

First 5 Commission of San Diego
June 29, 2009
Administrative Review and Recommended Changes
Regarding Advisory Committees

Background:

At the June 3, 2009, meeting of the First 5 Commission of San Diego County (F5SD), the Chair directed staff to review F5SD Commission Advisory Committees (AC) in regards to any potential Conflict of Interest (COI) or perception of COI. Staff was also directed to review contracts to see if any sitting members of any Advisory Committee to the Commission have contracts with the Commission and recommend any policy changes.

This report summarizes the staff review and findings and makes recommendations to address the COI perception issues related to the AC's which advise the Commission. A summary chart of issue areas and recommendations is provided at the end of this report.

Recommendations:

As a result of the Chair's direction, staff is making the following recommendations:

1. Adopt a by-law change to preclude contractors and subcontractors of F5SD from membership on the Technical and Professional Advisory Committee (TPAC) and Finance Committees (FC). Preclude members of advisory committees to the Commission from applying for F5SD funds during their service and for one year after their term ends (applies to committee members who are members of a committee on or after October 1, 2009), define terms of service on TPAC as 2 years, with a limit of up to 2 terms, and establish the number of TPAC members as no more than 11.
2. Direct the Interim Executive Director to bring the above recommendation back to the Commission at its next regular meeting for a vote to amend the First 5 Commission of San Diego By-laws.
3. Adopt policy changes to:
 - F5C-003 Commission Funding Process
 - F5C-010 Policy for Innovative Grants
 - F5C 016 Responsive Funds Requests
 - C5C-017 Finance Committee Membership Policy
4. Direct staff to restructure the TPAC to align expertise around the Commission's core strategies as identified in its strategic plan.

Process:

At the direction of the Chair, staff reviewed dates of services of all TPAC and Finance Committee members in view of any existing F5SD contracts with their organizations. Any contract awards to the members' organizations were independently reviewed by HHSA Agency Contract Support to ensure appropriate processes were followed. Though TPAC has no role in awarding contracts, TPAC minutes from July 2005 through May 2009 were also reviewed to determine if TPAC had ever taken any action that may have influenced the procurement process or awarding of a contract.

All First 5 San Diego policies were reviewed by staff. Four of the policies were identified as needing updates to preclude any appearances of COI. The recommended changes were reviewed by the Agency Compliance Office and County Counsel and their recommendations were incorporated into the proposed policy changes.

Findings:

No evidence was found of any actual conflict of interest in the contracting process. TPAC minutes reflect that no actions occurred related to the recommendation of any contract award to a TPAC member's organization or any other organization. TPAC minutes reflect that counsel provided several presentations to TPAC members on conflict of interest.

There does appear to be the potential for a perception of conflict of interest to exist as some TPAC members work for organizations that contract with F5SD.

Legal requirements:

Commissioners are subject to Government Code 1090 et seq. which generally prohibits conflicts of interest in contracting matters, and the California Political Reform Act which requires Commissioners to complete a Statement of Economic Interest (Form 700) and recuse themselves from influencing or voting on a decision where they have a personal financial interest.

TPAC and the Finance Committee are two standing committees that advise the Commission. As their role is advisory only, and these bodies have no direct role in awarding contracts or allocating funds, and members of these bodies are not required by statute to complete a form 700 disclosure form.

County employees who are designated employees annually complete a Form 700, and all County employees complete a disclosure statement identifying incompatible activities. County employees and elected officials do not have a conflict on Commission actions that involve the County because the Commission is part of the County.

Perception of Conflict Of Interest

While the TPAC and Finance Committee have no role in recommending or awarding contracts, a perception of conflict can exist if the sitting members' organizations have F5SD contracts. This can be addressed by precluding current contractors from sitting on committees which advise the Commission.

Status of Commission Contracts

May 2009

As of May 2009, F5SD had 78 active contracts. The majority of the F5SD procurements are for multi-year contracts. The originating procurement identifies the option periods which are executed by contract amendments. The majority of the initial contracts are awarded for one year and then contract amendments are processed annually for each of the subsequent contract years. Contract amendments that 'act on the option year' are brought to the Commission for approval; these amendments are not reviewed nor presented to either TPAC or the FC. Neither of these advisory committees has made a recommendation to the Commission regarding contract awards.

Total Contracts	Number of Contracts to Organizations with Staff Member on TPAC / Finance Committee	Of these, contracts to organizations awarded while the individual was on TPAC / Finance Committee
78	16 contracts	11 contracts

Technical and Professional Advisory Committee - Currently there are 16 TPAC members, 8 of whom work for organizations that have contracts with F5SD. They have 16 contracts between them. These TPAC members work for some of the largest, most experienced, competitive and respected organizations

serving young children and pregnant women in the county. They are experts in health, child development, social services, and education.

Finance Committee- There are 5 FC members. One, the TPAC representative to the committee, has 3 contracts, which are included in the TPAC figures above.

In the case of 3 TPAC members, (with 5 contracts between them) the initial award of the contracts occurred before their organization had a staff member on TPAC.

First 5 Contracting Process and Related Findings

The majority of F5SD contracts are awarded through a competitive procurement process. As with all County procurements, the County Purchasing and Contracting Department provides oversight of this process and works with the F5SD contracting staff on all aspects of procurement activities. Request For Proposals (RFP) are released, organizations respond and source selection committees (experts in the service area who are not competitors for the funds) review, rank and make award recommendations to the First 5 Executive Director (ED). The ED then reviews and makes recommendations to the full Commission for contract award at its regularly scheduled public meeting. Of the 16 contracts held by current TPAC members' organizations, 13 were such procurements. The HHSA Agency Contract Support staff reviewed these procurements and did not identify any conflicts of interest in the Source Selection Committee reports, nor in the award of contracts.

Of the 16 contracts held by current TPAC members' organizations, three contracts were awarded as sole source, in which specific criteria were addressed. In one instance the organization did not have a representative on TPAC at the time of the initial award. In another instance, the Commission was applying for First 5 California funding and the State Commission had identified the local entity (the County Office of Education) to be the contractor in San Diego county. In the third situation, the recommended Awardee was the only organization in the community that provided the services to the identified target population.

For innovative and responsive contracts, F5SD staff follows guidelines established in commission policies F5C-010: Policy for Innovative Grant Funds and F5C-016 Responsive Funds Requests. These have been revised to preclude any members of the Commission or their Advisory Committees from participating in the selection of awardees for either of these two programs.

The awarding of contracts and allocation of funds is under the sole purview of the First 5 Commission. Neither TPAC nor the FC review, advice, comment, or recommend contract awards to the Commission, nor are they otherwise involved in any of these processes.

Other Work Groups

From time to time, the Executive Director has put together work teams to assist staff with projects (such as strategic planning). These teams are not decision making groups and have only provided technical input to the Executive Director. In all cases, staff has drafted any resulting reports and the Executive Director has made the final decision of what was carried forward to the Commission.

Staff is currently looking at developing internal policies for these work groups consistent with Commission direction concerning conflict of interest.

Restructuring TPAC

State law requires each County Commission to "establish one or more advisory committees to provide technical and professional expertise and support for any purposes that will be beneficial in accomplishing the purpose of this act."

TPAC members are individuals who are experienced in fields serving children 0-5 years of age. Researchers, community based service providers, health care providers, private practice pediatricians, psychologists, pediatric dentists, child development specialists, nurses, child advocates, educators,

academics, and parents have served on TPAC. They advise the Commission about community needs, existing resources, research and best practices.

Finance Committee members include: County representatives with financial expertise from the Investment Division of the Treasurer and Tax Collectors office, the Group Finance Director from the Finance and General Government group, the Director of the HHS budget office, and representatives from local banks and the Chamber of Commerce.

In both cases, TPAC and FC organizations have generously committed to allowing staff members to take time to serve on Commission advisory committees.

We continue to learn and refine our operating procedures. By narrowing the focus of F5SD strategic initiatives, we have an opportunity to restructure TPAC around the core focus areas.

We can establish:

- TPAC of experts and academics with no personal or perceived financial interest in the award of contracts.

TPAC will:

- Review program performance and outcomes
- Review national and local evaluation data
- Convene a public process to learn from service providers, including F5SD contractors.

Issues to be covered will include:

- Trends
- Changing demographics
- Service delivery challenges and strategies
- Best practices

TPAC will consider all of this information when developing recommendations to advise the Commission. This allows retention of the valuable input and expertise of our contracted service providers through a process that will eliminate the appearance of conflict, and assure the public that we are protecting their interests.

Term limits have been recommended to reflect the County's policy direction for Advisory Committees. With no contractors on TPAC and a focus on the core initiatives, we can reduce the size of TPAC membership.

Summary Chart of Recommendations

Issue Area	Recommended Action
TPAC & FC Membership	<ul style="list-style-type: none"> • Adopt a by-law change to preclude First 5 contractors and subcontractors from membership on TPAC and FC • Restructure TPAC to align expertise around Commission's core strategies, specifying terms and establish the membership number
Contract Procurement	<ul style="list-style-type: none"> • Preclude members of advisory committees to the Commission from applying for First 5 funds during their service and for one year after their term ends
Contract Policies	<ul style="list-style-type: none"> • Adopt revisions to First 5 policies as appropriate