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REPORT TO THE AUDIT COMMITTEE

AUDITOR'S CERTIFICATES AND "TASK ORDER" CONTRACTS

On April 27, 2009, the Audit Committee requested that the City Attorney's Office provide advice on the proposed contract with the Macias firm for the 2009 audit. This report addresses the following questions:

QUESTIONS PRESENTED

1. Is an auditor's certificate required before the City may award a contract to the Macias firm for the 2009 audit?
2. May the City award a consultant contract to the Macias firm for the 2009 audit and then assign work on a task order basis without encumbering the full "not-to-exceed" contract amount upon award?

SHORT ANSWERS

1. Yes. Sections 39 and 80 of the San Diego City Charter provide that no contract shall be entered into by a City official unless the Chief Financial Officer certifies in writing that the City has appropriated funds to cover the proposed expenditure and that a sufficient balance remains to cover the proposed expenditure.
2. Yes. The City may award a consultant contract to the Macias firm for the 2009 audit and then assign work on a task order basis without encumbering the full "not-to-exceed" amount upon award because at the time of award the minimum guaranteed amount is the only payment required under the contract.

DISCUSSION

1. **The San Diego City Charter Requires the Chief Financial Officer to Certify the City has Sufficient Funds to Cover Proposed Expenditures**

San Diego City Charter [Charter] sections 39 and 80 set forth the duties of the Chief Financial Officer concerning what is commonly known as an "Auditor's Certificate." In relevant part, Charter section 39 states:

No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof.

Similarly, Charter section 80 provides in part:

No contract, agreement, or other obligation, involving the expenditure of money out of appropriations made by the Council in any one fiscal year shall be entered into, nor shall any order for such expenditure be valid unless the Auditor and Comptroller shall first certify to the Council that the money required for such contract, agreement or obligation for such year is in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered.¹

These two Charter sections clearly provide that it is the duty of the Chief Financial Officer to certify: (1) that an appropriation has been made for the expenditure; and, (2) that sufficient money is in the treasury to make the payment required under the contract, prior to the execution of a contract for the expenditure of City funds. The City Comptroller, under the supervision of the Chief Financial Officer, usually makes this certification by issuing an auditor's certificate or a purchase order. This certification would be required before the City enters into a contract with Macias for the FY 2009 audit.

¹ Although Charter section 80 references the Auditor and Comptroller, this responsibility has been "transferred to, assumed, and carried out by the Chief Financial Officer" pursuant to Charter section 39.

2. The City may Award a Consultant Contract and Then Assign Work on a Task Order Basis Without Encumbering the Full “Not-to-Exceed” Contract Amount.

Funds in the City Treasury are officially encumbered when the City Comptroller issues an auditor’s certificate for a given contract and the City executes that contract. As discussed above, the City Comptroller issues an auditor’s certificate, purchase order, or other document to certify an appropriation has been made for a given expenditure under a contract and sufficient money is in the Treasury to make the payment *required for such contract*.

“Task order” contracts, otherwise known as “as needed” contracts, allow the City to obtain and pay for services from a consultant as its need for the consultant’s services arises. The total payment amount which the City will be required to pay in a given fiscal year under such a contract is unknown at the time of award because it depends on the extent to which the City will utilize the consultant’s services.

Task order contracts typically guarantee at least one Task Order will be issued and specify a minimum guaranteed amount that will be paid to the consultant. At the time of award, this minimum guaranteed amount is the only payment required under the contract. Therefore, pursuant to Charter sections 39 and 80, the City Comptroller need only certify and encumber the minimum guaranteed amount. The Comptroller can then issue additional auditor’s certificates or purchase orders for subsequent expenditures as the need for additional services under the contract arises. Accordingly, the City may award a contract to Macias on a task order basis and only encumber the minimum guaranteed amount set forth in the contract.

CONCLUSION

The Chief Financial Officer must certify funds are available before the City may award a contract to the Macias firm for the 2009 audit. Alternatively, the City may award a task order contract to the Macias firm without encumbering the full “not-to-exceed” contract amount upon award, provided the Comptroller first certifies sufficient funds are available to cover the minimum guaranteed amount under the contract.

Respectfully submitted,



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