

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Katano Kasaine

SUBJECT: Investigation of
Grounds for Debarment

DATE: July 15, 2013

City Administrator
Approval

Deanna

AK

Date

7/23/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Administrator to negotiate and execute a professional services agreement with Spinnaker Consulting, Inc. and allocate funding in an amount not to exceed seventy-one thousand seven-hundred sixty dollars (\$71,760) for Phase I.A., seventy-two thousand six-hundred eighty dollars (\$72,680) for Phase I.B. and eighty-one thousand nine-hundred thirty-eight dollars (\$81,938) for Phase II for a total of two-hundred twenty-six thousand three-hundred seventy-eight dollars (\$226,378) to provide investigative services including investigation, analysis and reporting relating to potential debarment proceedings against Goldman Sachs Mitsui Marine Derivative Products, U.S., L.P. ("Goldman Sachs").

Staff will be returning to the City Council at each phase to give Council the flexibility to stop the investigation at any particular phase.

BACKGROUND/LEGISLATIVE HISTORY

On May 21, 2013, the City Council unanimously approved City Council Resolution No. 84386 C.M.S. amending Resolution No. 83962 C.M.S. and directing the City Administrator to negotiate the termination of the swap agreement with Goldman Sachs without termination fees and, if no such agreement was reached, to pursue all appropriate recourse to exclude them from any future business with the City of Oakland.

Staff engaged in negotiations and numerous discussions with Goldman Sachs regarding the interest rate Swap and City Council's directive to terminate the Swap at a zero cost. However, the Swap Agreement provided that any structured termination of the Swap was a market value transaction. Goldman Sachs did not agree to terminate the Swap at \$0.

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Pursuant to the City of Oakland Debarment Program in Chapter 2.12 of the Oakland Municipal Code of Ordinances ("OMC"), the City may debar a contractor if the City finds that the contractor has, or is engaged in, any of the grounds set forth in OMC Section 2.12.050. Further more, under the Debarment Program (OMC Section 2.12.040), the City will use City personnel and other appropriate resources to conduct an investigation to determine if evidence exists suggesting grounds for debarment. Because the City does not have the resources in-house with the expertise and experience required to perform an investigation this complex, staff issued a Request for Qualifications for outside investigative services.

Between January through March 2013, working with the City Attorney's Office, staff performed a local, as well as out-of-state search, to identify individuals and firms that would be qualified to conduct an investigation of possibly bringing debarment proceedings against Goldman Sachs. The Local and Small Local Business Enterprise ("L/SLBE") minimum participation requirement was waived in the Request For Qualifications ("RFQ") process since an availability analysis of certified local and small local firms performed by the Contract Compliance Department concluded that there were no certified firms that could perform the services as indicated in the scope of work. Although the L/SLBE requirement was waived, a local Oakland firm was included in the RFQ process. On April 11, 2013, an RFQ was issued to five individuals and firms. Since no proposals were received in the first round of the RFQ process, Staff extended the deadline for the RFQ. On June 7, 2013, Staff received one proposal from Spinnaker Consulting Inc. to perform the investigation.

ANALYSIS

The investigation will be led by P. David Richardson, President, CEO and founder of Spinnaker Consulting Inc, alongside Richard J. Hynes. Together, P. David Richardson and Richard J. Hynes have more than sixty years' combined experience in investigating complex cases, many of which have involved government contractor malfeasance, debarment actions, financial fraud, and a wide range of other issues. Staff believes that this team is highly qualified to perform the investigation, based on their experience, expertise, knowledge and resources. In addition, the City Administration has determined that it is in the City's best interests to use an independent investigator rather than City personnel to conduct the investigation for the reasons stated below.

- **Expertise:** City Staff does not have investigative training or expertise in identifying, locating and obtaining evidence from third parties.
- **Independence:** An independent investigation will eliminate the possibility of bias in an internal investigation.
- **Experience and Perspective:** An experienced investigator who has participated in numerous debarment proceedings can collect and review evidence, recognizing irregularities and significant facts, and in the context of debarment proceedings, anticipate potential counterarguments and identify weaknesses in the evidence that others are less likely to spot.

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- **Access to Information:** Professional investigators have access to proprietary data bases that are not available to the City.

Upon receiving City Council's authorization to conduct the investigation, Spinnaker Consulting Inc. has proposed the investigation in the phases and at costs outlined below.

Phase I.A. – Preliminary Investigation, includes but is not limited to: (not to exceed \$71,760)

- Obtain and review and analysis of all available internal and external records; and
- Preparation of a report summarizing preliminary analysis and recommendations.

Phase I.B. – Follow on Investigation, includes but is not limited to: (not to exceed \$72,680)¹

- Continue investigation of issues and evidence identified in the I.A. assessment; and
- Assemble supporting documentation, and provide analyses and recommendations as needed.

Phase II – Preparation & Assistance with Debarment Hearing includes but is not limited to: (not to exceed \$81,938)

- If debarment proceedings are initiated, compile evidence and assist and support the City during the debarment process.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

This report has been prepared by the Treasury Division in coordination with City Attorney's Office and Budget Office.

COST SUMMARY/IMPLICATIONS

Staff is requesting for the City Council to allocate an amount not-to-exceed seventy-one thousand seven-hundred sixty dollars (\$71,760) for Phase I.A., seventy-two thousand six-hundred eighty dollars (\$72,680) for Phase I.B., and eighty-one thousand nine-hundred thirty-

¹ The need for Phases I.B and II depends on the results of the Phase I.A and the Administrative decision relating to Phase I.A.

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eight dollars (\$81,938) for Phase II of the investigative services contract, for a total of two-hundred twenty-six thousand three-hundred seventy-eight dollars (\$226,378). An appropriation does not currently exist for the proposed contract; however, staff is recommending that the funding come from the reserves of the General Purpose Fund (Fund 1010) fund balance as it becomes available. The costs for the associated investigative services have been split into the investigative phases of the project and reflect not-to-exceed amounts. Staff will be returning to Council at each phase to give Council the flexibility to stop the investigation at any particular phase.

SUSTAINABLE OPPORTUNITIES

Economic: There are no impacts to economic opportunities associated with this report.

Environmental: There are no impacts to environmental opportunities associated with this report.

Social Equity: There are no impacts to social equity opportunities associated with this report.

CEQA

This report is not a project under CEQA.

For questions regarding this report, please contact Katano Kasaine, Treasurer, at (510) 238-2989.

Respectfully submitted,


KATANO KASAINÉ
Treasurer

Prepared by:
Bernadette de Leon, Treasury Analyst III
Treasury Division

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OAKLAND CITY COUNCIL

RESOLUTION NO. ___ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH SPINNAKER CONSULTING, INC. AND ALLOCATE FUNDING IN AN AMOUNT NOT TO EXCEED SEVENTY-ONE THOUSAND SEVEN-HUNDRED SIXTY DOLLARS (\$71,760) FOR PHASE LA., SEVENTY-TWO THOUSAND SIX-HUNDRED EIGHTY DOLLARS (\$72,680) FOR PHASE I.B., AND EIGHTY-ONE THOUSAND NINE-HUNDRED THIRTY-EIGHT DOLLARS (\$81,938) FOR PHASE H FOR A TOTAL OF TWO-HUNDRED TWENTY-SIX THOUSAND THREE-HUNDRED SEVENTY-EIGHT DOLLARS (\$226,378) TO PROVIDE INVESTIGATIVE SERVICES INCLUDING INVESTIGATION, ANALYSIS AND REPORTING RELATING TO POTENTIAL DEBARMENT PROCEEDINGS AGAINST GOLDMAN SACHS MITSUI MARINE DERIVATIVE PRODUCTS, U.S., L.P. ("GOLDMAN SACHS")

WHEREAS, at the May 21, 2013 City Council meeting, the City Council unanimously approved City Council Resolution No. 84386 C.M.S. amending Resolution No. 83962 and directing the City Administrator to negotiate the termination of the swap agreement with Goldman Sachs without termination fees and, if no such agreement was reached, to pursue all appropriate recourse to exclude them from doing business with the City;

WHEREAS, pursuant to Chapter 2.12 entitled "Debarment Program" of the Oakland, California Municipal Code of Ordinances ("OMC"), the City may debar a contractor if the City finds that the contractor has, or is engaged in, any of the grounds set forth in OMC Section 2.12.050; and

WHEREAS, pursuant to OMC Section 2.12.040, the City shall utilize City personnel and other appropriate resources to conduct the investigation and develop the documentation required by OMC Subsection 2.12.040.C; and

WHEREAS, a Request for Qualifications for investigative services was issued to five individuals and firms that would be qualified to conduct an investigation whether grounds exist to bring debarment proceedings against Goldman Sachs; and

WHEREAS, Spinnaker Consulting Inc. was the only firm to submit a proposal and is highly qualified to perform the investigation based on evaluation of expertise, experience, knowledge and resources of the proposed project team; and

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SPECIAL MEETING OF
THE OAKLAND CITY COUNCIL
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WHEREAS, the City wishes to enter into an agreement for professional services with Spinnaker Consulting, Inc. to provide investigative services in an amount not to exceed \$71,760 for Phase I.A., \$72,680 for Phase I.B. and \$81,938 for Phase II, for a total of \$226,378 ; and

WHEREAS, funding for this professional services contract has not been allocated by Council, an allocation from the General Purpose Fund (Fund 1010) reserves is necessary to fund the agreement; now, therefore be it

RESOLVED, that the City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED, that the City Administrator or designee is hereby authorized to negotiate and execute an agreement in an amount not to exceed \$226,378 with Spinnaker Consulting, Inc. to perform investigative services relating to potential debarment proceedings against Goldman Sachs Mitsui Marine Derivative Products, U.S., L.P., including investigation, preparation and submission of a report outlining the results of such investigation for consideration of the City Administrator, and other investigative services related to debarment; and be it

FURTHER RESOLVED, that the Council allocates and authorizes from the General Purpose Fund (Fund 1010) reserve funds necessary to fund the investigative services contract with Spinnaker Consulting, Inc., in an amount not to exceed \$ 226,378.

FURTHER RESOLVED, that said professional services agreement shall be approved as to form and legality by the Office of the City Attorney and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF,
AND COUNCIL PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

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