

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 MAY 26
To: Office of the City Administrator
Attn: P. Lamont Ewell, Interim City Administrator
From: Police Department
Date: June 7, 2011

Re: A Report And Proposed Resolution Authorizing The City Administrator to: 1) Waive The Advertising, Competitive Bid And Request For Proposals/Qualifications Requirements For Awarding Professional Services Contracts; 2) Extend The Professional Services Agreement With Police Performance Solutions, LLC., For Two Years For The Period From January 21, 2012 To January 20, 2014, In The Amount Of One Million, Six Hundred Eighty Four Thousand Dollars (\$1,684,000) For Monitoring The City's Implementation Of Contemporary Police Practices; And 3) Include As Part Of The Amended Contract A Provision That The Monitoring Team Will Provide Technical Assistance To The Oakland Police Department To Assist The City In Achieving Compliance With The Negotiated Settlement Agreement Approved By The City In Allen v. City Of Oakland, Et Al., USDC No. C00-4599 TEH(JL)

SUMMARY

The proposed resolution authorizes the City to engage in the following: 1) to amend and extend the Professional Services Agreement with the police monitoring team, Police Performance Solutions, LLC. for an additional two years, from January 21, 2012 through January 20, 2014, in an amount not to exceed \$1,580,000; 2) to provide for an additional \$104,000 in the Professional Services Agreement with Police Performance Solutions, LLC. for further technical assistance services from January 21, 2012 to January 20, 2013; and 3) to authorize the waiver of a Request for Proposals Process (REP) to amend and extend the Professional Services Agreement with Police Performance Solutions, LLC. These requests are made in order for the Oakland Police Department (Department) to meet the requirements of the Memorandum of Understanding (MOU) regarding post Negotiated Settlement Agreement (NSA) terms and conditions allowing for the resolution of Plaintiff's claims for injunctive relief and for dismissal of the action.

On November 3, 2009, the City Council approved a two-year MOU following the expiration of the NSA pursuant to the Parties and the Court's assessment that the City needed more time to complete the implementation of the police reforms agreed to in the NSA. The MOU is scheduled to expire on January 22, 2012. However, the Court recently issued an Order stating the 2010 MOU will need another extension, finding that the City needed more time to complete its reform program.

The Parties have agreed and the Court has required that the City retain the services of an independent team to continue to monitor OPD's progress in achieving compliance with the goals

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and objectives of the NSA under a new MOU. Staff recommends that the City retain the existing monitoring team, Police Performance Solutions, LLC, the contractor previously authorized by the Council to perform the services of the independent monitor.

FISCAL IMPACT

Approval of this resolution will authorize the City to enter into a professional services agreement with the Police Performance Solutions, LLC, beginning January 21, 2012 through January 20, 2014, in an amount not to exceed \$1.58 million to continue to perform Independent Monitoring Services and \$104,000 to provide additional Technical Assistance. During this period, the Police Performance Solutions, LLC will continue to provide oversight on the Police Department's efforts to comply with the MOU; audit the Department's implementation of the MOU reforms; and provide technical assistance as needed by the Department to reach substantial compliance with the MOU requirements.

Funding for this contract are included as part of the FY 2011-13 budget, and shall be drawn from the Miscellaneous Grant Fund (2999), Miscellaneous Contract Services Account (54919), Project to be Determined, and Agency-wide Administration Program (PS01).

BACKGROUND

On January 22, 2003, the City of Oakland and the Oakland Police Department entered into a five-year Negotiated Settlement Agreement to resolve the allegations of police misconduct raised in the civil case of *Delphine Allen, et. al., v. City of Oakland, et. al.* The City entered into the NSA with the intent of promoting sound police practices, police integrity and professionalism within the Department. On March 19, 2007, the Court extended the NSA for two years, and on November 24, 2009, the Court allowed for the termination of the NSA and the adoption of a more narrow MOU for two additional years under which the City was credited for all the work achieved while focusing outside monitoring on the areas that remained short on compliance.

The Oakland Police Department is still working to achieve substantial compliance with the MOU requirements and expects to be in full compliance by the end of the two year extension.

KEY ISSUES AND IMPACTS

Through the allocation of significant resources and the commitment by Oakland Police Department staff, the reforms outlined in the NSA are being implemented, and have already become part of the Department's policies and training. The Oakland Police Department continues to make significant progress and this extension will allow the Department to continue to demonstrate its ability to sustain compliance.

An independent monitor is an essential element to ensuring the Department's achievement of substantial compliance with the MOU requirements.

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PROJECT DESCRIPTION

In anticipation of the contract expiration of the previous Independent Monitoring Team (IMT) in January 2010, the Department conducted an informal RFQ process to identify professional police monitors who were available, interested, and qualified to provide monitoring services to the Department. The City Council had approved the informal RFQ process on December 8 2009, finding that the City's informal process was thorough and appropriate given the nature of services required and conducting a formal RFQ process would have delayed and hampered the City's efforts to meet its compliance obligations. Council Resolution No. 82448.

A working group consisting of members representing the Police Department and City Attorney's Office conducted a thorough evaluation and interview process. The preliminary proposals were shared with the Plaintiff's Counsel. Candidates went through a formal interviewing process that included Department staff, the Plaintiff's Counsel, and representatives from City Council staff.

The Department's working group conducted meetings to rank candidates, and Department staff met with the Plaintiff's Counsel to discuss the candidates. After the thorough evaluation process, the Department and Plaintiff's Counsel selected Police Performance Solutions, LLC (formerly known as Alexandria Group of MPRI) as the contractor.

Under the leadership of Chief Robert Warshaw, Police Performance Solutions is currently providing the following services:

- Reviewing policies related to the NSA and determining if the NSA requirements have been articulated in policy, and if the policies have been disseminated and adopted;
- Reviewing and evaluating OPD training;
- Reviewing OPD audits;
- Reviewing prior IMT audits;
- Reviewing established protocols for assessing compliance of NSA tasks and (in consultation with the parties) determining if adjustments are necessary;
- Evaluating compliance by conducting field observations and audits;
- Developing protocols for site visits, documenting retrieval, records review and field observations (in consultation with OPD);
- Establishing regular monthly meetings with representatives of the City of Oakland, OPD, the Oakland Police Officer's Association, other relevant bargaining units and the Plaintiff's Council;

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- Providing technical assistance concerning best police practices and the implementation of the reform tasks;
- Reviewing use of force and misconduct investigations;
- Preparing for and attending hearings or meetings as required by the Court; and
- Issuing regular public status reports directed to the Parties and the Court reporting OPD's compliance status.

SUSTAINABLE OPPORTUNITIES

Economic: The NSA provides for the implementation of reforms within the Department. These reforms reflect the best practices and procedures for police management in the areas of supervision, use of force, professionalism, and accountability mechanisms. Over time, having a highly professional police organization that closely supervises and monitors its activities, and holds persons accountable for violations of the law and serious misconduct increases public confidence, improves public relations with the community, and reduces liability and risk for the City.

Environmental: There are no environmental opportunities.

Social Equity: The police reforms the City is instituting will enhance the Police Department's ability to provide highly professional services in ensuring the public safety of the residents of Oakland.

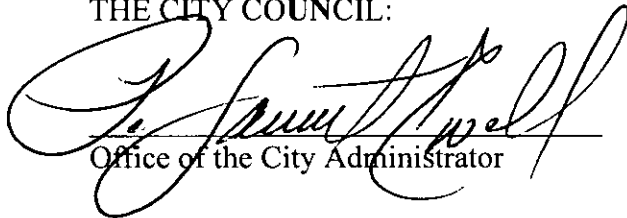
DISABILITY AND SENIOR CITIZEN ACCESS

- There are no disability or senior citizen access issues related to this contract.

RECOMMENDATION / ACTION REQUESTED OF COUNCIL

Staff recommends acceptance of this report and authorization for the City Administrator to: 1) Waive the Advertising, Competitive Bid And Request For Proposals/Qualifications Requirements For Awarding Professional Services Contracts; 2) Extend The Professional Services Agreement With Police Performance Solutions, LLC., For Two Years for the Period From January 21, 2012 To January 20, 2014, In The Amount Of \$1,684,000, For Monitoring The City's Implementation Of Contemporary Police Practices; And 3) Include As Part Of The Amended Contract A Provision That The Monitoring Team Will Provide Technical Assistance To The Oakland Police Department To Assist The City In Achieving Compliance With The Negotiated Settlement Agreement Approved By The City In Allen v. City Of Oakland, Et Al., USDC No. C00-4599 TEH(JL)

APPROVED AND FORWARDED TO
THE CITY COUNCIL:


Office of the City Administrator

Respectfully submitted,



Anthony Batts
Chief of Police

Prepared by:
Mrs. Antoné Hicks
Administrative Analyst II
Office of Chief of Police
and
Anthony Toribio
Captain of Police
Office of Inspector General

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Rocio V. Quesada
City Attorney

OFFICE OF THE CITY CLERK
OAKLAND, CALIFORNIA

OAKLAND CITY COUNCIL

RECEIVED
JANUARY 26 PM 4:20

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR:
(1) TO WAIVE THE ADVERTISING, COMPETITIVE BID AND REQUEST FOR PROPOSALS/QUALIFICATIONS REQUIREMENTS FOR AWARDING PROFESSIONAL SERVICES CONTRACTS;
(2) TO EXTEND THE PROFESSIONAL SERVICES AGREEMENT WITH POLICE PERFORMANCE SOLUTIONS, LLC., FOR TWO YEARS FOR THE PERIOD FROM JANUARY 21, 2012 TO JANUARY 20, 2014, IN THE AMOUNT OF ONE MILLION, SIX HUNDRED EIGHTY FOUR THOUSAND DOLLARS (\$1,684,000) FOR MONITORING THE CITY'S IMPLEMENTATION OF CONTEMPORARY POLICE PRACTICES;
(3) TO INCLUDE AS PART OF THE AMENDED CONTRACT A PROVISION THAT THE MONITORING TEAM WILL PROVIDE TECHNICAL ASSISTANCE TO THE OAKLAND POLICE DEPARTMENT TO ASSIST THE CITY IN ACHIEVING COMPLIANCE WITH THE NEGOTIATED SETTLEMENT AGREEMENT APPROVED BY THE CITY IN ALLEN V. CITY OF OAKLAND, ET AL., USDC NO. C00-4599 TEH(JL)

WHEREAS, in January 2003, the City Council approved the settlement in the case of *Allen vs. City of Oakland, et al*, which settled the claims of many Plaintiffs in which they alleged that several individual Oakland police officers violated their constitutional rights, and that the City was permissive or sanctioned said conduct; and

WHEREAS, the settlement resulted in the Negotiated Settlement Agreement ("NSA"), in which the City agreed to update its police policies, revamp police training, and adopt contemporary police practices in the areas of use of force, field supervision, discipline and accountability measures; and

WHEREAS, the Oakland Police Department completed all of the policy and training requirements and many of the practice compliance obligations within the first seven years of the NSA, but required more time to show practice compliance in some areas, and therefore the Court ordered the City to extend the time of the NSA and to continue to work under the oversight of an independent police monitor; and

WHEREAS, the City Council approved a two-year extension of the NSA, from 2010 to 2012, under a more narrow Memorandum of Understanding ("MOU") which credited the work already achieved by the Oakland Police Department, and also retained the services of a new independent monitor, Police Performance Solutions, LLP ; and

WHEREAS, to this day the Oakland Police Department continues to make progress in achieving practice compliance under the 2010 MOU, however the Parties believe, and the Court has found,

that the City will need more time to complete its police reform work thus requiring the Parties to agree to an additional two year extension of the MOU and of the Monitor's contract; and

WHEREAS, the City's efforts to improve its police policies, training and practices have and continue to lead to significant progress in the way the Oakland Police Department delivers services to the Oakland community; and

WHEREAS, the two-year contract with the current independent monitor, Police Performance Solutions, ends in January 2012, and the City desires to extend this contract for two more years from 2012 to 2014 so that there is no delay in monitoring, and further desires that the Monitoring Team provide technical assistance to the Oakland Police Department to help the City achieve full compliance with the Court's requirements, as part of the amended contract; and

WHEREAS, sufficient funds have been budgeted in the proposed FY 2011-13 budget in the Miscellaneous Grant Fund (2999), Project Number to be Determined to pay for this contract; and

WHEREAS, the City's Department of Contracting and Purchasing conducted an availability analysis on May 17th, 2011, and did not find a certified firm that could provide the contract services and therefore, the City's 20% Local and Small Business Enterprise requirements have been waived; and

WHEREAS, Oakland Municipal Code Section 2.04.051.B authorizes the City Council to dispense with the City's standard request for proposal process for award of professional services contracts upon a finding that it is in the City's best interests to do so, which is the case here considering that the City's informal RFQ process was thorough and appropriate for the nature of the services required, the Court has strongly encouraged the City to retain the services of the existing monitoring team, it serves the City's interests to not delay the monitoring process considering the Court's timelines and directives applicable to this case, and conducting a formal RPQ process will result in delays and hamper the City's efforts to meet its compliance obligations with the Court; and

WHEREAS, the City lacks qualified personnel to perform the necessary work, the Court has ordered the retention of an independent professional to conduct said work, and the City Council finds and determines that the services contract authorized hereunder is of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now therefore be it

RESOLVED: that the City Administrator is authorized to amend and extend the contract with Police Performance Solutions, for two additional years, from January 21, 2012 to January 20, 2014, to continue to provide technical assistance to the Oakland Police Department and to perform the services of an Independent Monitor as provided in the modified Memorandum of Understanding Re: Post Negotiated Settlement Agreement Terms and Conditions entered into by the Parties and in the Scope of Work submitted by the Independent Monitor; and be it

FURTHER RESOLVED: that the Council finds and determines, for the reasons stated above and the City Administrator's report accompanying this Resolution, and pursuant to Oakland Municipal Code, Section 2.04.051(B), that it is in the best interests of the City to dispense with the City's customary RFP/RFQ process for the Independent Monitor contract, and so waives these requirements; and be it

FURTHER RESOLVED: sufficient funds have been budgeted in the proposed FY 2011-13 budget in the Miscellaneous Grant Fund (2999), Project Number to be Determined to pay for this contract; and be it

FURTHER RESOLVED: that the City Administrator or his designee is authorized to carry out any financial actions necessary to fulfill the intent of this Resolution and accompanying Report, including completing all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this contract for services, except for any increase in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: that the City Attorney shall review and approve this agreement as to form and legality and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California