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JULY 13, 2004

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: FOLLOW-UP REPORT REGARDING A RESOLUTION AUTHORIZING THE SIXTH AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE LAKE MERRITT INSTITUTE FOR THE CLEANUP OF LAKE MERRITT FOR FY 2004-7 IN AN AMOUNT NOT TO EXCEED \$469,426 FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$1,269,581.

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Proposed Resolution and Agenda Report. In making our analysis, we also asked for additional information and clarification from City staff and obtained selected documents from the City Clerk's office.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only one (1) week for us to plan, perform and report on our analysis.

SUMMARY

The Lake Merritt Institute has provided clean up services in and around Lake Merritt under contract with the City beginning in December 1996. The Institute also provided other services under the terms of the contract, such as maintaining bulletin boards and providing educational programs about preventing pollution to Lake Merritt.

CONTRACT AWARD PROCESS

The contract commenced in December 1996 and was originally set to expire in May 1997. It was renewed through a series of five amendments that expanded the scope of services. As far as we can determine, the original contract or amendments have never been competitively bid. Moreover, the original contract period of six months became extended first to one year and gradually to three years.

Based on the most recently passed amendment, the contract expired on May 31, 2004. A proposed resolution authorizing a three-year extension to the contract for the Lake Merritt Institute was presented to the Public Works Committee on June 8, 2004. In response to a request from the Public Works Committee, staff prepared a follow-up report.

There are two proposed resolutions competing for consideration. They are mutually exclusive and as such, only one or neither of the two can be adopted. The selected resolution would authorize the sixth amendment to the contract with the Lake Merritt Institute.

1. The first proposed resolution would authorize a three-year extension to perform the existing provisions of the original contract and accompanying five amendments for the Lake Merritt Institute. In addition, the sixth amendment could include other provisions that may increase or decrease the scope of services the Lake Merritt Institute performs. The three-year extension would expire on May 31, 2007.
2. The alternative proposed resolution would authorize a one-year extension to perform the existing provisions of the original contract and accompanying five amendments for the Lake Merritt Institute. In addition, the sixth amendment could include other provisions that may increase or decrease the scope of services the Lake Merritt Institute performs. The one-year extension would expire on May 31, 2005. During this fiscal year, staff would prepare a Request for Qualifications (RFQ) to identify organizations qualified to perform the scope of work. Staff would then issue a Request for Proposals (RFP) to organizations that meet minimum requirements. A new contract with the selected organization would be ready for June 1, 2005. The proposed resolution for the one-year extension does not include any reference to initiating this competitive bid process. However, staff told us the RFQ process will be performed if the proposed resolution for a one-year extension is approved.

Staff currently does not intend to initiate the RFQ process if the proposed resolution for a three-year extension is approved.

FISCAL IMPACT

The amount of the contract with the Lake Merritt Institute has grown from \$42,967 at the inception of the contract to \$800,155 as summarized below:

Resolution No.	Period of Contract or Contract Extension	Length in Months	Amount Approved Not to Exceed
73064 C.M.S.	12/1996 to 5/1997	6 months	\$42,967
73589 C.M.S.	6/1997 to 5/1998	12 months	\$78,505
74356 C.M.S.	6/1998 to 5/1999	12 months	\$83,581
75103 C.M.S.	6/1999 to 5/2000	12 months	\$98,451
75762 C.M.S.	6/2000 to 5/2001	12 months	\$99,589
76528 C.M.S.	6/2001 to 5/2004	36 months	\$397,062
Amount Approved to Date			\$800,155

The proposed amount of the contract including the amount approved to date will be \$1,269,581 or \$951,725 depending on which proposed resolution is adopted as summarized below:

	Three-year extension	One-year extension
6/2004 to 5/2005	\$151,570	\$151,570
6/2005 to 5/2006	\$156,416	-
6/2006 to 5/2007	\$161,440	-
Proposed Total	\$469,426	\$151,570
Amount Approved to Date	\$800,155	\$800,155
Proposed Total Plus Amount Approved to Date	\$1,269,581	\$951,725

Staff provided us with a line-item budget from the Lake Merritt Institute showing the general categories, such as educational materials and part-time assistants, the funds would be spent on for a three-year extension. The three annual amounts totaling \$469,426 shown in the chart above are based on the line-item budget.

CONCLUSION

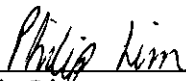
Before approving either of the two proposed resolutions, the Council should consider that:

1. adopting the three-year extension with the Lake Merritt Institute would preclude consideration of the competitive bid process until the approach of the contract expiration date on May 31, 2007.
2. adopting the one-year extension with the Lake Merritt Institute would allow for the competitive bid process to begin before May 31, 2005. The proposed resolution for the one-year extension does not include any reference to initiating this competitive bid process. However, staff told us the RFQ process will be performed if the proposed resolution for a one-year extension is approved.

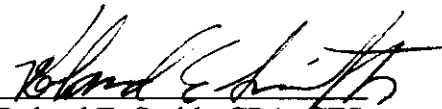
We repeat our concern, as expressed in our report dated June 8, 2004, that the contract has never been put out to bid, and the length of the contract has gradually grown to three years.

Prepared by:

Issued by:



Philip Lim
Deputy City Auditor



Roland E. Smith, CPA, CFS
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Report completion date:
July 6, 2004