
OFFICE OF THE CITY ATTORNEY

OFFICE OF THE CITY CLERK
OAKLAND

13 JAN 30 PM 3: 35

OAKLAND CITY COUNCIL

RESOLUTION No. 84189 C.M.S.

RESOLUTION AUTHORIZING EXPEDITED PURCHASING OF GOODS AND SERVICES DIRECTED BY COURT APPOINTED COMPLIANCE DIRECTOR IN ACCORDANCE WITH THE UNITED STATES FEDERAL DISTRICT COURT'S DECEMBER 12, 2012 ORDER, TO ASSIST THE CITY IN ACHIEVING COMPLIANCE WITH THE NEGOTIATED SETTLEMENT AGREEMENT ("NSA") AND THE AMENDED MEMORANDUM OF UNDERSTANDING ("AMOU") IN DELPHINE ALLEN V. CITY OF OAKLAND BY:

- 1) **WAIVING COMPETITIVE ADVERTISING, BIDDING AND REQUEST FOR PROPOSALS/QUALIFICATIONS PURCHASING PROCESSES SET FORTH IN OAKLAND MUNICIPAL CODE CHAPTER 2.04;**
- 2) **WAIVING THE ARIZONA BOYCOTT POLICY, RESOLUTION NO. 82727;**
- 3) **AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE ON BEHALF OF THE CITY CONTRACTS FOR THE PURCHASE OF GOODS AND SERVICES DIRECTED BY THE COMPLIANCE DIRECTOR IN AN AMOUNT UP TO \$250,000.00 PER CONTRACT IN ORDER FOR THE CITY TO COMPLY WITH THE AMOU AND THE COURT'S DECEMBER 12, 2012 ORDER;**
- 4) **AUTHORIZING DIRECT SCHEDULING TO COUNCIL OF ANY NSA/AMOU COMPLIANCE-RELATED PURCHASES THAT REQUIRE COUNCIL APPROVAL;**
- 5) **ESTABLISHING UNLIMITED SUMMER RECESS PURCHASING AUTHORITY FOR CITY ADMINISTRATOR FOR SUCH PURCHASES IF THE COUNCIL IS NOT ABLE TO CONVENE A TIMELY SPECIAL MEETING TO HEAR THE ITEM(S); AND**
- 6) **DIRECTING THE CITY ADMINISTRATOR TO PROVIDE PERIODIC REPORTS TO THE CITY COUNCIL REGARDING THE AMOUNTS, NATURE AND PURPOSES OF PURCHASES OF GOODS AND SERVICES MADE PURSUANT TO THE COURT'S ORDER**

WHEREAS, in 2001, plaintiffs filed Delphine Allen, et al. v. City of Oakland, et al., Case No. C 00-4599 TEH ("Riders case") in the United States Federal District Court ("Court") alleging that several Oakland police officers planted and fabricated evidence and engaged in other unconstitutional behavior; and

WHEREAS, in 2003, to resolve the issues in the Riders case, the City Council approved the NSA between the City and the plaintiffs which required the City to implement reforms to address the Riders case; and

WHEREAS, the City and plaintiffs subsequently entered into a 2009 Memorandum of Understanding ("MOU") and a 2011 AMOU that superseded the NSA; and

WHEREAS, in 2003, 2009, and 2011, the Court issued orders approving the NSA, the MOU and the AMOU, respectively, and retained jurisdiction to oversee compliance; and

WHEREAS, on February 24, 2012 the Court set a hearing for December 13, 2012 on a motion to place the Oakland Police Department (“OPD”) under receivership in order to complete the reforms to address the Riders case; and

WHEREAS, the plaintiffs filed a motion on October 4, 2012 asking the Court to order receivership and the City filed opposition papers on November 8, 2012; and

WHEREAS, the Court assigned the matter to United States Magistrate Judge Nathanael M. Cousins for purposes of resolving the issues the plaintiffs’ motion and the City’s opposition raised;

WHEREAS, on December 12, 2012 the Court issued an order removing the hearing on the receivership motion from the Court’s calendar and providing for a Court-appointed Compliance Director to assist the City in achieving compliance with the AMOU; and

WHEREAS, the City of Oakland is fully committed to completing the reforms to achieve sustainable compliance and to faithfully facilitating compliance with the AMOU and the Court’s December 12, 2012 order; and

WHEREAS, the Court’s December 12, 2012 order mandates that the Compliance Director develop a compliance plan (“Compliance Plan”) that includes a proposed budget for necessary expenditures for task compliance and the Court’s order further provides that such budget must be “included as part of the [Oakland Police Department] budget” and “mutually agreed to” by the Compliance Director and City; and

WHEREAS, the Court’s December 12, 2012 order grants the Compliance Director authority to purchase goods and services necessary for the City to achieve compliance with the NSA and AMOU, including expenditure authority up to and including \$250,000.00 for each contract to purchase goods and services included in the Compliance Plan and the “not to exceed” budget mutually agreed to by the City and the Compliance Director or ordered by the Court (“Budget”); and

WHEREAS, in order for the City to timely and expeditiously comply with the AMOU and the Court’s December 12, 2012 order granting the Compliance Director the authority to expend up to \$250,000.00 for each contract to purchase goods and services included in the Compliance Plan and Budget, the City Administrator and the City Attorney recommend that the Council authorize the City Administrator to execute such contracts on behalf of the City; and

WHEREAS, the Court’s December 12, 2012 order further provides that proposed individual expenditures by the Compliance Director that exceed \$250,000.00 must comply with the City’s applicable rules and regulations, including those set forth in Oakland’s Purchasing Ordinance (Oakland Municipal Code, Chapter 2.04); and

WHEREAS, in order to comply with the Court’s December 12, 2012 order the City must establish expedited purchasing (i.e., public procurement) processes for goods and services that are necessary to facilitate compliance with the NSA and the AMOU; and

WHEREAS, Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 permit the Council to waive advertising, bidding and request for proposals/qualifications requirements for purchases of goods and services upon a finding that it is in the best interests of the City to do so; and

WHEREAS, the City Administrator has determined and recommends that the Council find that it is in the best interests of the City to waive advertising, bidding and request for proposals/qualifications requirements for all AMOU compliance-related purchases to expedite compliance with the AMOU and to reduce or eliminate undue delays in acquiring goods and services necessary for the City to fully comply with mandates of the NSA and AMOU; and

WHEREAS, the City's Arizona Boycott Policy, set forth in Resolution 82728 C.M.S., urges "City Departments . . . to the extent practicable, and in instances where there is no significant additional cost to the City or conflict with the law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona;" and

WHEREAS, the City Administrator recommends that the Council waive the Arizona Boycott Policy for all AMOU compliance-related goods and services purchases in order to expedite compliance with the NSA, AMOU and to comply with the Court's December 12, 2012 order; and

WHEREAS, the City Administrator, requests that the Council establish a standing item on the City Council Agenda that will allow updates, reports and legislation pertaining to the Compliance Director's expenditures and actions pursuant to the Court's December 12, 2012 order for the purpose of reducing time and to facilitate achieving the mandates of the AMOU expeditiously; now therefore be it

RESOLVED: That pursuant to Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 and for the reasons stated above and in the City Administrator's report accompanying this resolution, the Council finds and determines that it is in the best interests of the City to waive advertising, bidding and request for proposals/qualifications requirements for all AMOU compliance-related purchases directed by the Compliance Director in accordance with the Court's December 12, 2012 order, and hereby waives the requirements; and be it

FURTHER RESOLVED: That for the reasons stated above and in the City Administrator's report, accompanying this resolution, the Council hereby waives the Arizona Boycott Policy, Resolution No. 82727, C.M.S., for all AMOU compliance related purchases directed by the Compliance Director in accordance with the Court's December 12, 2012 order; and be it

FURTHER RESOLVED: That the City Administrator is authorized to execute on behalf of the City contracts for the purchase of goods and services directed by the Compliance Director in an amount up to \$250,000.00 per contract in order for the City to timely and expeditiously comply with the AMOU and the Court's December 12, 2012 order granting the Compliance Director the authority to direct such expenditures included in the Compliance Plan and "not to exceed" budget mutually agreed to by the City and the Compliance Director or ordered by the Court; and be it

FURTHER RESOLVED: That the City Administrator is authorized to execute City contracts for the purchase of goods and services directed by the Compliance Director in an unlimited amount during the Council's annual summer recess if the Council is not able to convene a timely special meeting to hear the item(s); and be it

FURTHER RESOLVED: That the Council hereby authorizes direct scheduling to Council of purchases of goods and services made pursuant to the Court's December 12, 2012 order that require Council approval in order to facilitate compliance with said court order and the AMOU; and be it

FURTHER RESOLVED: That a standing item will be established on the regular Council Agenda allowing direct reporting to the Council of expenditures and other issues related to the AMOU and the Court's December 12, 2012, provided that reports must be submitted in compliance with the Brown Act and Sunshine Ordinance and that the City Administrator's Office and the City Attorney's Office will determine the title of the standing item; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator to conduct all negotiations, applications, agreements, and related actions which may be necessary to ensure compliance with the Court's December 12, 2012 order and the Compliance Director's expenditure authority; and be it

FURTHER RESOLVED: That in accordance with Article IV, section 401(6) of the City Charter, agreements entered into under the authority of this Resolution and as required by the Court's December 12, 2012 order, shall be approved as to form and legality before they are executed by the City Administrator and a copy of fully executed agreements shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

JAN 22 2013

PASSED BY THE FOLLOWING VOTE:

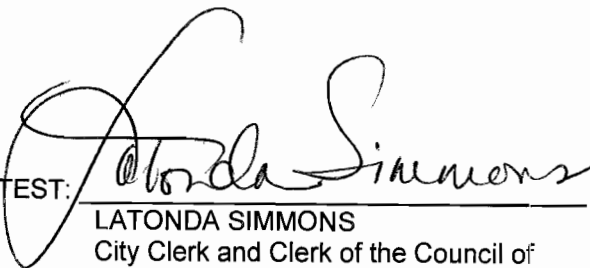
AYES - ~~Brooks~~, GALLO, KALB, KAPLAN, GIBSON McELHANEY, ~~Reid~~ SCHAAF and PRESIDENT KERNIGHAN - 6

NOES - 0

ABSENT - Brooks, Reid - 2

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California