

THE CITY ATTORNEY
CITY OF SAN DIEGO

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CITY ATTORNEY

August 5, 2011

REPORT TO THE HONORABLE MAYOR AND CITY COUNCILMEMBERS

AGREEMENT FOR CAR2GO CAR SHARE PROGRAM

This report reiterates our responses to the legal issues raised by the Public Safety and Neighborhood Services Committee at the hearing on July 27, 2011, regarding the proposed pilot car share program (Pilot Program).

1. Is The Proposed Agreement (Agreement) An Exclusive Agreement With Car2go¹?

Yes. The Agreement grants car2go the exclusive right to operate the City's Pilot Program for a two year period. The exclusivity clause states:

Exclusivity. The City may not contract with other car share programs for two (2) years after the Effective Date of this Agreement, unless the Agreement is terminated as described in section 9, below. The City will assess the Program and, if satisfied with the Program's results, may issue a Request for Proposal (RFP). The City may extend the contract with car2go for up to one additional year so that the Program may continue while procurement is occurring.

Accordingly, under the Agreement, car2go, *and no other car share service provider, even if that provider offers a not all-electric vehicle*, would operate the City's Pilot Program for a two year period unless the Agreement is terminated for convenience² by the City or car2go before the two year period concludes. The City may extend this Agreement by up to one additional year to accommodate a competitive procurement while still providing the Pilot Program.

2. Will The Proposed Pilot Program Be An All-Electric Vehicle Program?

Yes. The Pilot Program proposed by the Mayor's office involves 300 all-electric vehicles that will be provided, operated, and maintained by car2go.

¹ The company, car2go, does not capitalize its name.

² Section 9 states that either party may terminate the Agreement "at any time and for any reason by written ninety (90) day notice."

California Vehicle Code section 22507.1 authorizes a local authority (here, the City Council) to establish a car share vehicle program, including the program's criteria, operating area, and the types of vehicles participating in the program. It states, in pertinent part, as follows:

- (a) A local authority may, by ordinance or resolution, designate certain streets or portions of streets for the exclusive parking privilege of motor vehicles participating in a car share vehicle program or ridesharing program. The ordinance or resolution shall establish the criteria for a public or private company or organization to participate in the program, and may limit the types of motor vehicles that may be included in the program. Under the car share vehicle program a car share vehicle or ridesharing vehicle shall be assigned a permit by the local authority that allows that vehicle to park in the exclusive designated parking areas.

The Mayor's proposal for a Pilot Program includes the program's criteria, operating area, and vehicle type (i.e., all-electric vehicles).³ The City Council may adopt the Mayor's proposal or even create its own.

Note, also, that the Mayor's Office will perform a monthly assessment of the Pilot Program throughout the Agreement's two-year term and present this assessment to the City Council. The City Council may elect to establish a permanent car share vehicle program once the Pilot Program concludes. This would include the program's criteria, operating area, and types of vehicles participating in the program, as described in California Vehicle Code section 22507.1(a).

3. May The City Award This Contract To Car2go Without Allowing Competition?

Yes. In accordance with San Diego Municipal Code (SDMC) section 22.3037, the Mayor's Office certified in writing that a sole source contract is justified because the procurement is available from only one source, car2go, and strict compliance with competitive selection or bidding requirements would be unavailing, would not produce an advantage, and would be undesirable. Purchasing and Contracting approved this certification on July 27, 2011. See attached.


Additionally, under SDMC section 22.3212 (a), a contract that provides for an expenditure of less than \$5,000 is not required to be competitively bid. Car2go would provide

³ The Pilot Program is described in the Agreement and in the Resolution prepared by the Office of the City Attorney.

the car share program for up to three years at no cost to the City, so that the City may assess the benefit of a car sharing program to City residents, employers and visitors.

JAN I. GOLDSMITH, CITY ATTORNEY

By



Mara W. Elliott

Deputy City Attorney

MWE:als

Attachments: July 28, 2011 Memorandum from Purchasing

July 14, 2011 Memorandum from the Office of Mayor Sanders

RC-2011-31

ATTACHMENTS

CITY OF SAN DIEGO
MEMORANDUM

DATE: July 28, 2011

TO: Jacques Chirazi, Cleantech Program Manager, Economic Growth

FROM: Hildred Pepper, Jr., Purchasing Agent

SUBJECT: Sole Source Request for Sole Source Agreement with car2go, a car share provider, for an electric car share pilot program

Your Sole Source Request for the above subject with car2go was approved and is valid through 7/26/2012. In order for a Purchase Order to be issued, your department has to submit a purchase requisition. In the internal header notes of the requisition, please reference Sole Source Case Number 2471. For questions, please contact Bill Broderick, CPPB at x66653.



Hildred Pepper, Jr.
Purchasing Agent

HP/yk

CITY OF SAN DIEGO
MEMORANDUM

Approved
Hildred Pepper Jr
7/27/11

DATE: 7/27/2011
TO: Hildred Pepper, Jr.
FROM: Bill Broderick, CPPB *WFB*
SUBJECT: Sole Source Request — car2go for Sole Source Agreement with car2go, a car share provider, for an electric car share pilot program

Negotiated Total: \$0.00
Dept. Est. Total: \$0.00
Vendor: car2go
Expiration Date: 7/26/2012
Recommendation: **Approved**

In accordance with San Diego Municipal Code Section 22.3212 and 22.3037, Contracts Not Required to be Competitively Bid, I have reviewed the sole source justification for Car2go, for a two year with one option year contract for car sharing pilot program, requested by the Mayor's office. I have determined that Car2go is the only company who can provide 100 percent electric cares.

Background

The City is embarking on several Green Economic growth initiatives, the Mayor's office believe this is a unique opportunity to be the first to have a 100-percent electric vehicle car sharing program, at no cost to the City. The smart vehicles can be charged at designated Blink EV charging stations developed by California-based technology provider ECOTALITY.

Price Reasonableness

There is no cost to the City and all parking fees will be paid by Car2go. All fees for signs both installation and removals are the responsibility of Car2go.

Responsibility

Car2go has been shown to be responsible in other pilot projects and has a record of fulfilling it's contract obligation.

Duration:

This Sole Source approval shall remain in effect until such time as the City cancels contract, but will be reviewed annually

I recommend that the award be made to Car2go. in accordance with the San Diego Municipal

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MEMORANDUM

Code 22.3212. This is a justified Sole Source.

Documentation has been provided by Jacques Chirazi, Cleantech Program Manager, Economic Growth Office of the Mayor, (delineated in the attached justification letter dated July 14, 2011.)



THE CITY OF SAN DIEGO

Date: July 14, 2011

To: Hildred Pepper, Director, Purchasing and Contracting Department

From: Jacques Chirazi, Cleantech Program Manager, Economic Growth Office of the Mayor

Service: Electric Car Share Pilot Program

Subject: Sole Source Agreement with car2go, a car share provider, for an electric car share pilot program

Reference: San Diego Municipal Code sections 22.3212(a) and (e) and 22.3037(a)

The City Manager certifies that a sole source contract for a two-year term plus one option year is justified because the procurement is available from only one source, car2go, and strict compliance with competitive selection or bidding requirements would be unavailing, would not produce an advantage, and would be undesirable. In addition, this contract is not required to be competitively bid because the City will expend less than \$5,000. car2go has agreed to provide the car share program for up to three years at no cost to the City so that the City may assess the benefits of a car sharing program to City residents, employers and visitors.

Background

The City Council is expected to approve amendments to San Diego Municipal Code sections 86.06 and 86.23 (O-2011-126) on July 18, 2011. These amendments will authorize the use of municipal parking spaces for car sharing programs. Further, the Mayor's Office intends to present a pilot car sharing program to the City Council for approval in September 2011. This program will involve an exclusive contract with car2go North America, LLC, a subsidiary of Daimler North America Corporation.

car2go has offered the City of San Diego (City) the unique opportunity to be the first North American city to have a 100-percent electric vehicle (EV) car sharing program. car2go will provide 300 smart fortwo electric drive vehicles (smart vehicles) powered by a 30 kW electric propulsion system. The smart vehicles can be charged at designated Blink EV charging stations developed by California-based technology provider ECOtality¹, who is in the process of siting and installing 1,000 charging stations within the City.

¹ ECOtality is implementing the largest-ever rollout of electric vehicle infrastructure in the nation under a Department of Energy grant awarded to a group of San Diego governmental entities.



An all-electric car sharing program in the City supports the City's efforts to reduce greenhouse gas emissions within city limits. Driving an electric car creates no pollution, and makes almost no noise. A smart car's motor is approximately three times more energy efficient than a traditional combustion engine, and it is emission free if charged with renewable energy. The program is also compatible with other sustainable transportation methods like mass transit and bike-sharing programs, and with the City's existing infrastructure, including the EV charging stations discussed above.

The sole source contract is for a two-year term with a one year option. This contract will allow the City to assess the benefits of a car sharing program to City residents, employers and visitors at no cost to the City. If satisfied with the program after assessing the results of this pilot program, the City may elect to issue a request for proposals for one or more car share programs.

Why or how did the dept. determine it was reasonable price?

The electric car share pilot program will have no cost to the City. car2go has agreed to reimburse the City for all reasonable costs associated with this pilot program.

How do we know this is a responsible and responsive company?

car2go is a subsidiary of Daimler, AG, a company that has been in existence for 125 years. Its brands include Mercedes Benz and Smart. Daimler reported in its 2010 Annual Report that it had achieved double-digit growth rates in all of its divisions. The 2010 Annual Report further states management's expectations of important progress in 2011, including the development of pioneering green technologies, such as the first E-Class with diesel hybrid, and for large-series production of the electric smart car.

Duration of need for the sole source:

This sole source approval will last for up to three years: the initial two year term plus an optional one year term for purposes of allowing the City to issue a request for proposals if the City determines the program is beneficial.

Statement of true commitment to pay for it:

The electric car share pilot program will have no cost to the City. car2go has agreed to reimburse the City for all reasonable costs associated with this pilot program.