, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Mayor Adena Ishii (Co-Sponsor), and Councilmember Terry Taplin (Co-Sponsor)

SUBJECT: Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than \$100,000.

Further, for the City Attorney's Office (CAO), require development of an Outside Council Selection Protocol whereby the CAO develops a published pre-qualified list of outside attorneys and law firms based on respondents to the office's ongoing Request for Qualifications process. When outside counsel is required, senior staff in the CAO would choose from pre-qualified attorneys/firms and identify the best candidate based on expertise, quality of work, and cost--and follow guidelines for contract extensions and re-bid contracts as specified in the City of Berkeley Purchasing Manual. This recommendation would allow for a competitive process using the pre-qualified list, thus accommodating the CAO's need to quickly engage outside counsel while preserving best procurement practices. Additionally, request the CAO report legal services contracts and amendments to City Council quarterly to increase transparency of spending on legal services contracts.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual.

CURRENT SITUATION AND ITS EFFECTS

City Auditor Recommends Competitive Procurement for Service Contracts. The City Auditor's report, *City Contracts: Outdated Process Led to Non-Competitive Contracts* (released Feb. 19, 2026) found that in fiscal year 2021-22, Berkeley executed two large recycling contracts with the Ecology Center and Community Conservation Centers for nearly \$85 million over ten years without using a competitive procurement process.¹ The Auditor's report also found that the City Council authorized noncompetitive contracts for community-based organizations and amended service contracts that started below the threshold for Council approval of \$50,000 that increased by an average of \$218,026 per contract without competition. Recommendation 1.2 in the City Auditor's report recommends that Berkeley Municipal Code Chapter 7.18 be amended to explicitly require competition for service contracts.

City Charter Only Requires Competitive Procurement for the Purchase of Supplies, Equipment or Materials, Not Services. Pursuing competitive procurement is considered a best practice in contracting to ensure openness, fairness, transparency, and competition in the award and use of public funds. However, neither the Berkeley Municipal Code (BMC) nor the City Charter explicitly requires competitive procurement for professional services and other service contracts, such as recycling services. City Charter Section 67 only explicitly requires competitive solicitation for the purchase of supplies, equipment or materials to the "lowest responsible bidder." Updating the BMC to require competitive procurement for all service contracts that exceed \$100,000 would ensure that large service contracts would be subject to competitive procurement, as those for construction, equipment, supplies and materials.

In the Case of Services (Including Professional Services), Competitive Procurement Should Yield A Balanced Consideration of Quality, Experience, and Cost. Competitive procurement is the process of acquiring goods, services, or public works by soliciting bids, proposals, or quotes from multiple competing vendors. The primary goal is to ensure that public funds are spent efficiently and transparently, obtaining the "best value"—which is a balance of quality, experience, and cost—while preventing favoritism or corruption. Characteristics of a competitive procurement include the following:

- Openness: The opportunity is publicly advertised (often via a Request for Proposals or Invitation for Bids) so that any qualified vendor can participate.
- Fairness: All bidders are treated equally, receiving the same information and being evaluated against the same predetermined criteria.
- Transparency: The selection process is documented and subject to audit, ensuring the public can see why a specific vendor was chosen.
- Competition: By forcing vendors to compete, the procurement process can drive down costs and encourage innovation or higher-quality service delivery.

Common methods for conducting a competitive procurement include the following:

- Invitation for Bids: Used when requirements are very specific (e.g., office supplies). The contract is typically awarded to the lowest responsive and responsible bidder.

¹ City Auditor Jenny Wong: *City Contracts: Outdated Process Led to Non-Competitive Contracts*, February 19, 2026: https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf p. 8.

- Request for Proposals: Used for complex projects (e.g., policy analysis or IT systems) where the “how” is as important as the price. Evaluation includes technical expertise, methodology, and cost.
- Request for Qualifications: Focuses strictly on the vendor's experience and “bench strength” before negotiating costs, often used for architectural or engineering services.

Recommended Amendment to BMC Section 7.18.010 Requires Competitive Procurement for Service Contracts Exceeding \$100,000. The amended language below raises the threshold for Council approval to \$100,000 to better reflect costs for services and to explicitly require competitive procurement for service contracts that exceed \$100,000:

Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which exceed the initial amount exceeds of \$1050,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the “lowest responsible bidder” only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). All departments, inclusive of Charter Offices, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified.

BACKGROUND

Other Cities Require Competitive Procurement for Services. The proposed amendment to BMC Chapter 7.18 brings the City of Berkeley in line with neighboring jurisdictions that already require competition for service contracts. San Francisco’s Municipal Code Section 21.1 states: “All City contracts for Commodities and/or Services shall be procured through competitive solicitation, except as otherwise authorized in this Code.”² Similarly, the Oakland Municipal Code notes: “The City Administrator or the City Administrator's designee shall conduct a request for proposal (“RFP”) or request for qualifications (“RFQ”) process for the award of contracts that exceed fifty thousand dollars (\$50,000.00) and are exempt from bidding under

² San Francisco Municipal Code Chapter 21.1:

https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-13403

Subsection 2.04.050.1.1. ...The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services.”³

RATIONALE FOR RECOMMENDATION

As the City Auditor notes in her recent report, “competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices.”⁴ While no evidence of misconduct was found during the audit, contracting corruption cases do exist and promote a lack of trust in local government. A competitive process can guard against waste and fraud and discourage favoritism for specific contractors. Competitive processes is a good government best practice that highlights transparency and inclusivity while saving taxpayers’ money.

FISCAL IMPACT

Staff time to amend BMC Chapter 7.18.

ENVIRONMENTAL SUSTAINABILITY

Competition among contractors can help the city procure services for the best fit at the most reasonable price for recycling services and other environmentally sustainable services rendered to the city.

CONTACT PERSON

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

Attachments

- 1) BMC Chapter 7.18 tracked changes
- 2) City Auditor February 19, 2026 Report “City Contracts: Outdated Process Led to Non-Competitive Contracts”

³ Oakland Municipal Code Section 2.04.051:

https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.04PUS_Y_ARTIBICOPU_2.04.040COPR

⁴ City Auditor Jenny Wong: City Contracts: Outdated Process Led to Non-Competitive Contracts, February 19, 2026: https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf p.2

7.18.010 Expenditures pursuant to Charter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which the initial amount exceeds the amount of \$50,000 \$100,000, inclusive of professional services, other services, supplies, equipment, or materials(excluding leases and real estate agreements) shall require Council approval, and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI, Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). All departments, inclusive of Charter Offices, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for Community Development Block Grant funded Community Facility Improvement Projects which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

D. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

E. Expenditures for the acquisition and renovation of small multifamily rental properties through the Small Sites Program shall not require Council approval, but shall be approved by the City Manager. Expenditures will comply with the Small Sites Program guidelines, adopted by Resolution. (Ord. 7630-NS § 1, 2018; Ord. 7566-NS § 1 (part), 2017; Ord. 7035-NS § 1, 2008; Ord. 6875-NS § 1

(part), 2005; Ord. 6786-NS § 1 (part), 2003; Ord. 6522-NS § 2, 1999; Ord. 6361-NS § 1, 1997; Ord. 6248-NS § 1, 1994; Ord. 5777-NS § 1, 1986; Ord. 4992-NS § 1, 1977)

The Berkeley Municipal Code is current through Ordinance 8031-NS, passed July 28, 2026.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by ICC Code Solutions.](#)

Audit Report
February 19, 2026

City Contracts: Outdated Process Led to Non-Competitive Contracts



BERKELEY CITY AUDITOR

Jenny Wong, City Auditor

Caitlin Palmer, Audit Manager

Katie Wysong, Auditor I



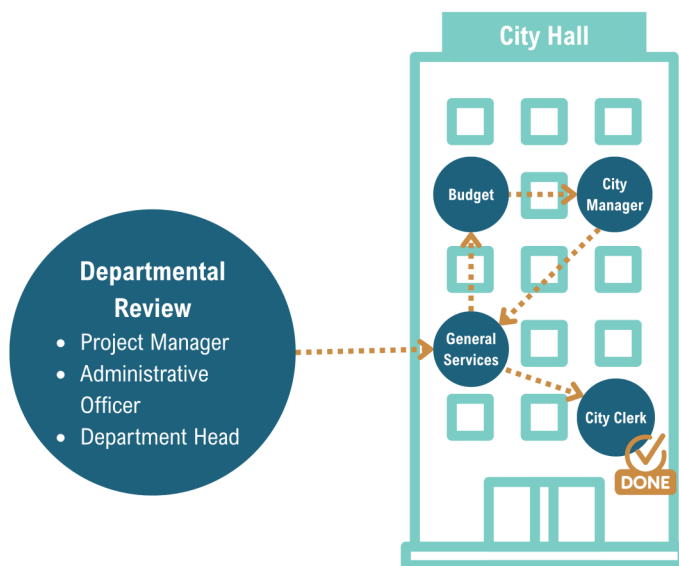
City Contracts: Outdated Process Led to Non-Competitive Contracts

Report Highlights

Findings

1. In fiscal year 2022, the City authorized nearly \$85 million in recycling contracts over 10 years without competition. Inconsistent rules made it difficult for staff to know when to waive competition. Our analysis of fiscal year 2024 waivers found that 38 percent did not clearly meet the Purchasing Manual criteria. City Council authorized additional non-competitive contracts for community-based organizations. Additionally, amended service contracts that started below the threshold for Council approval increased by an average of \$218,026 per contract without competition.
2. Berkeley used paper contracts hand-delivered between departments and lacked a centralized digital system, creating delays and misplaced contracts. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contracting process.

Moving paper contracts throughout City Hall created opportunities for delays.



Source: Auditor analysis of contract review sheet for new expenditure contracts

February 19, 2026

Objectives

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

Recommendations

We recommend the City add explicit competition requirements to the Berkeley Municipal Code for service contracts. We also recommend the City update the Purchasing Manual and contract forms for consistency and clarity, as well as expand training for staff. We recommend the City continue pursuing a comprehensive, integrated digital contracting system, as budget allows.

Why This Audit Is Important

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices. However, in fiscal year 2024, Berkeley executed 94 contracts without documented competition for a total value of \$43 million. While it is not practical or possible for every contract to go through competition, it is important that the City uses competition when feasible.



BERKELEY CITY AUDITOR

For the full report, visit [the City Auditor's website.](#)

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Introduction

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. Best value may include not only lowest price, but also the quality of the good or service and fit with Berkeley's specific needs. However, Berkeley spends millions of dollars on contracts that are not competitive. While it is appropriate, even necessary, for some contracts to be non-competitive, it is important that the City pursues competition when possible. Although we found no evidence of misconduct in Berkeley during our audit, contract corruption cases in neighboring jurisdictions emphasize the importance of having open, competitive contracting processes. A competitive process can discourage favoritism and guard against waste and fraud.

Competition has additional benefits for equity and fairness. According to a consultant report commissioned by the Berkeley City Council, "minority and women-owned business enterprises" lost out on an estimated \$21.7 million in contract dollars with the City of Berkeley between 2016-2019. In general, a fair and open competitive process can encourage additional contractors to seek City contracts, including from historically excluded groups.

This audit focuses on contracts that were not competitive and were subject to the requirements of the Berkeley Municipal Code and the City's Purchasing Manual. We did not evaluate the City's competitive selection processes or staff's compliance with them, nor the management of contracts after execution.

Objectives

The objectives of this audit are to address the following questions:

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

Scope and Methodology

We reviewed expenditure contracts executed between July 1, 2023, and June 30, 2024 (fiscal year 2024). We also analyzed subsets of all expenditure contracts active in the City's financial system as of March 6, 2025, including the largest dollar value contracts and service contracts approved at or below the threshold for City Council approval, then later amended to exceed it. Additionally, we reviewed Berkeley's laws, policies and procedures related to contracts, researched best practices and other jurisdictions' policies, and interviewed relevant staff and

leadership. This audit focused on the City's contracting processes, and we did not audit individual contracts or contractors.

Background

Berkeley uses formal and informal competition to select contractors depending on the cost and type of purchase.

Depending on the expected cost and type of purchase, the City uses different formal and informal competition to select a contractor (Table 1).

- **Formal competition involves a structured public process.** For supplies, equipment and materials, the City Charter requires the City to select the vendor with the lowest bid that meets the City's criteria after publicly issuing an Invitation for Bids (IFB). For more complex purchases, such as professional services, the City selects the contractor with the best value based on the criteria set in the posted Request for Proposals (RFP).
- **For informal competition,** departments are required to reach out directly to at least three contractors for written quotes and then select the contractor with the lowest cost or best value. Informal competition allows for more flexible timelines and does not require City Council approval.

The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department. The City uses contracts for most services that are not done by City staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods like office furniture and equipment for parks maintenance.

Table 1: City Purchasing Requirements by Price and Type¹

Purchase Value	Competitive Purchasing Process
<u>Services</u>	
Under \$5,000	Purchase Order with 3 verbal quotes
\$5,000 - \$25,000	Purchase Order with informal competition (3 written quotes)
\$25,000 - \$50,000	Contract with informal competition (3 written quotes)
Over \$50,000	Contract with formal competition (Request for Proposal or Request for Qualifications)
<u>Goods</u>	
Under \$5,000	Purchase Order with 3 verbal quotes
\$5,000 - \$100,000	Purchase Order with informal competition (3 written quotes)
Over \$100,000	Purchase Order or contract with formal competition (Invitation for Bid)
<u>Construction</u>	
Under \$5,000	Purchase Order with 3 verbal quotes
\$5,000 - \$25,000	Purchase Order with informal competition (3 written quotes)
\$25,000 - \$200,000	Contract with informal competition (3 written quotes)
Over \$200,000	Contract with formal competition (Invitation for Bid)

Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

The benefits of competitive contracts are well-established. According to the U.S. Government Accountability Office, competitive contracts can save taxpayers money, improve contractor performance, curb fraud, and promote accountability for results. Competition is a critical tool for achieving the best return on the government's investment. Berkeley's Purchasing Manual requires all purchases to be made through a competitive process unless they meet specific criteria described in the next section.

In some cases, the City can select a contractor without competition.

Competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. In these cases, non-competitive contracts give the City flexibility to respond quickly to emergencies or meet a need where competition is not feasible or practical.

During the audit period, the Purchasing Manual allowed the City Manager to waive the competition requirement for contracts under the cost threshold for formal competition in specific circumstances (Figure 1). Departments could request waivers of competition if there was only one contractor that provided a good or service, or competition was otherwise found to be inadequate. Waivers were also allowed in emergencies when competition was not feasible or practical. The Purchasing Manual also required departments to conduct market research to

¹ Solicitation is the process of reaching out to contractors, which ideally results in competition among contractors. We use the term competition to refer to competitive solicitation for simplicity.

justify the business case for the waiver, and whenever possible, avoid requesting items that could only be obtained from a sole or single source.

Figure 1: Purchasing Manual Criteria for Non-Competitive Contracts

The Purchasing Manual only allows sole or single source contracts when:



Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

City Council can also waive competition for specific contracts or broader categories of purchases. Once a contract is in place, the City can use amendments to increase the dollar amount and extensions to extend the duration of a contract without new competition. Even if the contractor offered the best value when selected, years later, a different contractor may be more affordable or better suited for the City's needs.

Though non-competitive contracts are sometimes the most appropriate or practical option, if the City over-relies on non-competitive contracts, it runs the risk of:

- Overpaying for services,
- Not getting the best quality service,
- Having fewer opportunities for new and small businesses, including historically marginalized contractors, and
- Creating more opportunities for bribery or corruption between staff, officials, and contractors.

Over 40% of the contracts executed in fiscal year 2024 did not clearly go through competition.

Ninety-four of the 218 contracts executed, or formally approved, in fiscal year 2024 did not have documented competition (Figure 2). The total value of these contracts was approximately \$43 million compared to \$102 million in competitive contracts. Competitive contracts include both those with formal and informal competition, as well as contracts that piggybacked on other jurisdictions' contracts.

Figure 2: Berkeley executed 94 contracts in fiscal year (FY) 2024 without documented competition for a total value of \$43 million.

Berkeley executed **94** contracts in FY 2024 without documented competition...

94 non-competitive contracts



124 competitive contracts

...for a total value of **\$43 million**.

\$43 million in non-competitive contracts



\$102 million in competitive contracts

Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley's financial system

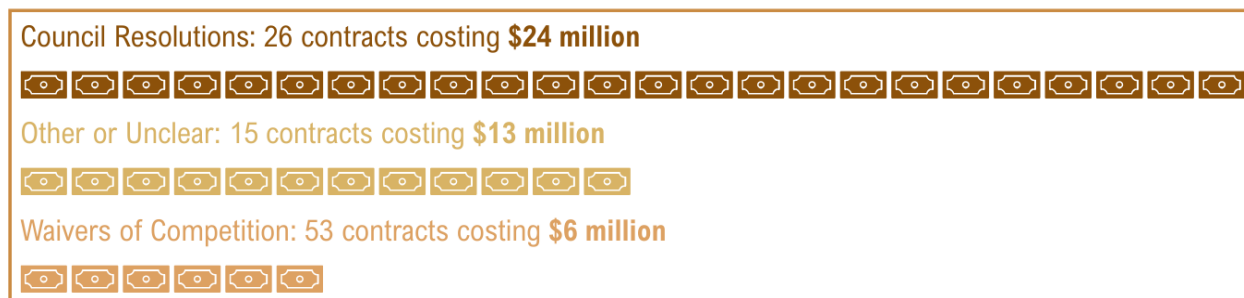
Berkeley awarded 30 percent of contract dollars without competition in fiscal year 2024.

According to a recent benchmarking survey of public procurement entities from NIGP: The Institute of Public Procurement (NIGP), Berkeley was similar to the median responding jurisdiction, which awarded 30 percent of contract dollars without competition.

City Council authorized 26 non-competitive contracts through Council Resolutions, which made up the majority of the cost associated with non-competitive contracts (Figure 3). The group of non-competitive contracts with the second highest total cost were 15 "other or unclear" contracts. These included contracts that were missing in Records Online, the City's electronic document repository, or where competition was marked as "not required" on the contract review

form, such as leases or the City Attorney’s contracts for legal services.² Most of the non-competitive contracts executed in fiscal year 2024 had a waiver of competition, but that group had the lowest total cost.

Figure 3: Breakdown of non-competitive contracts



Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley’s financial system

Note: “Other or unclear” include contracts missing from Records Online, leases, license agreements, contracts with no evidence of competition, or where marked as not required. The dollar amounts for the contracts missing from Records Online are based on data in the City’s financial system.

² The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements.

Berkeley spent millions of dollars on non-competitive contracts when competition was likely possible.

We found that most of the City's largest active expenditure contracts had evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but two non-competitive recycling contracts totaling nearly \$85 million did not. Additionally, inconsistent rules may have made it difficult for staff to know when it was appropriate to waive competition. As a result, 38 percent of waivers in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual. City Council authorized additional non-competitive contracts with community-based organizations. Furthermore, service contracts that started at or below the \$50,000 formal competition threshold and were later amended increased by an average of \$218,026 per contract. We did not audit individual contracts or contractors.

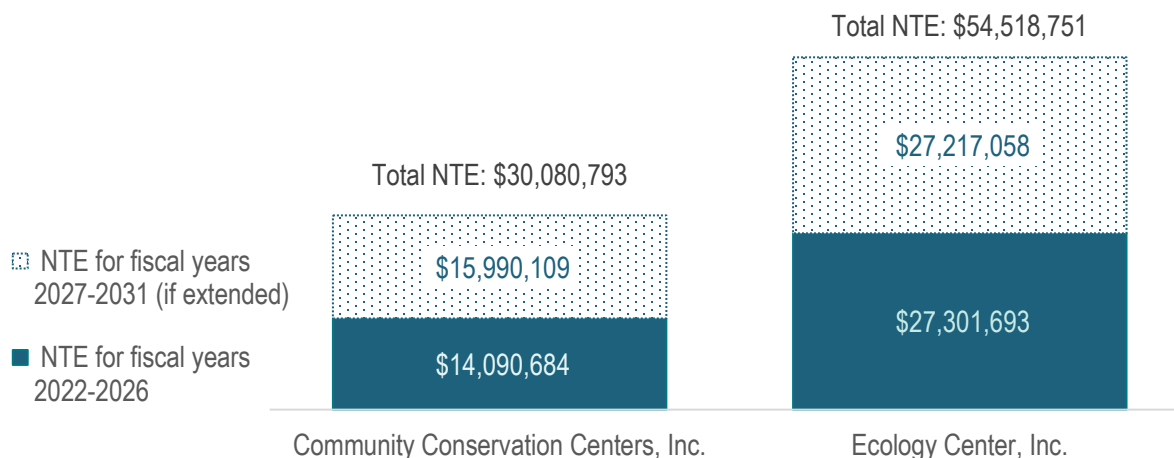
The City authorized nearly \$85 million in recycling contracts over 10 years without competition.

In fiscal year 2022, Berkeley executed recycling contracts with the Ecology Center, Inc. and Community Conservation Centers, Inc. for nearly \$85 million over ten years without seeking bids from other contractors. Together, the contracts have a not-to-exceed amount of \$41,392,377 for fiscal years 2022 through 2026, with optional five-year extensions which would bring to total not-to-exceed amount to \$84,599,544 (Figure 4). We found that most of the City's 100 largest contracts had documented evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but these two recycling contracts did not.³

Berkeley has contracted with the Ecology Center and Community Conservation Centers for recycling services since the 1980s (Appendix 1). A review of public City records since the 1980s found no documented evidence of competition. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but did not audit these individual contracts or contractors. While these contracts may offer the best value or best fit for Berkeley, it is difficult for the City to determine that without open competition among all potential contractors.

³ We reviewed the 100 largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date before June 30, 2025 in the City's financial system. The remaining 78 contracts also included one legal services contract, one lease, and one settlement agreement that fell outside the City's standard expenditure contract process.

Figure 4: The recycling contracts will have a total not-to-exceed (NTE) of nearly \$85 million dollars if the City takes the optional five-year extensions.



Source: Auditor analysis of current recycling contracts

Note: NTE stands for “not-to-exceed.” City Council authorizes the City to spend up to that amount on the contract. We did not assess how much the City has spent on each contract.

Prior to authorizing these non-competitive contracts, there were proposals to pursue competition for the City’s recycling services. In 2011, an outside consultant recommended that the City issue an RFP for the recycling materials processing operations performed by Community Conservation Centers, and end the contract with the Ecology Center to have the City take over recycling pick-up. The Zero Waste Commission disagreed with the report’s recommendations citing incomplete and missing information and cost-benefit analyses, and a lack of an adequate and inclusive process. In 2020, Public Works staff requested that City Council authorize an RFP for the recycling processing operations done by Community Conservation Centers, but City Council voted to remove it from the list of proposed RFPs. According to Public Works staff reports to Council in 2021, third-party reviews found both contractors’ costs reasonable when compared to surrounding communities. The report also stated that both contractors received mostly “satisfied” or “very satisfied” responses to a third-party customer satisfaction survey. Ultimately in 2021, City Council voted to authorize new sole source contracts with both contractors without issuing RFPs.

Although pursuing competition is an established best practice, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive (Table 2). The City Charter required purchases of supplies, equipment, and materials above a dollar amount set by the Municipal Code to be awarded to the lowest responsive bidder. It also required City Council to authorize these purchases. The language in the corresponding Municipal Code section only discusses the thresholds for Council approval.

The Purchasing Manual states service contracts above \$50,000 must go through formal competition. However, this policy was not included in the City Charter and Berkeley Municipal Code. In other jurisdictions like Oakland and San Francisco, city codes explicitly require competition for service contracts with some exceptions. During the audit, Berkeley's Purchasing Manual also said only City Council can waive competition for contracts over the Council approval threshold. However, there was no guidance on how City Council should decide and document these decisions.

Table 2: Neither the City Charter nor the Berkeley Municipal Code explicitly requires service contracts to be competitive.

City Charter	Berkeley Municipal Code
Discusses purchases of supplies, equipment or materials above BMC threshold but does not specifically require competition for service contracts.	Sets thresholds for Council Approval, but does not discuss competition: - Public Projects and Facility Improvements - \$200,000 - Supplies, Equipment and Materials - \$100,000 - Other Expenditures, which includes services - \$50,000

Source: Berkeley City Charter, Article XI and Berkeley Municipal Code 7.18

It may be reasonable for City Council to waive competition in unique circumstances, but the lack of clear standards allows large contracts to be awarded without competition when they could have been opened to competition. Overusing non-competitive contracts may make it difficult to assess if the City is getting the best value or best fit for goods and services. Berkeley may also be perceived as operating on favoritism.

City management approved some waivers that did not meet the Purchasing Manual criteria.

Thirty-eight percent of waivers City management approved in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual at the time, meaning the City could likely have pursued competition under the current policy. For example, Human Resources used six waivers in a month and half, including three for classification and compensation studies. There may have been an urgent need for these services, but the form did not document that this was an emergency. By requesting three waivers for the same service from three different contractors, this indicated that it would have been feasible to request quotes from at least three contractors (Table 3).

In another example, a waiver for drug and alcohol testing cited immediate need because the previous contract had already been expired over two years. However, the long timeframe

indicates that it was not an emergency. The waiver form even states that the lack of advanced planning does not constitute an immediate need.

Finally, a department requested a waiver for legislative services because the contractor previously worked effectively with the City and had knowledge of the region and the City's lobbying. However, the rationale did not explain why another firm would be unable to provide the same or better services. The General Services Manager at the time noted on the waiver that the department should consider competing soon.

There were also many cases when the rationale for waivers did meet the Purchasing Manual's criteria, according to our assessment. For example, the City's labor contracts require the City to provide staff memberships to the YMCA, therefore the City must contract with the YMCA specifically.

We also found cases when departments unnecessarily completed and attached the waiver of competitive solicitation. In several cases, contract packets included both waivers of competition and City Council approval of the sole-source negotiations of contracts. In another example, a department had already done informal competition. In this case, General Services staff explained that the department already had the necessary documentation and did not need to complete a waiver, creating additional work and confusion.

Table 3: Many waivers met the Purchasing Manual criteria, but 38 percent did not.**Examples that Likely Met the Purchasing Manual Criteria**

Purchase	Department Rationale	Why Likely Eligible
Hazardous Vegetation Treatments & Removal	The previous RFP only resulted in one response. The City needed three vendors, so awarded two additional single source contracts while preparing a new RFP.	Competition inadequate: The RFP did not attract sufficient interest. The City needed to continue the work while taking steps to attract more responses.
Transfer Station Rain/Stream Gauge	The City needs equipment in place at the transfer station within three months to comply with a legal mandate.	Emergency: The City had a limited time to make the purchase before facing legal consequences.
Employee Fitness Memberships	Labor contracts require the City to provide staff memberships to the YMCA.	One viable source: There was only one source the City could provide the fitness memberships that complied with the labor contracts.

Examples that Likely Did NOT Meet the Purchasing Manual Criteria

Purchase	Department Rationale	Why Likely Ineligible
Classification & Compensation Studies	Human Resources had six waivers in a month and half, including three for classification and compensation studies. All cited a “dire situation” and the fact that “an informal or formal RFP process would be further detrimental” to addressing the situation.	There may have been an urgent need for these services, but there was no documented evidence that it was an emergency. By requesting three waivers for the same service from three vendors, they indicate that it would have been feasible to request quotes from at least three vendors.
Drug & Alcohol Testing Services	The previous contract expired over two years earlier. Publicly competing these services would create a gap in services and negatively impact multiple operational processes.	Since the contract had already been expired for two years, the long timeframe indicates it was not an emergency.
Tailored Legislative Funding & Advocacy Strategy	The vendor has previously worked effectively with the City and has knowledge of the region and the City’s lobbying.	This does not explain why another firm would not be able to provide these services. Familiarity is not a sufficient reason for a sole source contract and can be seen as favoritism. Additionally, the General Services Manager noted on the waiver, “Consider competing in near future.”

Source: Auditor analysis of contracts with waivers of competitive solicitation in fiscal year 2024 from Records Online

A potential cause of the inconsistent use of waivers is the fact that, during the audit period, the City’s Purchasing Manual and waiver of competition form had different criteria for when waivers are justified (Table 4). For example, the waiver form had categories for “specialized service” and “immediate need,” which were different than the categories specified in the Purchasing Manual. As a result, inconsistent criteria may have made it difficult for staff to understand when it is appropriate to use a waiver of competitive solicitation. According to the Procurement Excellence Network, document consistency can reduce review time.

Table 4: The categories on the form staff use to request approval for a waiver did not match the criteria in the Purchasing Manual.

Purchasing Manual	Waiver of Competition Form
Sole or single source procurement, or non-competitive solicitation, may only be used following informal or formal solicitation when: • Only one viable source is found for the needed product or service; • Competition is found to be inadequate; or • There is an emergency and it is impractical for the City to seek competitive bids.	Explanation must clearly state why this exception meets the required criteria. • Service is very specialized; • This product or service can only be provided by this contractor (sole source); • This service and/or product must be provided immediately; or • Other category. <i>Note: The lack of advanced planning does not constitute an immediate need.</i>

Source: Berkeley’s Purchasing Manual and Waiver of Competitive Solicitation form as of the end of fiscal year 2024

City Council authorized additional non-competitive contracts for community-based organizations.

Beyond waivers of competition approved by the City Manager, City Council also authorized non-competitive contracts for community-based organizations through a separate process. In fiscal year 2024, we found three instances where City Council awarded new contracts totaling \$417,400 to community-based organizations through budget referrals without any competition. According to an April 2025 Council item for Resolution 71,719, community-based organizations seeking one-time financial assistance have historically appealed directly to councilmembers to sponsor a budget referral outside of the City’s established procurement process. While it is appropriate for the City to contract with community-based organizations, it is important that the process is open and transparent for all community-based organizations and does not privilege certain organizations above others who may be equally or more deserving of financial support. To help address this issue, City Council passed a resolution to establish a more open

and transparent application process for community-based organizations to apply for emergency funding.

To promote fair and transparent procurement, it is important that decisions about contracts meet ethical standards to prevent conflicts of interest, but Berkeley's process to do that was limited. Berkeley requires certain employees and officials to complete the Form 700 financial interest disclosure form to comply with California state law, which includes disclosure of involvement in non-profit organizations. However, the Form 700 does not collect information about other relationships that may exist, such as friendships, that may bias a decision. In Berkeley, the only contractors required to complete a Form 700 were consultants that make government decisions or act in a staff capacity that would require a Form 700 if that role was held by a City employee. Berkeley's RFP and RFQ boilerplates also required interested contractors to disclose potential conflicts of interest, but these do not apply to non-competitive contracts.

In comparison, a best practice analysis from Atlanta's Ethics Office found that requiring potential contractors, in addition to City officials and employees, to continuously disclose relationships, serves as a checks and balance system between the two groups. It also helps maintain compliance and transparency in the government procurement process. In addition to the Form 700, San Francisco requires City officers and employees to publicly disclose any personal, professional, or business relationships with anyone involved in a government decision they make.

Contracts starting below the formal competition threshold were amended by an average of \$218,026 per contract without additional competition.

As of March 2025, the City had 95 active service contracts that began at or below the formal competition threshold of \$50,000 but were later amended above the threshold. On average, these amendments added \$218,026 in total to each contract. Since these service contracts started below \$50,000, they did not require City Council approval or formal competition. The contracts then increased without meeting the requirements for competition that apply to larger dollar values. We found some contracts which originally had waivers of competitive solicitation and were later amended by large amounts. For example, one contract that started at \$50,000 was amended to \$737,092 over 6 years, nearly 15 times the original cost. All of the service

contract amendments over \$50,000 in our sample received City Council or Board approval,⁴ as required by the Finance Department. According to Finance staff, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

While Berkeley's policy sets dollar thresholds for when a new contract must go through a formal competitive process, there was no documented citywide guidance for when existing contracts should be re-competed rather than amended. According to the U.S. Government Accountability Office, competitive contracts can help save taxpayers money. When Berkeley relies on existing contractors without competition, the City may lose out on the potential financial benefits of competition. In a sample of 23 amended contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Standard guidance on when amendments are appropriate and when contracts need to be re-competed could help address confusion about the amendment process that staff shared. Clear expectations may help reduce use of amendments instead of competition.

We also identified three City Attorney contracts for legal services which grew by over 20 times their original amount, including one which started at \$50,000 in 2018 and grew to \$4,167,000 as of August 2025. Because the City Charter and Berkeley Municipal Code give the City Attorney the authority to enter into legal services contracts,⁵ the amendments do not require City Council approval unlike other City contracts above the Council approval threshold. This different process for the City Attorney's Office does not provide the same level of public oversight and transparency compared to new contracts and contract amendments that are reviewed by City Council at public meetings.

⁴ In our sample, contracts from the Library and the Rent Board received authorization from their boards rather than City Council.

⁵ The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements. We did not evaluate best practices for competition of legal services contracts.

Recommendations

- 1.1. To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.
- 1.2. To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.
- 1.3. To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.
- 1.4. To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.
- 1.5. To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.
- 1.6. To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.

Paper contracts, unclear guidance, and short staffing led to delays and overuse of non-competitive contracts.

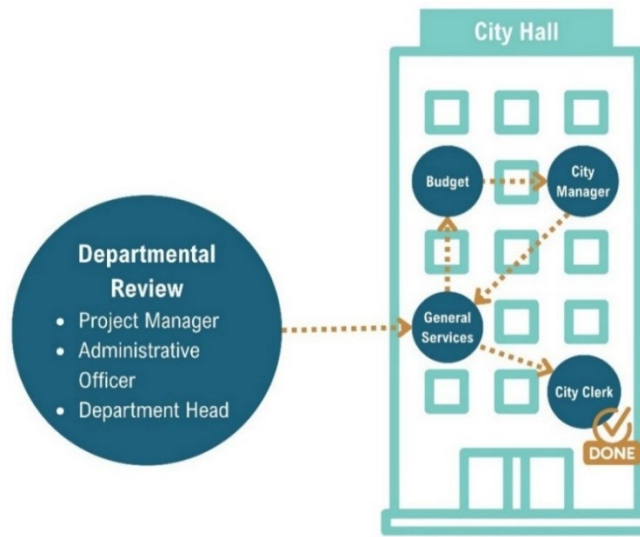
During our audit period, Berkeley used paper contracts that needed to be hand-delivered between departments, creating some delays and misplaced contracts. Lack of electronic tracking of waivers or the type of competition used for contracts made it difficult for management to analyze or monitor the use of waivers or analyze competition citywide. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contract process. Together, these conditions caused delays, errors, and greater reliance on non-competitive contracting to keep City services running.

Berkeley used paper contracts that need to be hand-delivered between departments.

In fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals (Figure 5). During the scope of our audit, Berkeley did not have a comprehensive digital contract management system. In fiscal year 2024, it took an average of 37 days between when the contract was dropped off to General Services and when it was given to the City Clerk's office, according to an internal tracking spreadsheet. Departments conducted additional levels of review prior to it arriving at General Services, meaning the entire process took even longer.⁶

⁶ This does not include the City Attorney review, which is only required when not using a pre-approved contract boilerplate, according to the Purchasing Manual and review form. However, the City Attorney has said they should review all contracts.

Figure 5: Moving paper contracts throughout City Hall created opportunities for delays.



Source: Auditor analysis of contract review sheet for new expenditure contracts

Some department staff said this outdated process created delays, so they had to use the shorter non-competitive contract process to maintain City services. Some staff stated that they needed to amend a contract or use a waiver of competition for a contract that could have been competed because they needed additional time to complete the full RFP and contract review processes, especially if they were short staffed. One General Services staff member also said that many of the waivers of competition they reviewed came from a lack of planning for future contracts. However, the waiver form specifically notes that the lack of advanced planning does not constitute an immediate need. If the City continuously amends contracts instead of going out to competition, it could potentially miss out on new contractors and savings. According to the Procurement Excellence Network, streamlining the procurement process is essential to freeing up staff time to focus on improving the performance of programs and services and, in turn, results for residents.

Staff also explained that it was hard to track where a contract was in the review process. Figure 6 shows some locations where staff dropped off paper contracts throughout the routing process. Contracts awaiting signatures could sit unsigned at staff members' desks for days while they were out of the office, or could even be misplaced or lost. During our audit, General Services staff found four unsigned contract amendments for \$500,000 each sitting in a box under a desk. The contracts were approved, and the department could spend the money. However, the contracts were not formally amended, so the liability terms of the contract were not finalized.

Figure 6: Staff had to deliver paper contracts between departments.



Source: Auditor photos of Finance Department and the City Clerk contract locations

Since the City's financial system did not track the contract review process, General Services staff created a separate spreadsheet to give departments some insight into where the contract was in the approval process. However, at the start of the audit period, any Berkeley staff member could edit the sheet, leading to the potential for intentional or accidental changes to the information. This has since been addressed.

While waivers of competition were available in the individual contract file, the City did not centrally track waivers overall in an electronic format nor the type of competition used for contracts, making it difficult for management to understand the use of waivers across all city departments or identify trends over time. Berkeley's current system makes it very time-consuming to conduct this analysis, especially determining how much money is spent competitively versus non-competitively. For this report, we manually reviewed hundreds of contract PDFs to assess if they were competitive or not. Regular analysis of the City's spending on purchases is important for supporting management decisions and better oversight of contractor relationships.

The City has begun to explore options for digitizing the contracts process. During our audit, Berkeley adopted DocuSign, a more efficient and trackable digital signature software for some parts of the City's contracting process, such as approving waivers of competition and extension letters. However, various General Services staff members explained that the software is not set up to effectively manage the full contract review process. Additionally, a cross-departmental team led by the City Manager's Office is looking into purchasing a digital contract management system to improve the contracting process. However, given the City's current budget limitations, they want to make sure it provides significant value to the City.

The Purchasing Manual was missing key guidance and training for staff was limited.

Berkeley's Purchasing Manual was missing sixteen of the minimum necessary parts of a procurement policy manual defined as industry best practices during the audit (Table 5). For example, Berkeley's Purchasing Manual did not have a definitions section to help ensure that all staff understand the terms referenced in the manual and how they are used in the City of Berkeley. It also did not include a process for suspending or debarring contractors who violate City law or fail to meet contract obligations.

The Purchasing Manual also had limited or conflicting guidance on key purchasing topics. Information on sole or single-source contracts was separated across three different sections and did not align with the information on the required waiver form itself, making it difficult for staff to know how to use them correctly. There was also no written guidance on amendments or extensions, in the Purchasing Manual or elsewhere, including when they should go back out to competition. There was also very limited guidance on piggybacking or cooperative agreements, which allow staff to use a competitively bid contract from another jurisdiction. Piggybacking could be a way to save staff time while ensuring the best price, but only if staff have appropriate guidance. In our analysis of fiscal year 2024 contracts, departments used different procedures for piggybacked contracts from waivers of competition to authorizing Council Resolutions to no contract at all.

Table 5: Berkeley's Purchasing Manual was missing key elements, as defined by industry best practices.

Element	Element Aspects that are Missing or Incomplete	Element Aspects that are Included
Definitions - Defines key terms	1	0
Organizational Structure - Establishes roles and responsibilities	2	1
Vendor Selection – Provides guidance for evaluating vendor proposals and developing a contract	1	5
Specifications – Provides guidance for drafting specifications to ensure maximum competition	1	0
Ethics – Includes guidelines to ensure the procurement process is fair and resolve violations to stated policy	5	2
Personnel – Outlines required qualifications and training for procurement staff	3	0
Other Initiatives – Provides guidance for procurement-related initiatives, such as prioritizing minority and women-owned businesses or local businesses	3	3
TOTAL	16	11

Source: Auditor analysis of NIGP: The Institute for Public Procurement's Principles and Practices of Public Procurement and the City of Berkeley's Purchasing Manual as of the end of fiscal year 2024.

Staff in each City department have responsibilities related to purchasing goods and services for their department, but the City did not have clear policies and procedures so that staff could easily navigate the purchasing process. In a listening session hosted by the City Manager in February 2025, some staff members representing most City departments shared that they did not understand the rules of purchasing. This confusion can end up requiring more General Services staff time to either individually walk staff through the process or correct errors once submitted. According to best practices, the Purchasing Manual should simplify, clarify, and reflect the laws governing purchasing in way that is useable for staff across the City. To fill in the gaps from the citywide Purchasing Manual, some departments have created their own manuals to support their staff.

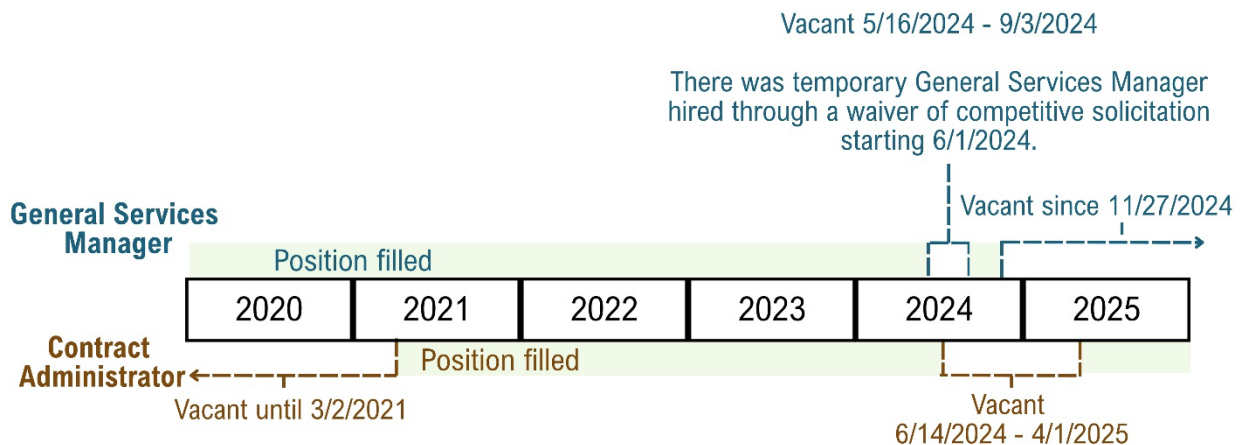
Staff also shared that there were few training opportunities or resources for department staff to learn about the contract process. In addition to a clear Purchasing Manual, it is important that all staff with a role in procurement have a clear and consistent understanding of the rules. Prior to May 2025, contract training was inconsistent. However, between May and July 2025, the Finance Department conducted five contract trainings. The Procurement Excellence Network recommends continuous training and coaching of staff on procurement best practices. Having

clear, documented policies and procedures also increases consistent application of purchasing rules during times of transition or understaffing.

Short staffing and turnover made it more difficult to improve the contract process.

The General Services Division has had repeated vacancies in key positions in the past five years making it difficult to improve the contract process. The General Services Manager position leading the division has been vacant since November 2024 (Figure 7). The Director of Finance is primarily acting in that role after the previous General Services Manager left the City after less than three months. Previously, the Finance Department used a waiver of competition to contract a consultant to cover the position while they hired a full-time staff member. Another key position, the Contract Administrator, was vacant for almost a year until April 2025, and for substantial time prior to 2021. Government finance departments across the country have also struggled to fill purchasing positions. According to a 2022 report from the Government Finance Officers Association, procurement clerks, buyers and purchasing agents are in high demand and have a high ratio of job postings per filled positions. Positions with a relatively higher ratio will take longer to fill since competition for candidates is higher.

Figure 7: Key General Services positions have been repeatedly vacant, especially in the last two years.



Source: Finance Department and auditor review of employee data

These Finance Department vacancies strained General Services staff capacity, and they reported taking on the work of these vacant positions in addition to their own responsibilities. The turnover and understaffing made it difficult for General Services staff to review and provide substantive feedback on contract documents, and delayed contracts during our audit period,

according to staff. Overworked staff may also not be able to appropriately prioritize procurements and focus resources on the highest risk purchases, including non-competitive contracts. Short staffing and turnover made it difficult for the division to make changes to improve the contracting process that could limit non-competitive contracts, such as implementing additional training and updating manuals.

Limited General Services staff capacity also means that while the City has started to collect contractor demographic information, they have not had the capacity to complete a formal analysis of this data. City leadership has not determined responsibility for managing demographic data from potential contractors to facilitate data analytics. The analysis could inform changes to the City's policy to promote fairness and increased competition.

Recommendations

- 2.1. To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.
- 2.2. To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.
- 2.3. To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.
- 2.4. To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.
- 2.5. To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.

- 2.6. To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.
- 2.7. To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

Management Response

We provided a draft of this report to the City Manager, the Finance Department, and the City Attorney for review and comment. City management agreed or partially agreed with our findings, conclusions, and recommendations. We generally expect the City to implement audit recommendations within two years of report issuance. City management provided the implementation dates and corrective action plan below. We will be conducting our standard recommendation follow-up process after the audit is issued. We have not yet confirmed to what extent any recommendations may have been implemented prior to the audit release date.

Recommendation 1.1: To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.

Management Response: Agree

Implementation Date: To be determined

Corrective Action Plan: Will assess and develop timeframe for 2026

Recommendation 1.2: To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.

Management Response: To be determined

Implementation Date: To be determined

Corrective Action Plan: To be determined

Recommendation 1.3: To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.

Management Response: Agree, this was completed in November 2025

Implementation Date: November 2025

Corrective Action Plan: The language in both the Competitive Solicitation Waiver form and the Purchasing Manual has been updated to be consistent.

Recommendation 1.4: To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.

Management Response: Partially agree

Implementation Date: To be determined

Corrective Action Plan: Will incorporate into guidance for staff. Will work on solutions for contractor disclosures but need to determine how best to incorporate given potential enforcement challenges.

Recommendation 1.5: To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.

Management Response: Agree

Implementation Date: November 2025

Corrective Action Plan: This information is in the updated purchasing manual and the contract training class.

Recommendation 1.6: To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.

Management Response: Agree

Implementation Date: April 30, 2026

Corrective Action Plan: The City Attorney's Office will report new legal services contracts and amendments to the City Council on an annual basis beginning with contracts entered into Q1 2026. The reports will not include any confidential or attorney-client privileged information.

Recommendation 2.1: To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.

Management Response: Agree

Implementation Date: Partially implemented July 2025

Corrective Action Plan: Several departments have implemented DocuSign for the full contract routing process (about 65% of city contracts). Citywide, DocuSign has been adopted for all extension letters and waivers. There are budget and resource constraints to purchasing software that would integrate with the City's current financial system. However, a multi departmental work group has been working for several months on bringing electronic contracts management system recommendations to the City Manager for a new system.

Recommendation 2.2: To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.

Management Response: Partially Agree

Implementation Date: July 2025

Corrective Action Plan: By implementing DocuSign for all waivers, the process itself has all the necessary information to track quantity, date, and all approvals. This solution will not add additional steps, time or expense which is helpful given limited resources and financial constraints. We continue to assess for use in potential new systems.

Recommendation 2.3: To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.

Management Response: Agree

Implementation Date: November 2025

Corrective Action Plan: The updates have been made.

Recommendation 2.4: To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.

Management Response: Agree

Implementation Date: Partially implemented

Corrective Action Plan: Ongoing process to improve guidelines and process flows.

Recommendation 2.5: To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.

Management Response: Agree

Implementation Date: May 2025

Corrective Action Plan: We have already had several sessions of Contract Training classes and will continue them in 2026.

Recommendation 2.6: To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.

Management Response: Agree

Implementation Date: In process

Corrective Action Plan: All vacancies in the Finance Department are in the process of being filled including the General Services Manager and Buyer.

Recommendation 2.7: To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

Management Response: Agree

Implementation Date: September 24, 2025

Corrective Action Plan: This was assigned to the DEI Officer.

Methodology and Compliance

To gain an understanding of General Services operations and internal controls, and to achieve our audit objectives, we used the following methodology:

- We reviewed the City Charter, Berkeley Municipal Code, Purchasing Manual, other internal policies and procedures, review forms, and past reports and audits. We also attended one of the contract training sessions offered by the Finance Department.
- We compared Berkeley's practices against published best practices and guidance from organizations such as NIGP: The Institute for Public Procurement, the Procurement Excellence Network, and the U.S. Government Accountability Office. We also reviewed related audits from other jurisdictions and spoke with the auditors.
- We interviewed a range of stakeholders to understand how the contract process works both within General Services and from the perspective of other departments. This included General Services staff and staff from six other city departments regularly involved in the contracts process

Our scope focused on two datasets from the City's financial system: (1) all expenditure contracts marked as posted in the City's financial system as of March 6, 2025 and (2) expenditure contracts executed in fiscal year 2024. Since the City's largest contracts often last years, they likely would not have been captured in our dataset of contracts executed in fiscal year 2024, even though these contracts were active in this year. Therefore, we also reviewed 100 of the City's largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date in the City's financial system before June 30, 2025. We did not verify if there were cases when the contracts were extended, but the expiration date in the City's financial system had not been updated. We included only the remaining 78 active contracts in our analysis. Additionally, we identified the largest contracts based on the revised total in the City's financial system. It is possible the not-to-exceed written in some contracts was greater than what was listed in the financial system depending on variations in how the amount is entered, such as entering only one year's worth of funds at a time for a multi-year contract. We did not include purchase orders in our definition of contracts.

We performed a risk assessment of the City's contract practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. This included a review of selected policies and procedures, as well as interviews with internal staff.

The City's financial system does not indicate the type of competition the City used for each contract. Therefore, we used the publicly available contract information in Records Online to determine the competition for all expenditure contracts executed in fiscal year 2024 and the 100 largest active contracts. We reviewed the contract packet for each contract to assess if it was competitive or not, as well as to ensure consistency in contract information between the City's financial system and the contract itself. We validated the determination of the non-competitive contracts with the responsible department. We did not assess the effectiveness of the competition – i.e., if they received multiple bids – only if the department reported using competition.

We did additional testing of a subset of the contracts identified above. For example, among the contracts from fiscal year 2024 that used waivers of competitive solicitation, we also assessed if they met the Purchasing Manual criteria for waivers. We also analyzed the active service contracts that began at or below \$50,000 and were later amended above that threshold. We tested a sample of 25 contracts amended under the City Manager, as well as five additional amended City Attorney contracts, for competition and compliance with policy requirements for review and approval. We also reviewed the Contracts Log spreadsheet managed by the General Services team. For specific contracts, we also reviewed additional documentation from Council Resolutions, Council Items and other documentation.

Data Reliability

We assessed the reliability of the City's financial system and Records Online data by reviewing it for reasonableness and completeness. We also interviewed staff responsible for managing the systems and inputting the data. We were also able to validate the information across the two systems to ensure the data matched. We identified a few instances of incomplete data, however, we determined that the data is sufficiently reliable to address the audit objectives.

Independence

According to Article XI of the Berkeley Charter, the City Auditor is responsible for countersigning, numbering and registering all contracts for the City of Berkeley. Given updates in technology, in recent years, this responsibility involved no actual oversight as contracts were already executed by the time they reached the City Auditor's office. The City Auditor's Office assigned the executed contract a number and recorded it. The City Auditor's Office did not have a role in reviewing or approving contracts, or ensuring that contracts followed City policy.

In November 2018, the City began using the ERMA financial system, which automatically numbered all contracts. To reduce redundant steps, the City Auditor officially designated responsibility to countersign contracts as registrant to the Finance Department. In 2024, the City updated the Berkeley Municipal Code (2.24.050.C) to reflect this change.

To reduce the threat to our independence, we limited our work by excluding areas overseen by our office.

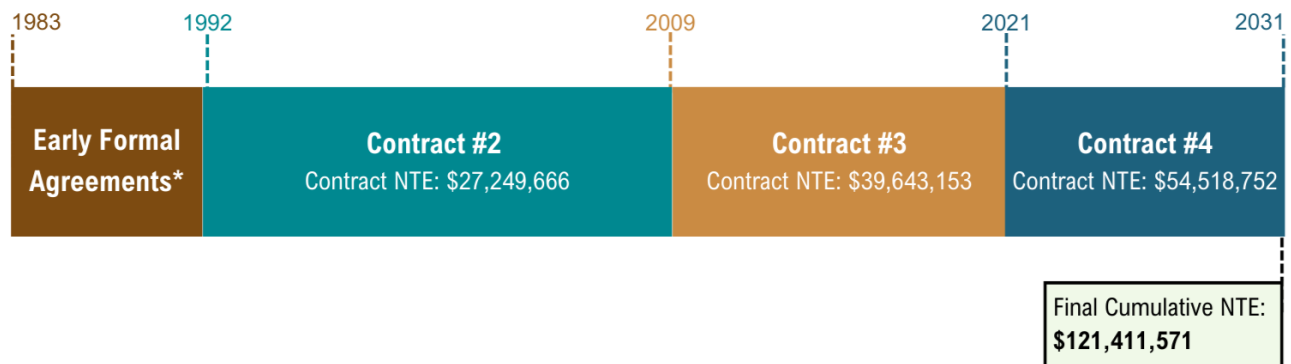
Statement of Compliance

We conducted this performance audit 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.

Appendix 1: Timelines of the City's Recycling Contracts

Figure 8 and Figure 9 show the history of the City's contracts with the Ecology Center and Community Conservation based on review of authorizing Council Resolutions and other related documents. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but we did not audit these individual contracts or contractors.

Figure 8: Berkeley has contracted with the Ecology Center since the 1980s.

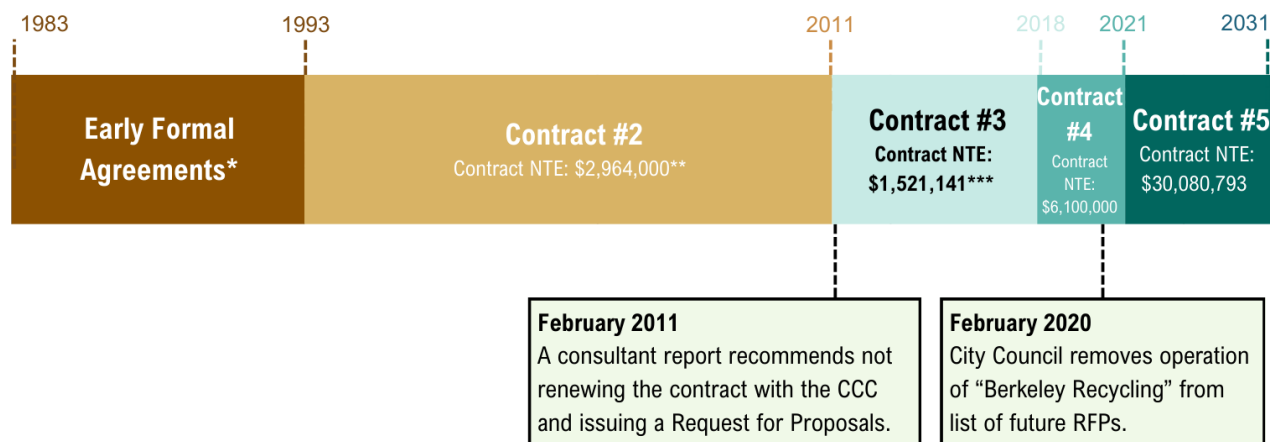


Source: Auditor analysis of Council Resolutions and contract documents on Records Online

*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed amount for these contracts.

Note: NTE stands for "not-to-exceed." City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

Figure 9: Berkeley has contracted with Community Conservation Centers (CCC) since the 1980s.



Source: Auditor analysis of Council Resolutions and contract documents on Records Online

*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed (NTE) amount for these contracts.

**We were unable to calculate the contract NTE prior to 2005 due to inconsistent reporting and documentation.

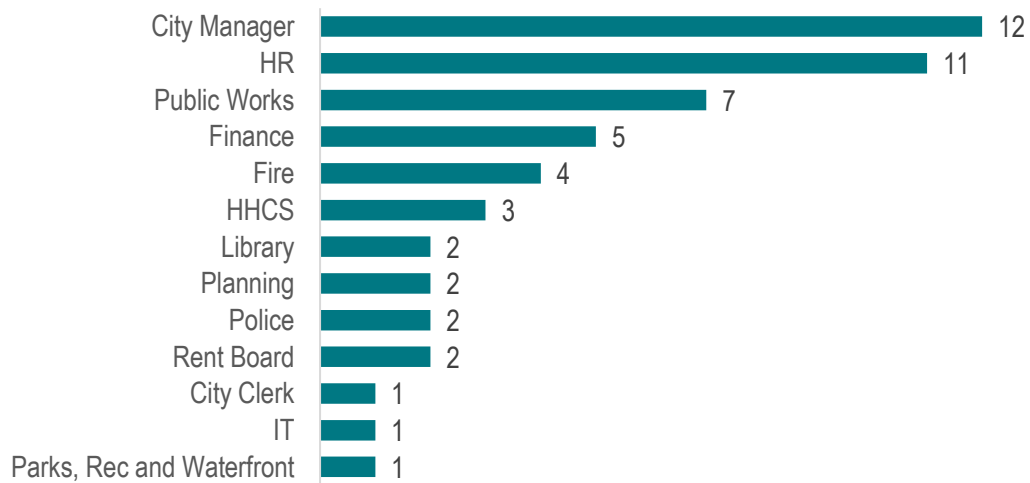
***This is an underestimate of the total cost of this contract, as the original not-to-exceed was the total gross receipts resulting from the sale of the City's recyclable materials minus 7.5 percent of those gross receipts which was to be paid to the City annually. Later amendments added additional one-time payments which account for the reported NTE. We did not analyze or calculate the total gross receipts for this report.

Note: City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

Appendix 2: Contracts with Waivers Executed in Fiscal Year 2024

Figure 10 shows the total number of contracts executed in fiscal year 2024 that used a waiver of competition, broken down by department.

Figure 10: Number of non-competitive contracts executed via waiver in fiscal year 2024 by department.



Source: The City's financial system and auditor assessment of contracts in Records Online

Appendix 3: Largest Active Non-Competitive Contracts

In Table 6, the term “active” refers to the contract’s status in the City’s financial system. The contractor and description also come from the City’s financial system. The contract length in years is based on the expiration date in the City’s financial system as of September 29, 2025. The total contract amount is based on the contract itself and any subsequent amendments as of September 29, 2025.

Table 6: List of non-competitive contracts among the City’s 100 largest active contracts, largest to smallest

Contractor	Description	Total Contract Length (in years)	Total Contract Amount	Met PM Criteria?
ECOLOGY CENTER, INC	RESIDENTIAL RECYCLING COLLECTION SERVICES	5	\$54,518,752	NO
COMMUNITY CONSERVATION CENTER, INC	RESIDENTIAL & COMMERCIAL RECYCLING OPERATIONS	5	\$30,080,783	NO
BAY AREA COMMUNITY SERVICES	PATHWAY STAIR CENTER	8	\$15,168,616	YES
EVICION DEFENSE CENTER	HOUSING RETENTION PROGRAM	5	\$8,294,683	YES
BERKELEY CONVENTION & VISITOR	TOURISM BSNSS IMPROV DIST MKTG SVCS	8	\$7,966,000	YES
TELEGRAPH PROPERTY & BUSINESS	TELEGRAPH BUS. IMPROVE DIST.	10	\$7,410,024	YES
INSIGHT HOUSING	INTERM HOUSING AT SUPER 8 MOTEL	5	\$7,295,634	YES
DOWNTOWN BERKELEY ASSOCIATION	PROPERTY BASE BID ASSESSMENT (DPBID)	5	\$7,285,257	YES
EBMUD	EBMUD PW SEWER BILLING SERVICES / COLLECTIONS	10	\$6,100,000	YES
MOTOROLA SOLUTIONS INC	MUNICIPAL LEASE - RADIO & EQUIPMENT LEASE	7	\$5,818,116	YES

Contractor	Description	Total Contract Length (in years)	Total Contract Amount	Met PM Criteria?
RENNE PUBLIC LAW GROUP	MISCELLANEOUS SERVICES, NO. 1 - Legal Services	7	\$4,167,000	N/A*
SENTRY CONTROL SYSTEMS, INC	PARKING ACCESS & REVENUE COLL	9	\$2,915,355	YES

Source: The City's financial system and auditor assessment of contracts in Records Online

* N/A indicates that we did not assess whether this contract met the Purchasing Manual criteria for competition because the City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services.

Appendix 4: Active Service Contracts Amended Over the Threshold for Competition

The contracts listed in Table 7 are the top 10 active service contracts by total dollar value that began at or below the formal competition threshold of \$50,000 and were later amended to increase the cost of the contracts. The term “active” refers to the contract’s status in the City’s financial system.

The contractor, department, description, and revised total come from the City’s financial system. The original total is based on the contract posted in Records Online. The revised total includes any amendments recorded in the financial system as of March 2025.

We did not review the contract file for every contract nor determine which ones were initially competitive. This list is intended to highlight that the amendment process can lead to increases for contracts with no guidance for when competition may be needed.

Table 7: List of ten largest service contracts which began at or below \$50,000 and were amended above \$50,000 as of March 2025, largest to smallest

Contractor	Department	Description	Original Total	Revised Total
RENNE PUBLIC LAW GROUP	City Attorney	MISCELLANEOUS SERVICES, NO. 1 - Legal Services	\$50,000	\$4,167,000
BURKE, WILLIAMS & SORENSEN, LLP	City Attorney	EXTERNAL LEGAL COUNSEL	\$10,000	\$1,208,266
L.J. KRUSE CO	Library	BPL HVAC Building Maintenance	\$16,000	\$843,020
YOUTH SPIRIT ARTWORKS	Health, Housing, and Community Services	TAY CASE MANAGEMENT & LINKAGE SVCS.	\$50,000	\$737,092
BRISCOE IVESTER & BAZEL LLP	City Attorney	Outside Legal Counsel re: Ruegg & Ellsworth v. COB	\$30,000	\$725,000
CIVICMAKERS, LLC	IT	Coaching & Training Svcs	\$35,000	\$529,025
SLOAN SAKAI YEUNG & WONG LLP	HR	LEGAL SVCS-LABOR NEGOTIATION SUPPORT	\$45,000	\$484,587
MSR MECHANICAL, LLC	Public Works	ON-CALL HVAC SVCS	\$50,000	\$448,515
ATTHOWE FINE ART SERVICES	City Manager	As-Needed Fine Art Services	\$49,950	\$400,000

Contractor	Department	Description	Original Total	Revised Total
ACCUTITE ENVIROMENTAL ENGINEER	Public Works	STORAGE TANK MAINT & TESTING	\$50,000	\$382,496

Source: Records Online and the City's financial system

Mission Statement

Promoting transparency and accountability in Berkeley government.

Contributors

Erin Mullin, Audit Manager
Caitlin Palmer, Audit Manager
Kendle Kuechle, Auditor II
Pauline Miller, Auditor II
Manami Suenaga, Auditor I
Katie Wysong, Auditor I

City Auditor

Jenny Wong

Office of the City Auditor

Phone: (510) 981-6750

Email: CityAuditor@berkeleyca.gov

Website: <https://berkeleyca.gov/your-government/city-audits>

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Cover photograph by the City Auditor's Office.



BERKELEY CITY AUDITOR



To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: City Contracts: Outdated Process Led to Non-Competitive Contracts

RECOMMENDATION

We recommend City Council request that the City Manager report back by Fall 2026, and annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Finance Department and other relevant departments. The audit includes 13 recommendations to clarify for staff when non-competitive contracts and amendments are appropriate, as well as to improve transparency and efficiency in the contracts process overall. The City management agreed or partially agreed to our findings and recommendations. Please see our report for their complete response.

FISCAL IMPACTS OF RECOMMENDATION

Reducing the use of non-competitive contracts could help the City ensure it is not overpaying for services. As the City faces a budget deficit, it is important that the City gets the best value for the goods and services it purchases. Updating the Purchasing Manual and related training and procedures will likely take an upfront investment of staff time but could reduce the workload for General Services and staff in the long run. Getting a comprehensive and integrated electronic contract management system, as recommended by the audit, would require financial investment, but could address the challenges we identified related to current paper contract process, including delays and lost contracts.

CURRENT SITUATION AND ITS EFFECTS

In fiscal year 2024, 94 of the 218 contracts executed did not have documented evidence of competition. The total value of these contracts was approximately \$43 million compared to \$102 million in competitive contracts. The non-competitive contracts included 26 authorized by Council Resolution, 53 through waivers of competition approved by the City Manager, and 15 through other or unclear means.

Most of the City's largest active contracts had documented evidence of going through competition or meeting the Purchasing Manual criteria for exceptions, but two recycling contracts did not. In fiscal year 2022, Berkeley executed contracts for recycling services for nearly \$85 million over ten years without seeking bids from other contractors. Although pursuing competition is an established best practice and the City's Purchasing Manual states that service contracts above \$50,000 must go through formal competition, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive.

Of the 53 approved waivers of competition, 38 percent did not clearly meet the criteria in the Purchasing Manual, meaning the City could likely have pursued competition. For example, while waivers for classification and compensation studies were used, there was no documentation that this was an emergency. By requesting waivers for the same service from different contractors in a similar time period, this indicated that it would have been feasible to request quotes instead.

Once a contract is in place, the City can use amendments to increase the dollar amount. Our audit found the City had 95 active service contracts that began at or below the formal competition threshold of \$50,000 but were later amended above the threshold. On average, these amendments added \$218,026 in total to each contract. According to Finance, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

Paper contracts, unclear guidance, and short staffing led to delays and the overuse of non-competitive contracts. For example, in a sample of 23 amended service contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Additionally, in fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals. During our audit, the City adopted DocuSign for some parts of the contracting process and an interdepartmental team was looking into purchasing a digital contracting system. However, short staffing and turnover in General Services and across the City made it more difficult to improve the contract process.

BACKGROUND

The City uses contracts for most services that are not done by city staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods, like office furniture and equipment for parks maintenance. The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department.

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. However, competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. This primarily occurs through either Council authorization or a waiver of competition approved by the City Manager.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will decrease reliance on non-competitive contracts. Additionally, they will improve the contracting process overall through clearer, more consistent guidance and improved systems.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Audit Report: City Contracts: Outdated Process Led to Non-Competitive Contracts

