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AGENDA REPORT

TO: DEANNA J. SANTANA

FROM: Howard A. Jordan

SUBJECT: Frazier Group, LLC Contract

DATE: April 18, 2012

City Administrator
Approval

Deanna J. Santana

Date

4/18/12

COUNCIL DISTRICT: City-Wide

SUPPLEMENTAL

RECOMMENDATION

Staff recommends that the Council approve a resolution authorizing the City Administrator to 1) waive the Advertising, Competitive Bid and Request for Proposals/Qualifications Requirements (RPF/Q) Process; 2) continue existing services; and, 3) increase the existing contract with Frazier Group, LLC in the amount of two hundred fifty thousand dollars (\$250,000) for conducting administrative misconduct investigations related to police complaints received during *Occupy Oakland* events in the City of Oakland and to satisfy the conditions of the Negotiated Settlement Agreement (NSA).

EXECUTIVE SUMMARY

The Oakland Municipal Code Section 2.04.020 "Authority of the City Administrator," states that the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council for purchases of supplies and services or a combination up to one hundred thousand dollars in any single transaction or term agreement and/or for the purchase of Professional Services up to one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement. The City Administrator exercised that authority in response to the critical time sensitive and complex needs generated by the actions and events related to *Occupy Oakland*.

Since October 25, 2011, the Oakland Police Department Internal Affairs Division (IAD) has received numerous misconduct complaints against members of the Oakland Police Department (OPD) as a result of *Occupy Oakland* protests and events. Due to the volume, sensitivity, and complexity of these complaints as well as a response-time mandate outlined in the Negotiated Settlement Agreement (NSA), coupled with a substantial increase in the number of complaints

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compensation of the most recent agreement to support the Department's investigative capacity (internal affairs investigations).

After considering the proposals received, the City entered into a contract with Frazier Group, LLC, in the amount of \$100,000 for the time period of February 13, 2012 to March 1, 2013, to 1) conduct 38 administrative investigations related to police misconduct complaints received during *Occupy Oakland* events; 2) assist with the development of a crowd control training curriculum; and, 3) provide general support and technical assistance to the Chief of Police.

Additionally, the contractor has requested a modification to the standard indemnification language to cover future costs if their work products are subpoenaed and the contractor is required to testify. This modification is not unusual when responsibility for findings may extend beyond the life of a contract and in circumstances where future litigation may ensue. Moreover, these efforts have been coordinated appropriately and in compliance with the Federal Court Order relative to independent contracts and investigations. The City Attorney is advising staff of potential liability and legal risks and, as of print of this report, we are exploring additional alternatives.

OUTCOME

As a result of continuity in service delivery, administrative investigations of misconduct complaints related to *Occupy Oakland* will be conducted thoroughly, objectively, and in a timely manner, the City will be responsive to the response-time mandate of state law and a savings in cost of services will be realized by retaining the existing investigator as opposed to utilizing multiple independent contractors to conduct investigations.

BACKGROUND

On October 25, 2011, the City removed the initial *Occupy Oakland* encampment from Frank Ogawa Plaza which resulted in numerous protests, a general strike, and a shutdown of the Port of Oakland. During the course of these *Occupy Oakland* events, hundreds of misconduct complaints were filed against members of the OPD. As mandated by the NSA, internal investigations of misconduct complaints shall be thoroughly completed within 180 days, however it is now impossible to comply with that requirement. With the increase in the number of complaints related to *Occupy Oakland*, coupled with the complexities of the allegations, additional investigative capacity is critical to ensure objective assessments of complaints and that other legal investigation timelines are met.

As of January 26, 2012, the City of Oakland was directed by the Court to expand the monitoring services of Police Performance Solutions, LLC. Police Performance Solutions has been consulted concerning the hiring of Frazier Group, LLC to conduct the misconduct investigations and, Police Performance Solutions supports the Department's efforts on this issue.

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As a result of soliciting informal bids, the City executed a \$100,000 contract with the Frazier Group to conduct administrative misconduct investigations related to *Occupy Oakland*, assist with the development of a crowd control training curriculum, and provide general support and technical assistance to the Chief of Police. Given the unexpectedly high number of misconduct complaints related to *Occupy Oakland*, the City Administrator seeks the City Council's authority to continue the services, expand the scope, and increase this contract in the amount of \$250,000 for a total amount not to exceed \$350,000. The City Council is authorized under Oakland Municipal Code Section 2.04.051.B to dispense with the City's standard RFP/Q process for the award of professional services contracts upon a finding that it is in the City's best interest to do so. Staff finds that it is in the City's best interest to waive the RFP/Q process and amend the original agreement with the Frazier Group, LLC which will prevent delays in the investigations potentially jeopardizing the Department's ability to meet legally required timelines. The time taken to hire a contractor has already resulted in compliance being lost as related to the NSA, although investigations have been advanced and prepared for their commencement. However, state law has additional timeliness requirements that must be met.

ANALYSIS

This supplemental responds to a variety of questions and clarifies topics posed by members of the City Council at the April 3, 2012 City Council meeting.

Qualifications of The Frazier Group, LLC

The Frazier Group is a management consulting corporation specializing in evaluation, planning and technical assistance to Federal, State and Local public safety departments, educational institutions and private sector entities. The Frazier Group is led by Tom Frazier, who is a nationally recognized expert in law enforcement and has conducted similar investigations at the national level, including serving as a former Police Commissioner of the City of Baltimore, MD. In addition, Mr. Frazier served as a Consent Decree advisor to the Cities of Los Angeles and Detroit, a COPS Grant Director for the U.S Department of Justice and as a Deputy Chief for the San Jose Police Department. Mr. Frazier leads a highly qualified team that includes Deputy Chief Mike Hillman (Retired) of the Los Angeles Police Department, Deputy Chief Don Anders (Retired) of the San Jose Police Department, and Captain Richard Cashdollar of the U.S. Coast Guard (Retired) and former Executive Director of Public Safety for the City of Mobile, Alabama.

In addition to their formal qualifications, during their work on the investigation of the October 25 encampment removal, The Frazier Group developed a global understanding of the *Occupy Oakland* events—including complaints associated with Occupy Oakland events, action taken by police personnel involved in the *Occupy Oakland* operations and Department policy and procedures gained a familiarity with *Occupy Oakland* misconduct complaints. The Frazier Group's awareness of the cases combined with their vast law enforcement background and

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experience, made them the best qualified to conduct *Occupy Oakland* misconduct complaint investigations.

Frazier Group, LLC Contracts

As a matter of clarification and context, there are two contracts with the Frazier Group, LLC. The first contract was awarded in December 2011 for \$100,000 to conduct an independent investigation of the City's Response to the Occupy Oakland encampment removal on October 25, 2011. The Frazier Group was well qualified for this type of work and has leading experts in crowd management and internal investigations. The scope of the initial contract was limited to the investigation of Department policy, pre-operational planning, command and control, mutual aid, tactics, media relations, overall use of force, complaint intake, mass arrest procedures, and other relevant issues. This investigation was for a broad overview of the Department's handling of Occupy Oakland.

The second (separate) contract was awarded in February for \$100,000 to conduct administrative misconduct investigations in a responsible and timely manner related to *Occupy Oakland* as needed by the Chief of Police. In addition, mindful of the mandates of the NSA, the contract was also to assist with developing a crowd control training curriculum and provide general support and technical assistance to the Chief of Police. Conducting administrative misconduct investigations regarding individual uses of force was not included in the first scope of work. Consistency of service delivery is essential to this investigative process. Because there are various critical timelines associated with these investigations, and because the contracting process can take months, it was determined that in consultation with the City Attorney, an initial contract would be awarded using the City Administrator's authority so that work could begin on the Internal Affairs investigations.

As noted in the Executive Summary section of this report, the City Administrator's Contract Authority gives the City Administrator the authorization to execute contracts up to \$100,000. It was intended that the contract would be sufficient until a contract could be brought to the City Council for an expanded scope of service and contract amount so that the investigations could be completed. It should be noted that the Administration went to the Rules Committee on March 22 to schedule this item for the April 3 City Council meeting; however, this item was pulled from the agenda because it was apparent there was information not included in the report and the decision was made to submit a more complete report, and the item was subsequently placed on the May 1 agenda (April 30).

Conflict of Interest

It should be noted that the Administration conducted its due diligence in determining whether two instances of potential conflicts of interest that arose were actual. With respect to staffing, within days of the camp removal that occurred on October 25, OPD had received hundreds of

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investigations arising from the camp removal or to properly support some of the more complex investigations (e.g. multi-agency, etc.). Additionally, the personnel needs to staff the camp removal required all members of the Department, including sworn staff in Internal Affairs. As such, this created numerous potential conflicts of interest where Internal Affairs investigators were potentially involved (minimally as witnesses) to some of the force incidents that occurred. For instance, the Internal Affairs Commander was pressed into service as the night time Operations Commander due to a shortage of Captains. Upon recognizing this conflict of interest, in the October and November timeframe, the City Administrator and I removed the IAD Commander from any of the preliminary investigations completed for any of the *Occupy Oakland* events on October 25.

With respect to the two contracts with the Frazier Group, LLC, prior to the award of the second contract that focused on administrative misconduct investigations, the City Administrator and I consulted with City Attorney Barbara Parker on February 3, 2012 regarding whether the City Administrator could award a second contract to the Frazier Group to focus on misconduct investigations. It was at that meeting that the City Attorney advised that given there was an entirely separate scope of work, it was determined that there was no conflict of interest and within the law—therefore, it was permissible to proceed.

NSA Compliance Requirement: Task 2: 180 Days

Due to the high number of misconduct complaints resulting from *Occupy Oakland* protests, marches, and general strikes, the City requires additional capacity to ensure these misconduct complaints are investigated thoroughly. As noted in the background section of this report, the NSA requires that misconduct complaints be investigated within the required timeliness standards (180 days). However, this NSA-required timeframe is much shorter than the 365 days as required by State Law. Due to the time it has taken getting a vendor selected and hired, it is now impossible for the Department to meet compliance with the timeliness requirement in the NSA. The Department cannot afford to not meet the timeline required by state law. If the Department does not meet the 365 day deadline, then the Department cannot impose any discipline, regardless of the nature of any misconduct discovered. This would present additional compliance problems related to consistency of discipline. Furthermore, aside from compliance issues and in fairness to people that may have lodged legitimate complaints; the City needs to be able to administer discipline, if appropriate.

The Department has assured that the Monitor and Plaintiff's attorneys are aware of the cases that will pass timeliness compliance. The decision was made early on to assign these investigations to an outside investigator due to limited capacity in IAD as well as the desire for an independent analysis. For this reason, Internal Affairs was directed to cease working on these investigations and to turn their attention to other cases. While timeliness compliance will not be reached for *Occupy* cases from October and November, Internal Affairs has tried to ensure that all other misconduct complaints, as well as *Occupy* complaints from events in 2012, still continue to meet timeliness standards. The Department recognizes that compliance with timeliness will be lost

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temporarily but is working to ensure more current cases meet the requirements and that compliance can be regained as soon as possible.

The same NSA task requiring investigations to be completed in 180 days also requires that IAD staffing is increased if there is an unusual proliferation of cases and/or workload. The investigative scope of the Occupy Oakland related misconduct complaints is large. Investigators must review hundreds of hours of video and conduct numerous interviews of OPD and City staff, outside agency personnel, and citizen witnesses. The number and complexity of the *Occupy Oakland* misconduct complaints requires additional capacity which has resulted in an unusual proliferation of cases and workload.

Changes in State Law

Annuitants have contributed to IAD's capacity and the ability to meet the required timelines. New State law only allows for the use of annuitants on a temporary basis and all of OPD's annuitants have already worked longer than permitted by the new State law. OPD has sought legal options to maintain the employment of these individuals, but has concluded that those positions cannot be maintained given the current wording of the state law. The penalty for non-compliance with state law would subject the annuitant to mandatory reinstatement from retirement back to City employment, subjecting the annuitant and the City to adverse financial risk. The Department will be losing seven annuitants who have been conducting and reviewing misconduct investigations for the last two years. While state law continues to limit the use of annuitants to temporary assignments lasting no more than 960 hours in a fiscal year, a new law clarifies "temporary" status. Retirees must not be appointed to vacant permanent part-time, permanent intermittent, or permanent full-time positions, even if the hours worked will not exceed 960 hours per fiscal year or the retiree will be subject to mandatory reinstatement from retirement. OPD's use of annuitants is not an option and the program offering additional capacity is terminated.

The loss of the seven annuitants further depletes staffing in Internal Affairs. Existing staff in Internal Affairs will need to continue much of the work that was being done by those annuitants. With that workload redistributed it diminishes the Internal Affairs Division's ability to handle a large influx of IAD cases. Additionally, even if the Department was able to hire new annuitants; there are a limited number of annuitants qualified to do Internal Affairs investigations. The most qualified annuitants were the ones already employed by OPD and that now can no longer work due to the change in law. The time it would take to hire and train new annuitants is not feasible given the existing time constraints.

CPRB Resources

The intent is to have the 38 administrative investigations assigned outside of the Department. The Citizen's Police Review Board (CPRB) has only two investigators to investigate and also

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does not have the capacity to investigate the volume of complaints received. The CPRB currently only investigates less than twenty cases per year. Previously, the CPRB did have a Policy Analyst completing some work on *Occupy* complaints. However, that individual was laid off as a result of the budget reductions that the City had to undertake earlier this year. He was also a Policy Analyst and not a trained administrative investigator. Regardless, CPRB does not have, or would not have had, the capacity required to do this volume of work.

Independent Monitor Team (IMT) Duplication

The Monitor cannot do the misconduct investigations. The Monitor's role is to audit the work, including misconduct investigations, done by the OPD or by a contractor on behalf of OPD. Therefore, a conflict would arise if they were to have to audit investigations that they completed. This work is outside the scope of the contract with the Monitor and entirely inconsistent with his Federal Court assigned role.

Policy Alternative

If this contract is not awarded, OPD will have to train and assign additional personnel to Internal Affairs Division to conduct the investigations. Thirty eight investigations will likely require the assignment of minimally four to five sergeants. Identifying these individuals will be difficult due to the fact that so many OPD sergeants will have to conflict as result of their participation in the *Occupy Oakland* activities. Identifying these individuals is also difficult due to the fact that not all sergeants have the training to investigate complex administrative investigations. All sergeants are trained to conduct investigations but not to the level of staff assigned to Internal Affairs. The time to train new investigators is not feasible given the time constraints. Even if OPD were able to identify enough sergeants to investigate these cases, that would draw from already scarce pool of OPD supervisory resources.

The Department currently has over 10 openings for sergeants and no list in place for them to be promoted. There is a promotional test planned in the month of May, however the promotional process is also time consuming. The Department is also required by the NSA to staff sergeants at a certain ratio to officers. The current deployment plan cannot spare any reallocation of Sergeants, much less the number that would be required to do these investigations if it plans to reach compliance with the span of control requirements. The current deployment of sergeants appears to be barely sufficient to reach compliance and the span of control for supervisors is one area the Department has never reached compliance with during the duration of the NSA. If sergeants were pulled from Patrol then compliance would be lost just when the Department finally instituted a deployment plan likely to reach compliance. In order to staff those positions, the Department already depleted many Sergeants' positions in other places in the Department. Pulling additional sergeants for additional *Occupy* investigations would certainly result in non-compliance for span of control of sergeants but also reduce supervision of criminal investigators including those investigating robberies and murders.

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PUBLIC OUTREACH/INTEREST

It is in the City's best interest and that of the Oakland residents to comply with the NSA and to ensure that all citizen complaints are investigated thoroughly and timely.

COORDINATION

Other City Agencies affiliated with this request include: The Office of Contracts and Compliance, the City Attorney's Office, the Budget Office, and the Office of the City Administrator.

COST SUMMARY/IMPLICATIONS

The OPD believes it is more cost effective to hire the Frazier Group than to assign these investigations to multiple independent contractors. There are thirty eight investigations planned to be assigned. In the past, OPD has contracted out several investigations and those costs have averaged from \$25,000 to \$30,000 per investigation. A \$350,000 contract to investigate thirty eight investigations is at a cost of just over \$9,200 per investigation. The individual investigations require review of many of the same materials and for that reason having a single investigative unit is more efficient. Investigations are done on a per hour basis and it is more economical to not pay multiple investigators to review the same material.

AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$250,000.

SOURCE OF FUNDING: Funds for this contract shall be drawn from the General Fund (1010), Emergency Contingency Reserve (90611), Contingency Fund (P404410), and Program (OCCO).

SUSTAINABLE OPPORTUNITIES

Economic: Investigating citizen complaints and holding police personnel accountable for violations of the law and serious misconduct increases public confidence and improves public relations with the community, and reduces liability and risk for the City.

Environmental: There are no environmental opportunities.

Social Equity: Citizens deserve to have a Police Department that provides highly professional services in ensuring the public safety of the residents of Oakland. Complaints tiled against police personnel must be investigated thoroughly and timely to ensure public confidence and good relations with the community.

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Deanna J. Santana, City Administrator

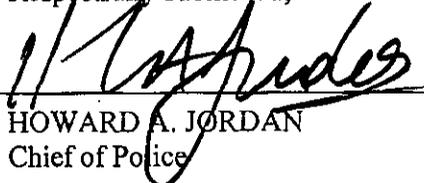
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For questions concerning this report, please contact Deputy Chief Sean Whent at (510) 238-3568.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Jordan", written over a horizontal line.

HOWARD A. JORDAN

Chief of Police

Prepared by:

Ms. Kristin Burgess

Policy Program and Performance Auditor

Office of Inspector General

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