

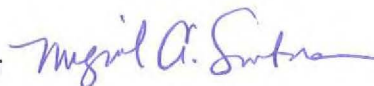
CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 1, 2010

0220-04578-0000

To: The City Council

From: Miguel A. Santana, City Administrative Officer

Subject: **ARIZONA CONTRACTS – CONTRACT CANCELLATION CLAUSES**

Our office was instructed to review the terms of the contracts with Arizona companies that were identified in the CLA Report, dated May 11, 2010, and report-back on which of those contracts could be legally terminated (C.F. No. 10-0002-S36).

Specific contract termination clauses have been included in Attachment A. Also included in Attachment A are preliminary departmental impact statements if contracts are cancelled, as well as information on if alternate vendors might be available (e.g., multiple vendors submitted responses to the last bid, or if the contract was with a sole source provider).

In sum, of the 25 contracts reviewed, 16 are active contracts with Arizona-based firms. Of these contracts, 7 can be terminated, or not used, and could be re-bid (in bold font below and in shaded cells on Attachment A). It will not be known if alternate vendors are available to assume contract work until the contracts are re-bid. The remaining 11 contracts will involve policy decisions (e.g., replacing the sole source service provider for the maintenance and repair of the LAPD's tasers), or may require legal review (e.g., the Harbor Department's Clean Truck Incentive Program concession agreements). A summary of the contract review is as follows:

- A total of 25 contracts were reviewed. This includes two additional contracts that were not included in the CLA Report (#24-Mobile Mini and #25-American Traffic Solutions).
- Of the 25 contracts, five contracts have expired (#2-Justicetrax, #11-Waste Management/Arizona, #12-A Through Z Consulting, #13 Knowledge Computing, #22-A Bridge Between Nations,), and work has been completed, or has been substantially completed, on three contracts (#1-Carollo Engineers, #14-Detection Logic, #23-Seliger and Associates).
- Of the remaining 17 contracts, based on additional information from the Controller, one contract was determined not to be an Arizona contract (#5-American Industrial Supply).
- Of the remaining 16 contracts, five contracts are SMS contracts awarded by the City's Purchasing Agent (GSD) and can be cancelled at the City's convenience (#3-R & R Products, #4-Diversified Inspections, #6-Flight Trails Helicopters, #10-Proforce Marketing, #24-Mobile Mini).
 - **From the information gathered from departments, it would appear that there may be suitable replacement vendors for three of the**

contracts (#3-R & R Products, #4-Diversified Inspections, # 24-Mobile Mini.

- #6-Flight Trails Helicopters is a sole source contract, and the Police Department has outlined additional issues to research with respect to #10-Proforce Marketing.
- Of the remaining 11 contracts, seven contracts are Blanket Purchase Orders, One-time Purchase Orders or AFEs. Generally, these smaller contracts do not have cancellation clauses. Departments can be instructed or choose to stop utilizing the contract authorities. From the information gathered from departments:
 - ITA believes that a waiver may be necessary to continue the current contract until the replacement of the Fire Department's fire and rescue dispatch system is completed (#7-Durham).
 - The Police Department notes the potential impacts of replacing a sole source service provider for the maintenance and repair of their tasers (#8-Taser International and also see LAWA's #16-Taser International).
 - **LAWA states that there was only one bid for #17-West Coast Equipment and Parts, which may indicate difficulty in obtaining a replacement vendor (also see related #21-West Coast Equipment and Parts).**
 - **There is a likely replacement vendor for #15-Diversified Inspections.**
 - **Information is pending on #9-Detection Instruments.**
- Of the remaining 4 contracts, three contracts are related to the Harbor Department's Clean Truck Incentive Program (#18-Knight Transportation, #19-Duncan and Sons, #20-Swift Transportation). The Harbor Department has outlined additional issues that may require legal review with respect to the termination of these contracts.
- The last contract (#25-American Traffic Solutions) is related to the Photo Red Light Program. The Council extended this contract until June 30, 2010. The Council may need to extend the contract on a month-to-month basis if the City elects to maintain the existing program until a new Request for Proposals is released and a new contract is awarded.

If additional information is needed, please contact David Luther at (213) 473-7533.

Cc: Honorable Antonio R. Villaraigosa, Mayor

Attachment

MAS:DL/ 03100021

Attachment A

No.	Company	Department(s)	Contract No.	Purpose	Contract Termination Clause
1	Carollo Engineers	PW, Engineering	C-112813	On-call wastewater and environmental engineering consulting services.	<u>This contract may be terminated in whole or in part in writing by the City for its convenience</u> , provided that the Consultant is given (1) not less than thirty (30) calendar days' written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. <i>Per BOE, this is a Pre-Qualified On-Call Wastewater contract. One Task Order was issued, and the contract manager reports that the work is complete. In the contract, the responsible party for this contract is an office for Carollo in Pasadena. Contract term expires five years from date of full execution (September or December, 2012).</i>
2	Justicetrax, Inc.	Police	C-111238	Provides products and services under the Laboratory Information Management System project for the 1998 COPS MORE Grant.	N/A. Contract expired in November 2009.
3	R & R Products	GSD/SMS: Primary users appear to be Recreation and Parks, Street Services and GSD	57962	Turf equipment replacement parts.	<u>The contract may be terminated in whole or in part by the City for its convenience</u> , without penalty, provided that the contractor is given not less than 30 days written notice of the intent to terminate. The City will pay for that portion of orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time. <i>Per GSD, R & R was the only vendor that submitted a complete bid the last time the contract went to bid (there was one other partial bid). Impact Statements pending.</i>
4	Diversified Inspections	GSD/SMS: GSD is the primary contract user	58777	Mandatory certification of aerial equipment (cranes, man lifts, etc.).	<u>The contract may be terminated in whole or in part by the City for its convenience</u> , without penalty, provided that the contractor is given not less than 30 days written notice of the intent to terminate. The City will pay for that portion of orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time. <i>GSD notes that there were other bids the last time the contract was bid. The next lowest bid was \$12,676 more than Diversified Inspections. GSD also states that it is critical that a contract of this type be maintained to ensure that any operator is safe from contact with electrical current (i.e., power lines) and that City staff cannot perform the inspections. See Related #15-Diversified Inspections (GSD).</i>
5	American Industrial Supply, Inc.	GSD/SMS: Recreation and Parks, Transportation, Street Services	Blanket Purchase Order		N/A. Appears not to be an Arizona contract. Mailing address is Northridge, CA.

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6	Flight Trails Helicopters, Inc.	GSD, SMS: Police, Fire, ITA	58294	Avionics replacement parts.	<i>The contract may be terminated in whole or in part by the City for its convenience, without penalty, provided that the contractor is given not less than 30 days written notice of the intent to terminate. The City will pay for that portion of orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time. Term can be extended to 6/30/2010. LAPD states that cancellation of this contract may leave the department with no vendor for avionics replacement parts. GSD confirms that the contract was awarded on a sole source basis.</i>
7	Durham Communications	GSD/SMS: ITA; Fire	One-time Purchase Orders	Public safety support services for the Fire Department's fire and rescue dispatch operations.	<i>ITA states: (1) The vendor provides vital public safety support services for the Fire Department's fire and rescue dispatch operations; (2) ITA is currently in the process of replacing the Durham equipment with a new system; (3) In the interim, ITA is currently exploring alternatives to maintain the existing Durham system; and, (4) It may be necessary to obtain a waiver to allow the renewal of the current Durham contract for one year until the replacement of the existing system is completed.</i>
8	Taser International, Inc.	GSD/SMS: (Police, GSD and Harbor)	One-time Purchase Orders		<i>LAPD states: 1) Taser International is a sole source service provider for the maintenance and repair of their current tasers and the sole provider of compatible dart cartridges; 2) If the contract is terminated, a replacement vendor must be found; 3) There is one alternate vendor outside of the State of Arizona, however, this vendor's product would require evaluation by the Police Department as few law enforcement agencies have used or extensively tested the product; 4) The cost to replace the current tasers with a potential alternate taser is approximately \$1.5 million; and, 5) Cancelling the contract, without providing suitable replacement tasers will result in equipment malfunctions and units that will be placed out of service, and could impact officer safety. Also see related #16-Taser International (LAWA).</i>
9	Detection Instruments Corp.	Sanitation, Finance	Blanket Purchase Order		Information pending.

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10	Proforce Marketing, Inc.	GSD/SMS: Police	58553	Police weapons.	The contract may be terminated in whole or in part by the City for its convenience, without penalty, provided that the contractor is given not less than 30 days written notice of the intent to terminate. The City will pay for that portion of orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time. CAO Note: Term can be extended to 1/31/2011. GSD confirms that that were several bids the last time the contract was bid. The Police Department states: 1) Handguns in stock will be exhausted by January 2011; Cancelling the contract may eliminate a trade-in agreement to exchange obsolete or excess inventory (the City has a \$49,392 credit that can be used to purchase other necessary equipment from the vendor); 3) Cancelling the agreement prematurely may impact the "lifetime replacement parts" clause of the contract, which can amount to substantial costs (e.g., the replacement of firing pins).
11	Waste Management	GSD, SMS: Zoo, Community Development, Cultural Affairs, Transportation, Sanitation	113188		N/A. The City has multiple contracts with Waste Management. Waste Management is based in Houston, Texas. Waste Management has multiple office locations outside of Texas. The General Services Department states that three Purchase Orders were issued to the Waste Management Office at PO Box 78251 in Phoenix, AZ (identified in the CLA Report) last fiscal year and that none were issued in the current fiscal year. The three from last year have been paid and completed in SMS.
12	A Through Z Consulting	GSD			N/A. Contract expired 10/30/2009.
13	Knowledge Computing	Mayor's Office of Homeland Security and Police	11540	UASI Grant program.	N/A. Contract expired September 2009.
14	Detection Logic, Inc	Library		L.A. Central Library retrofit.	N/A. Per Library, project work has been completed. The contractor upgraded and retrofit the Central Library's fire/life safety system. Work began in 2008. The only payment due contractor is a retention payment pending final testing and acceptance by the Fire Department in June 2010.
15	Diversified Inspections	Airports	4600005449	Mandatory certification of aerial equipment (cranes, man lifts, etc.).	Contract ends 9/14/2010. LAWA states that its smaller contracts often do not have a cancellation clause. The contract allows LAWA to order the particular product or service needed, up to the limit of the contract. There is no guarantee that LAWA will order a certain amount of product from a vendor, and LAWA can simply stop purchasing product from this vendor without penalty. If LAWA were to stop using this agreement, the contract would likely need to re-bid, and it is not known if an acceptable replacement vendor would be available. See related #4-Diversified Inspections (GSD).

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16	Taser International, Inc.	Airports		Taser Gun Repair.	Airports Department states that the agreement is an AFE, or a one-time payment authority for non-contracted services. The AFE remains open for one year or until the funds are expended, and <u>can be cancelled at any time</u> . LAWA is not aware of any other firm that can repair the equipment that is manufactured by the company. See related #8-Taser International (Police).
17	West Coast Equipment and Parts	Airports	4600005530	Reconditioned street sweeper brooms.	CAO Note: Contract ends 2/17/2011. Airports states that its smaller contracts often do not have a cancellation clause. The contract allows LAWA to order the particular product or service needed, up to the limit of the contract. There is no guarantee that LAWA will order a certain amount of product from a vendor, and <u>LAWA can simply stop purchasing product from this vendor without penalty</u> . If LAWA were to stop using this agreement, the contract would likely need to re-bid, and it is not known if an acceptable replacement vendor would be available. Airports states that for this specific contract, there was only one bid (West Coast). See related #21-West Coast Equipment and Parts (Harbor).
18	Knight Transportation, Inc.	Harbor	08-00374	Clean Truck Incentive Program.	CAO Note: The contract does not have a clause that would enable the Port to cancel the contract at its convenience or upon notice. The contract does contain a comprehensive Default and Termination section wherein the contract can be suspended or revoked if the contractor does not remedy a Major Default as defined in the contract (e.g., repeated violations of traffic rules and regulations in and around the Harbor District or disregard of public safety). The Harbor Department notes that this is not a standard contract for goods or professional services in which the Harbor Department is making ongoing payments; this is a Concession Agreement that entitles the company to access the Port for drayage if the company meets Port requirements. The Harbor Department states that under the Clean Truck Incentive Program, this company was entitled to certain grants and financial incentives to assist with the cost of replacing aging drayage trucks. In exchange, this company committed to operating at the Port for five years using clean trucks. Should this agreement be canceled, this company may not be obligated to honor their prior commitment of continuing drayage in the Port. Canceling this Agreement may raise a gift of public funds/State Tidelands Trust issue recently raised by the State Lands Commission (Commission). The Commission advised that they would be concerned if the Harbor Department terminated these contracts without receipt of the benefits of Port service, after having given millions in incentives to these companies.
19	Duncan and Sons Lines, Inc.	Harbor	08-00545	Clean Truck Incentive Program.	See above #18.

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20	Swift Transportation Corp.	Harbor	08-00175	Clean Truck Incentive Program.	See above #18.
21	West Coast Equipment, Inc.	Harbor	31109-08	Gutter broom cores for street sweepers and rewinding of street sweeper broom.	<i>The Purchase Order does not contain a cancellation clause. To implement a cancellation, the Port would stop using the contract, re-bid the contract and find an alternate bidder. See related comments in contract item number #17 of this report (Airports).</i>
22	A Bridge Between Nations	CRA	10-0519	Translation equipment.	N/A. Purchase Order closed. Goods received and invoice paid.
23	Seliger & Associates	CRA	10-0576	EDA Grant Consulting Services.	<i>CRA states that the work is nearing completion as the vendor is working on drafting a grant application to EDA by the end of May.</i>
24	Mobile Mini, Inc.	GSD, SMS: GSD, Recreation and Parks, Harbor	58809	Mobile storage containers.	<i>The contract may be terminated in whole or in part by the City for its <u>convenience</u>, without penalty, provided that the contractor is given not less than 30 days written notice of the intent to terminate. The City will pay for that portion of orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time. CAO Note: GSD notes that Mobile Mini submitted the only complete bid the last time the contract was bid. Impact Statements pending.</i>
25	American Traffic Solutions	Police	C-109495	Photo Red Light (PRL).	<i>The City may terminate this Agreement for City's convenience at any time by giving Contractor thirty (30) days written notice thereof. CAO Note: Council approved an extension of the contract until June 30, 2010. The contract may be extended on a month-to-month basis if the City elects to release a new Request for Proposals. The cost of a PRL citation is \$446. Of that amount, the City receives \$157. In 2009, the PRL Program raised \$3.7 million in revenue and cost \$3.8 million. The Police Department believes that PRL has been effective in reducing traffic collisions and fatalities at the intersections where PRL is installed.</i>