

RESOLUTION No. R-254236

(R-81-2171)

Adopted on MAY 19 1981

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That for the reasons set forth in a Report to the Mayor and City Council dated May 18, 1981, a copy of which is attached hereto and by this reference made a part hereof, and having heard oral testimony and representations from Triple L, this City Council specifically finds and determines that Triple L Enterprises is not a responsible bidder and the City Manager is hereby authorized to execute a service contract with Bekins Building Maintenance Company for certain payroll and labor contract services at the City Convention and Performing Arts Center, under the terms and conditions set forth in the contract on file in the office of the City Clerk as Document No. RR-254236.

APPROVED: JOHN W. WITT, City Attorney

By C. M. Fitzpatrick  
C. M. Fitzpatrick  
Senior Chief Deputy

CMF:vl:715.7  
5/19/81  
Or.Dept.: Atty.

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ROBERT S. ...  
COURTIS M. ...

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

CITY ADMINISTRATION BUILDING  
SAN DIEGO, CALIFORNIA 92101  
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**JOHN W. WITT**  
CITY ATTORNEY

May 18, 1981

REPORT TO THE HONORABLE MAYOR  
AND CITY COUNCIL

IN THE MATTER OF A SERVICE CONTRACT TO PERFORM CERTAIN  
PAYROLL AND LABOR CONTRACT SERVICES FOR THE CITY'S  
CONVENTION AND PERFORMING ARTS CENTER ("CPAC")

The above captioned item is on your agenda for May 18, 1981. This matter was previously considered by you on December 8, 1980 at which time you authorized an award of this contract to Bekins Building Maintenance Company ("Bekins") although Bekins was not the low monetary bidder on the contract. The low monetary bidder (by \$19,200 over a three-year period) was Triple L Enterprises ("Triple L"), but the City Manager and the City Attorney recommended that the contract not be awarded to Triple L because, in their view, it was not deemed to be a responsible bidder because of legal and audit disputes over past contracts for services at CPAC and San Diego Stadium.

Following this action by the Council, Triple L brought an action in the Superior Court challenging the award to Bekins contending that since it (Triple L) was the lowest monetary bidder it must, as a matter of law, be awarded the contract. The Superior Court issued a temporary order which precluded the City from executing the contract with Bekins and in subsequent hearings determined that the purported award to Bekins was invalid as an abuse of discretion because there was no substantial evidence in the record considered by the court to indicate that Triple L was not responsible. (As you may recall, at the hearing on the matter in December 1980, there was a brief Manager's Report concerning the issue and the City Attorney's office made some oral representations but apparently the court felt that there was a need for more detailed evidence to be presented.) The Superior Court ordered the City Council to reconsider this matter and award the CPAC contract to the lowest responsible bidder. The matter is again before you for that purpose. Although we contended in the court proceedings that the City Council should have the right to reject all bids as an alternative, the lower court rejected this contention and declined to allow us this option. The City Attorney has filed a notice of appeal on this aspect of the case.

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In order that the City Council be fully informed as to particulars in this matter it will be necessary for us to indicate to you in detail the nature of the transactions and disputes which have arisen in the past with Triple L and Bekins and the results of those transactions and disputes which continue to lead us to conclude that Triple L is not a responsible bidder and recommend to you that the contract be awarded to Bekins.

The proposed labor and payroll contract for the Convention and Performing Arts Center (CPAC) is a service contract in which the contractor supplies labor and payroll contract services to CPAC. The method of operation contemplated under this type of contract is one in which the contractor makes available at the request and selection of the CPAC management certain personnel who perform certain services at CPAC and its facilities under the direct supervision of the CPAC management.

The essential criteria in evaluating the bid responses of potential contractors, in addition to the total monetary costs to the City, are the experience of the bidders, past performance for the City (if any), the bidders' capability to fully and faithfully execute the terms of the proposed contract and the trustworthiness of the bidders. The apparent low bidder, Triple L, was the labor and payroll contractor at CPAC from May 1, 1976 to April 30, 1980, and under a separate contract for maintenance and custodial services at San Diego Stadium from January 1, 1977 to December 31, 1979. Early in 1980 the City Auditor and Comptroller, at the request of the City Manager, conducted separate audits of the operations of Triple L at CPAC as well as at the Stadium. As a result of the audits and reports issued by the Auditor on March 14 and April 2, 1980, the City Council, in executive session on April 22, 1980, directed the City Manager not to renew the option with Triple L for continued service to CPAC for the period May 1, 1980 through April 30, 1981. The Council also authorized the City Attorney to take legal action to recover funds due to the City as a result of apparent overcharges by Triple L during the period they were the labor and payroll contractor at CPAC and at the Stadium. The basis for the City Council's action was the disclosure in the audits by the City Auditor and Comptroller of the following:

(1) That Triple L was overpaid \$143,306.19 under the maintenance and custodial contract at San Diego Stadium.

Of this amount \$94,013.19 was for fringe benefit overpayments and \$49,293 was for 7,351 labor hours billed in excess of supporting documents.

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(2) That Triple L was overpaid \$133,239.82 under its contract at the CPAC.

Inasmuch as it was your direction not to continue the contractual relationship with Triple L at CPAC, it was necessary to make other arrangements for the contractual services previously rendered by Triple L. Bekins Building Maintenance Company, who has had an existing three-year contract at the Stadium for similar services (having replaced Triple L in January 1980) indicated its willingness to perform these services at CPAC on a month-to-month arrangement pending the issuance of a request for proposal and award of the contract we are discussing here. Thus, Bekins assumed the responsibilities at CPAC on a month-to-month basis on May 1, 1980. They continue to perform on a month-to-month basis at CPAC and under their long-term contract at the Stadium, and in both cases do so in a satisfactory manner.

However, in the course of administrative review of the contract for services at the Stadium, a question arose with respect to billings by Bekins for the services Bekins was rendering there. At the request of the City Manager an audit was conducted by the City Auditor which determined that Bekins had been overpaid \$6,515.81 for employee fringe benefit costs from January 1, 1980 through December 31, 1980. As a result of this audit by the Auditor in January 1981, discussions were held with the officials of Bekins by representatives of the City Manager and City Attorney's office and Bekins' representatives agreed that there had been an overpayment and reimbursed the City the full amount of the overpayment determined by the Auditor. They also agreed that the City's interpretation of the contract with respect to employee fringe benefit costs was correct and that billings in the future would reflect that interpretation.

Following the determination by the City Council not to continue its contractual relationship with Triple L, the City Attorney's office met from time to time with legal representatives of Triple L in an effort to isolate out contested items. As to the \$49,243 for labor hours billed in excess of supporting documents, Triple L paid this amount through the City Attorney's office in May 1980. However, with respect to many other disputed items, Triple L continued to maintain that it was entitled to the monies under its interpretation of the prior contracts.

In order to resolve this matter the City has filed a legal action seeking to recover these amounts. The thrust

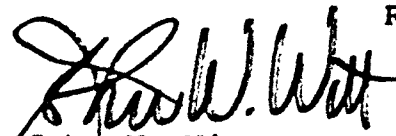
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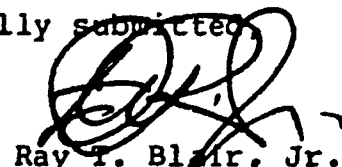
of that action is that the cost of fringe benefits which Triple L is obliged to provide for the contract employees is reimbursable to Triple L to the extent that it has been obliged under its labor contracts to actually pay those amounts to the various trust funds of the labor union. Triple L's position is that under its contract with the City it was entitled to bill (and receive) payments from the City for fringe benefit costs whether or not these fringe benefit payments were actually made to the labor union trust fund. This issue is the same issue which was in dispute with Bekins and to which Bekins conceded the correctness of the City's position. The legal action with Triple L is proceeding accordingly.

We believe that, aside from the legal dispute with respect to the fringe benefit issue, that the past performance of Triple L in overbilling for 7,351 labor hours of work at San Diego Stadium during its contractual period there from 1979 to 1980 which resulted in an overcharge of \$49,283 raises a sufficient question of the responsibility and trustworthiness of Triple L. Were it not for the audits conducted by the City in March and April 1980, these overcharges and overpayments would not have been discovered. We believe that the City should not be required to continually audit to assure that a contractor will not overcharge the City.

It is for the reasons set forth above that the City Manager and City Attorney continue to believe that Triple L is not a responsible bidder. We therefore recommend that the contract be awarded to Bekins as the low responsible bidder.

  
John W. Witt  
City Attorney

Respectfully submitted

  
Ray T. Blair, Jr.  
City Manager

CMF:v1:715.7 (x043.2)

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Passed and adopted by the Council of The City of San Diego on MAY 19 1981,  
 by the following vote:

| Councilmen        | Yeas                                | Nays                     | Not Present              | Ineligible               |
|-------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Bill Mitchell     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Bill Cleator      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Susan Golding     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Leon L. Williams  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fred Schnaubelt   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mike Gotch        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Dick Murphy       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lucy Killea       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mayor Pete Wilson | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

AUTHENTICATED BY:

PETE WILSON

Mayor of the City of San Diego, California.

CHARLES G. ADDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Ellen Board, Deputy.

Office of the City Clerk, San Diego, California

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