January 5, 1996

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

REQUEST FOR PROPOSALS FOR PARKING CITATION PROCESSING SERVICES

INTRODUCTION

The City Council will shortly be considering the award of a contract for the provision of certain parking citation processing services. The Public Safety & Neighborhood Services Committee forwarded the matter to the full Council with a recommendation that the Council adopt the Manager's recommendation (to award the contract to City of Inglewood/PTS Processing Center for data processing services, software, hardware and training) contingent upon the City Attorney's Office rendering opinions on the following questions:

1. Would the award of the contract to Inglewood violate state law?
2. Was the Request for Proposals ("RFP") process, used in soliciting and evaluating bids, legal and fair?
3. May the City of San Diego require, as a condition of any contract, that Inglewood defend and indemnify San Diego in any action brought to challenge the legality of a contract awarded to Inglewood?

An additional question related to this matter and addressed in this Report is:

4. Does Inglewood's use of the California Law Enforcement Telecommunications System ("CLETS") in the performance of its parking citation services contracts violate state law?

The short answer to each of these questions is:

1. No, the award of the recommended contract would not violate state law. The award does not conflict with state law and, even if it did, the subject matter of the contract is a municipal affair and San Diego, as a charter city, is not bound by the state law.
2. Yes, the RFP process used was legal and fair. Each bidder was given an equal opportunity to compete and there is no restriction on amendments to the RFP or further negotiations after the bids are opened.
3. Yes, San Diego may require a defense and indemnification clause in any contract.

4. No, Inglewood's use of CLETS does not violate state law.

A more detailed analysis follows.

BACKGROUND

In May, 1994, after more than two years of study and preparation, the City of San Diego issued an RFP for the processing of parking citations. The primary goal in issuing the RFP was to improve efficiency for the entire Parking Management program by replacing an inadequate data processing system and thereby providing an increase in services to citizens and a decrease in operating costs. Section 2.1 of the RFP stated that vendors were allowed to bid on one or both of the following bases: a "Systems Only" or a "Full Service" proposal. Under the Systems Only option, the vendor would provide a data processing system, including hardware; software; maintenance of hardware, software and data base; support services; and training. City staff would be trained by the vendor and would use the vendor's data processing system to process citations. Under the Full Service option, vendors would bid to provide full parking citation processing services, including direct services to violators as well as providing the complete system.

Section 3.0 of the RFP set forth the evaluation criteria for the award process. In particular, the RFP stated that the City would select the bidder whose proposal was "determined to best meet the needs of the City." The amount of the bid was not determinative of whether a bid was best. All bids were subject to the same criteria, which were listed.

Section 4.0 of the RFP set forth certain instructions to the bidders. Section 4.1.2 reserved to the City the right to revise any portion of the RFP or issue clarifications. Addendums would be issued accordingly. Section 4.7 reserved to the City, amongst other things, the right to "award the contract in whole or in part if it is deemed to be in the best interest of the City . . . ." Furthermore, the City reserved the right "to negotiate with any bidder after proposals are opened, if such action is deemed to be in the best interest of the City . . . ."

Four vendors submitted proposals. The City of Inglewood (also known as the PTS Processing Center) and Lockheed IMS were the two highest-ranked vendors. Inglewood's bid consisted solely of a Systems Only proposal whereas Lockheed submitted proposals for both options.

On April 19, 1995, this item was heard by the Public Safety and Neighborhood Services ("PS & NS") Committee. The City Manager recommended, in part, that the City enter into a five-year agreement with Lockheed for its Systems Only proposal. See City Manager Report No. 95-79, dated April 12, 1995, attached for your reference. That Report explained in detail the process by which Parking Management staff evaluated the proposals and recommended that Lockheed be awarded the contract. The Report stated that Lockheed's Full Service option had the greatest cost-saving potential and also offered the highest service levels. However, since the RFP was issued before the City adopted the

Competition Program, the Manager recommended that City staff and the Competition Team be allowed to develop a proposal which would involve use of City staff to continue processing parking citations. That proposal could then be compared to Lockheed's Full Service Option and the Council could decide whether to continue with City staffing or opt for Lockheed's Full Service Option. Thus the Manager's recommendation was for the System Only contract at that time.

At the Committee meeting representatives of both Inglewood and Lockheed spoke in support of their respective proposals. Members of the City's Municipal Employees Association ("MEA") also spoke and expressed concern that MEA did not have adequate input into the evaluation process. Since the RFP had been released prior to adoption of the City's Competition Pilot Project,F

> The "Competition Pilot Project" was implemented to ensure that City employees had adequate opportunity to compete with private businesses in operation of City projects.

City employees had not been included in the original RFP evaluation team.

As a result of the issues raised at the April 19 meeting, the Committee directed staff to organize a new task force (consisting of representatives from the Parking Management and Accounting Programs, the Manager's Competition Team, and MEA) to reexamine Inglewood's and Lockheed's proposals. The task force was also directed to visit each vendor, obtain input from current users of each system, and return with a recommendation to the Committee.

On May 30, 1995, the City issued a "Clarification of RFP Issues" to both Inglewood and Lockheed. The clarification listed some 25 issues on which the City solicited additional information from the bidders. An additional, brief clarification was issued on June 2, 1995, granting more time for the responses to the original clarification and setting forth a revised evaluation process.

The task force concluded its work and made its report. When analyzed on a price-only basis, the Full Service option proposed by Lockheed was again found to provide the lowest cost alternative. But the task force provided an additional, detailed explanation regarding which proposal would provide the best over-all benefit to the City and concluded that Inglewood's Systems Only option would ultimately best serve the City's needs.F

> The task force considered such factors as number of citations expected to be issued in the future; options and enhancements to be offered; rent; notification; and access to CLETS (California Law Enforcement Tracking System).

See City Manager's Report No. 95-174, attached for your reference.

The matter was reheard at the Committee meeting of August 2, 1995. Several people spoke urging the Committee to adopt one proposal over

another. Because of the complexities that had developed with the project, the Committee wished to ensure the propriety and legality of any recommendation it would be making to the full City Council. Consequently, the Committee requested that the City Attorney's office provide this Report to the full Council. In preparing this report, we solicited and received input from both Inglewood and Lockheed on the issues discussed.

Our office has also learned the following information which is relevant to this matter. Inglewood has previously entered into contracts with other cities not in its own county (including Sacramento and Berkeley) for the provision of parking citation services. In 1994, Lockheed initiated litigation over those contracts alleging that the California Vehicle Code prohibits Inglewood from entering into such contracts. A superior court in Los Angeles granted Lockheed's request for a temporary restraining order that prohibited Inglewood from contracting with entities outside of Los Angeles County. However, the court subsequently denied Lockheed's request for a permanent injunction and the restraining order was lifted. There is thus no current judicial order precluding Inglewood from contracting with the City. Lockheed is currently seeking appellate review of that decision.

Additionally, however, we have learned that the California Attorney General is reviewing the use of CLETS by Inglewood in the performance of its other contracts. That review is pending but there is no indication at this time that the Attorney General will be taking any action against Inglewood.

ANALYSIS

I

LEGALITY OF CONTRACTING WITH INGLEWOOD

A. The Proposed Contract Does Not Violate The Vehicle Code

Lockheed contends that both Inglewood and San Diego are prohibited by the California Vehicle Code from contracting with agencies outside of their respective counties for the processing of parking citations. The Vehicle Code section at issue is Section 40200.5 which provides, in relevant part: "An issuing agency may elect to contract with the county, with a private vendor, or with any other city or county issuing agency, other than the Department of the California Highway Patrol, within the county, with the consent of the other entity, for the processing of notices of parking violations and notices of delinquent parking violations . . . ." The section thus prohibits a contract with a city outside the county for the "processing of," essentially, parking tickets. Here, Inglewood is outside San Diego County. The issue thus raised in the context of this matter is the meaning of the phrase "processing of" as it relates to parking citations.

Neither "process" nor "processing" is defined in the Vehicle Code so the word must be given its ordinary, everyday meaning. Halbert's Lumber, Inc. v. Lucky Stores, Inc., 6 Cal. App. 4th 1233, 1238 (1992),

rev. denied. Webster's Third New International Dictionary (G. & C. Merriam & Co. 1976) defines "process" in this context as: "vb. . . . 2: to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to affect a particular result: . . ." In a related context, the word is defined as: "n. . . . 1. . . . e: a particular method or system of doing something, producing something, or accomplishing a specific result; . . ." See Halbert's, 6 Cal. 4th at 1240 (dictionary meaning of word sufficient).

Each of these definitions connotes the whole of a procedure, from beginning to end. When correlated with the subject matter of the Vehicle Code section, the "processing of" parking tickets connotes the whole of that procedure, from the recordation of the violation to receipt, if any, of fines or penalties. With that meaning in mind, what appears to be prohibited by the Vehicle Code is the complete relinquishment to a public entity outside the county of the entire procedure for collecting on parking violations.

Here, the RFP solicited two different types of proposals: Systems Only and Full Service. Certainly the latter would fall within the concept of "process" or "processing" as set out in the dictionary and as contemplated by the Vehicle Code. The former, on the other hand, would not seem to reasonably fall within the common meaning of the term. A bidder could provide only a part of the entire "process," for example data processing software, but the processing agency would still be responsible for all other aspects of the process. That is what is proposed here. Inglewood is to provide certain computer hardware; software; maintenance; support services for the hardware and software; and training. The City would still be responsible for recordation of the violation; input of all information into the system; mailing of notices; interaction with violators; and receipt and recordation of fines and penalties. It is thus our opinion that the provision of the Systems Only option by Inglewood, as specifically set out in the City Manager's Report, does not violate or conflict with the Vehicle Code.

B. As A Charter City, San Diego Is Not Bound By The Provisions Of The Vehicle Code

Even if the provision of the Systems Only option conflicts with the Vehicle Code, the subject of the contract is a municipal affair and San Diego is not bound by the state law. San Diego is thus free to contract with Inglewood.

A charter city has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter itself. Cal. Const., art. XI, Section 5(a); City of Grass Valley v. Walkinshaw, 34 Cal. 2d 595, 598 (1949). "The charter operates not as a grant of power but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation."

Id. at 598-599. The rules of statutory construction governing charter provisions provide that:

> The exercise of . . . power . . . is favored against the existence of any limitation or restriction thereon which is not expressly stated in the charter . . . . So guided, reason dictates that the full exercise of the power is permitted except as clearly and explicitly curtailed. Thus in construing the city's charter a restriction on the exercise of municipal power may not be implied.

Id. at 599. "A city charter is thus construed to permit the exercise of all powers not expressly limited by the charter or by superior state or federal law." Taylor v. Crane, 24 Cal. 3d 442, 450 (1979).

As to such superior state law:

> A charter city is constitutionally entitled to exercise exclusive authority over all matters deemed to be "municipal affairs." Citation. In such cases, the city charter supersedes conflicting state law. If the statute in question addresses an area of "statewide concern," however, then it is deemed applicable to charter cities. Citations. In deciding whether a matter is a municipal affair or of statewide concern, the Legislature's declared intent to preempt all local law is important but not determinative, i.e., courts may sometime conclude that a matter is a municipal concern despite a legislative declaration preempting home rule. Citation.

DeVita v. County of Napa, 9 Cal. 4th 763, 783 (1995).

> As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine).

Bishop v. City of San Jose, 1 Cal. 3d 56, 61-62 (1969).F

The reference to the preemption doctrine here is a little misleading. The full extent of the preemption doctrine is applicable where the Legislature intends to fully occupy a field,

whether of statewide concern or municipal affair, and thus preempts legislation or action of a general law (as opposed to charter) city. Baron v. City of Los Angeles, 2 Cal. 3d 535, 539 n. 4 (1970) (citing Professional Fire Fighters, Inc. v. City of Los Angeles, 60 Cal. 2d 276, 292 n. 11 (1963)). The import of the quotation is that charter cities may legislate on matters of statewide concern where the Legislature has not intended to occupy the field and the local law does not conflict with the state law. Id. at 541; Bishop, 1 Cal. 3d at 62.

In sum, a charter city may legislate or act on "municipal affairs" even if such activity conflicts with state law. Similarly, the state Legislature may not enact legislation affecting a charter city on a matter considered a municipal affair. Conversely, on a matter determined to be of "statewide concern" a charter city may not enact legislation that conflicts with state law. The charter city may, however, enact legislation on a matter of statewide concern which is not in conflict with state law unless the Legislature has intended to preempt that field.

Generally, the first step in determining whether a charter city's action is valid is to determine whether an actual conflict exists with state law. If not, no further analysis is needed. Johnson v. Bradley, 4 Cal. 4th 389, 398-399 (1992); California Fed. Savings & Loan Assn. v. City of Los Angeles, 54 Cal. 3d 1, 16-17 (1991); Bishop, 1 Cal. 3d at 62. But see Baron v. City of Los Angeles, 2 Cal. 3d 535, 539 (1970). If there is a conflict,

> "it becomes necessary for the courts to decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern." In other words, "No exact definition of the term 'municipal affairs' can be formulated, and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case. The comprehensive nature of the power to legislate on "municipal affairs" is however, conceded in all the decisions . . . ."

Bishop, 1 Cal. 3d at 62 (quoting Butterworth v. Boyd, 12 Cal. 2d 140, 147 (1938); see also Cal. Fed., 54 Cal. 3d at 16; Johnson v. Bradley, 4 Cal. 4th at 399.

If the subject is not of statewide concern the local legislation stands. If the state legislation, however, is of statewide concern it prevails provided it is reasonably related and narrowly tailored to the resolution of that concern. Johnson v. Bradley, 4 Cal. 4th at 399; Cal. Fed., 54 Cal. 3d at 17.

> The phrase "statewide concern" is thus nothing more than a conceptual formula employed in aid of the judicial mediation of jurisdictional disputes between charter cities and the Legislature, one that facially discloses a focus on extramunicipal concerns as the starting point for analysis. By requiring, as a condition of state legislative supremacy, a dimension demonstrably transcending identifiable municipal interests, the phrase resists the invasion of areas which are of intramural concern only, preserving core values of charter city government. As applied to state and charter city enactments in actual conflict, "municipal affair" and "statewide concern" represent, Janus-like, ultimate legal conclusions rather than factual descriptions. Their inherent ambiguity masks the difficult but inescapable duty of the court to, in the words of one authoritative commentator, "allocate the governmental powers under consideration in the most sensible and appropriate fashion as between local and state legislative bodies."

Johnson v. Bradley, 4 Cal. 4th at 399-400 (quoting Cal. Fed., 54 Cal. 3d at 17) (italics, footnotes and citations deleted).

While courts will give "great weight" to the purpose of the state Legislature in enacting general laws when deciding whether a matter is a municipal affair or of statewide concern, the Legislature's intent does not control. The Legislature may not determine what is a municipal affair or turn such affair into a matter of statewide concern. Bishop, 1 Cal. 3d at 63. Courts, on the other hand, are not to "compartmentalize" areas of governmental activity as either a municipal affair or of statewide concern. Cal. Fed., 54 Cal. 3d at 17-18. Very generally, a matter is of statewide concern if, "under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city . . . . The hinge of the decision is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations." Id. at 18.

We have opined above that there is no conflict between the award of the contract to Inglewood and the Vehicle Code. Thus no further analysis would normally be necessary under the "municipal affairs" doctrine. Johnson v. Bradley, 4 Cal. 4th at 398-399. Assuming there is a conflict, however, as Lockheed maintains, it must be determined

whether the subject of contracting for parking citation processing services is of statewide concern or a municipal affair. Id. There is no case on point although some cases give guidance.

It has been held that "the collection, treatment and disposal of city sewage and the making of contracts therefor are . . . municipal affairs, . . ." City of Grass Valley, 34 Cal. 2d at 599 (emphasis added, citation omitted). Similarly, "street and sewer work in a municipality, and the making of contracts therefor on the part of the municipality are 'municipal affairs' within the meaning of the municipal affairs doctrine. Citations. Especially is this true where the expense of the work is to be borne by the municipality itself, . . ." Loop Lumber Co. v. Van Loben Sels., 173 Cal. 228, 232 (1916) (emphasis added). Also, "deciding who will be awarded the contract for refreshment stands in a city park is unquestionably a matter of municipal concern," R & A Vending Services, Inc. v. City of Los Angeles, 172 Cal. App. 3d 1188, 1192 (1985), rev. denied, and the application of competitive bidding requirements to a city contract is a municipal affair, Smith v. City of Riverside, 34 Cal. App. 3d 529, 536-37 (1973). Finally, it has been said that "'matters of intracorporate . . . process designed to make an institution function effectively, responsively, and responsibly should generally be deemed a municipal affair'. . ." Id. at 535 (quoting Sato, "Municipal Affairs" in California, 60 Cal.L.Rev. 1055, 1077 (1972)).

These cases compel a conclusion that, generally speaking, contracting for municipal services is a municipal affair. Included within such municipal services would be contracting for the processing of parking citations. The appropriate contract certainly would, in the words of Professor Sato, above, help San Diego run effectively, responsively and responsibly.

Application of the policy considerations set forth in cases such as Johnson v. Bradley and Cal. Fed. reinforce that conclusion. The Vehicle Code would somewhat inexplicably and arbitrarily allow all the cities in Los Angeles County to take advantage of a potentially cost saving contract for services but not allow any other cities in the state the same advantage, to the detriment of their taxpayers. It is difficult to identify any "extramunicipal concerns" which would allow San Diego to contract with Oceanside or Vista for the processing of parking citations but not allow a contract with San Clemente (just north of Oceanside) much less Inglewood. Cal. Fed., 54 Cal. 3d at 18. It is similarly difficult to identify any "sensible, pragmatic considerations" "justifying legislative supersession," Id., nor "a dimension demonstrably transcending identifiable municipal interests, Johnson v. Bradley, 4 Cal. 4th at 399-400, which would prohibit a contract with Inglewood.

Even if one could identify such considerations, the legislation does not seem to be "reasonably related and narrowly tailored to the

resolution of that concern," Id. at 399, as it would rather arbitrarily allow contracts within a county but not across county lines. It would seem that the same concern about inter-county contracts would apply to intra-county contracts as well. Thus the arbitrariness of the legislation is self-defeating as evidence of a purported statewide concern.

Lockheed may cite two points in particular to establish a statewide concern. The first is Vehicle Code section 21 and the second is a message by Governor Wilson vetoing legislation that would have amended Vehicle Code section 40200.5. Neither point is availing, as state lawmakers may not, by fiat or expressions of intent, make a statewide concern out of matters that are municipal affairs. DeVita, 9 Cal. 4th at 783; Bishop, 1 Cal. 3d at 63. Vehicle Code section 21 provides that public entities may not enact or enforce ordinances on matters covered by the Vehicle Code. The intent of the Legislature was to make uniform all traffic regulations throughout the state. The section, however, predated by many years the adoption of Section 40200.5 and it is apparent that the preemption is solely as to traffic regulation or control. Rumford v. City of Berkeley, 31 Cal. 3d 545, 549-550 (1982); Poway v. City of San Diego, 229 Cal. App. 3d 847, 857-858 (1991). In our opinion, it does not operate to create a statewide concern in the area of municipal contracts.

Similarly, the Governor's veto message does not create a statewide concern or evidence overriding considerations justifying legislative supersession. The vetoed legislation would have amended Section 40200.5 to allow these types of contracts across county lines. In particular, the Governor stated: "Public entities should not be competing with private business on a Statewide basis. Existing law appropriately allows for neighboring jurisdictions to contract with each other for services for purposes of lowering costs to taxpayers. Expanding these operations Statewide, however, has quite different policy implications." The Governor went on to state that those policy concerns centered on the tax exempt status of public entities.

We do not believe the Governor's expressed concern creates an overriding state interest. First, unpassed bills have little value as evidence of legislative intent. Dyna-Med, Inc. v. Fair Employment & Housing Com., 43 Cal. 3d 1379, 1396 (1987). A veto message would also have little value as to the legislative intent behind previous legislation. See Baldwin v. County of Tehama, 31 Cal. App. 4th 166, 181 n. 10 (1994) (judicial notice of veto message declined - not relevant to meaning of statute). Second, the rationale behind the Governor's expressed concern would also apply to contracts between the "neighboring jurisdictions" the Governor mentions in his veto message, especially in a county as large and populous as Los Angeles where Inglewood is located. In fact, the Governor's message acknowledges the benefit to taxpayers in the existence of such contracts, reinforcing a conclusion

that the matter is a municipal affair. The Governor's veto message thus does not resolve the arbitrariness and irrationality of the legislation, it merely reinforces it.

In sum, we are of the opinion that the subject of contracting for parking citation processing services is a municipal affair. To the extent that the recommended contract conflicts with the Vehicle Code, San Diego's charter city status overrides the conflicting state law and the contract may be awarded to Inglewood.

II

PROPRIETY OF RFP PROCESS

Absent a statutory requirement, San Diego is not required to enter into competitive bidding. San Diego Service Authority For Freeway Emergencies v. Superior Court, 198 Cal. App. 3d 1466, 1469 (1988), rev. denied. San Diego City Charter section 94 only requires competitive bidding for the award of a public works contract. There is thus no competitive bidding requirement here and no party contends there is. This contract is to be let on the basis of an RFP, which is a negotiated procurement. An RFP process is different than a competitive bid process. In an RFP, the purpose is to provide the best overall deal for the public entity. Price need not be the only consideration. RFP's usually contain a description of the item or service requested, the criteria to be used in evaluating the proposals, and other relevant matters relating to the time and manner of performance. Bids made under an RFP may be clarified and changed in discussions after proposals have been received as long as each bidder is treated fairly. The contract is eventually awarded to the bidder whose proposal is determined to be the most advantageous for the governmental entity, taking into consideration price and other factors set forth in the RFP. See generally McQuillan, Municipal Corporations, v. 10, p. 384-385, Section 29.31 (3d ed. rev. 1990); In re Honeywell Information Systems, Inc., 367 A.2d 432, 439-440, 145 N.J. Super. 187, 199-201 (1976). The award of a contract under an RFP would be upheld absent evidence of fraud or corruption, R & A Vending Services, 172 Cal. App. 3d at 1193, or absent other evidence indicating an abuse of discretion, Diablo Beacon Printing & Pub. Co. v. City of Concord, 229 Cal. App. 2d 505, 508 (1964).

At the last meeting of the PS & NS Committee on this matter, Lockheed generally contended that the RFP process had become "unfair." In a subsequent letter to this office, Lockheed's attorney submitted that "the Request for Proposal process has become tainted, in that objective factors of evaluation have been set aside in favor of subjective areas. This violation of due process has in effect resulted in an award to Inglewood on a sole source basis, . . ." Lockheed's letter further contends that the scope of the RFP "dramatically" changed over time and the process became "distorted." Finally, Lockheed suggests that Inglewood's bid was non-responsive to the RFP.

It is our opinion that none of the contentions has merit. The RFP

stated quite clearly that the contract would be awarded to the bidder whose proposal best met the needs of the City. The RFP reserved to San Diego the right to revise the RFP, and issue clarifications and addendums. The RFP also clearly indicated that San Diego reserved the right to negotiate with any bidder after the proposals were opened. These provisions of the RFP controlled, and we are aware of no evidence that establishes that the process of evaluation and award conflicted with the terms of the RFP or the power reserved under it. It is our opinion that both Lockheed and Inglewood were given an equal opportunity to meet the needs of San Diego as directed by the PS & NS Committee, and as rigorously reviewed and evaluated by staff. In the end, the Manager has recommended the award of the Systems Only option to Inglewood as meeting the best needs of the City. Absent any evidence of fraud or corruption (of which we are unaware) we are of the opinion that the award of the contract to Inglewood would not be an abuse of discretion and would be upheld. R & A Vending Services, 172 Cal. App. 3d at 1193; Diablo Beacon, 229 Cal. App. 2d at 508.

III

THE CITY MAY REQUIRE A DEFENSE AND INDEMNIFICATION CLAUSE

As a general proposition, the City may always require a defense and indemnification clause in any contract into which it enters. Here, section 10.0 of the RFP allows the City to negotiate specific terms of a contract with the successful bidder. The City should thus require the successful bidder to defend and indemnify the City in any lawsuit arising out of the contractor's actions in the performance of the contract. The City may also require such a clause relative to any lawsuit brought to challenge the validity of the contract. This office would recommend the latter type of clause if the Council awards the contract to Inglewood, in light of the litigation threat from Lockheed. While we are confident of the correctness of our legal position on these issues, such a clause saves the City the costs associated with a defense.

IV

THE USE OF CLETS BY INGLEWOOD IS LAWFUL

Lockheed contends that the use of the CLETS system by Inglewood in the performance of its contracts for parking citation processing services violates state law. We believe that it does not. The CLETS system is a statewide telecommunications system, established and operated pursuant to Chapters 2 and 2.5 of the California Government Code, sections 15100-15137 and 15150-15167 respectively. For these purposes, the system provides access to registered owner information for California and some neighboring states. While the statutes refer repeatedly to "law enforcement" as a dominate purpose, both sections 15101 and 15153 provide that the system may be used for the "official

business" of any city. It is important to note that the statutes do not require that the use of the system be by the city whose official business justifies access to the system.F

Section 15101 provides: "The system shall be used exclusively for the official business of the State, and the official business of any city, county, city and county, or other public agency."

Section 15153 provides: "The system shall be under the direction of the Attorney General, and shall be used exclusively for the official business of the state, and the official business of any city, county, city and county, or other public agency."

The Legislature is presumed to understand the significance of variations in terminology in statutes it adopts. Interinsurance Exchange of the Automobile Club of Southern California v. Spectrum Investment Corp., 209 Cal. App. 3d 1243, 1258 (1989), rev. denied. In this case, the term "official business" is broader than "law enforcement business" and the statutes thus allow the CLETS system to be used for any "official business," not just law enforcement business. It cannot reasonably be doubted that the processing of parking citations is official business for San Diego and San Diego could thus use the system to aid its processing of citations. The fact that Inglewood is performing a part of that processing for San Diego, which includes utilizing Inglewood's access to CLETS, does not remove the processing of parking citations from the realm of official business for San Diego. Because the state statutes do not limit who may use the system for the official business of a city, Inglewood may access the system for the official business of San Diego.

CONCLUSION

We believe that the Vehicle Code does not prohibit the City of San Diego from entering into a contract with the City of Inglewood for the provision of certain parking citation data processing services as outlined in the Manager's Report. In any event, as a charter city, San Diego is not bound by the provisions of the Vehicle Code as the business of contracting for municipal services is a municipal affair. In addition, Inglewood's use of the CLETS system in the performance of its contract does not violate California law. Finally, the RFP process was fair, and the City may require a defense and indemnification clause from the successful bidder.

Respectfully submitted,
JOHN W. WITT
City Attorney

LJG:MKJ:js:mb:522:151(043.1)
Attachments:2
RC-96-1