

MEMORANDUM OF LAW

DATE: September 17, 1985

TO: Bruce Herring, Risk Management Director

FROM: City Attorney

SUBJECT: City Property Insurance

By both telephone and memorandum you have apprised this office of a renewal of a three (3) year insurance policy for City property insurance placed by the County of San Diego's broker of record, Robert F. Driver Company. You point out that this extension was done in reliance on Resolution No. R-254522 authorizing a cooperative contract with the County of San Diego to obtain property insurance on a cooperative basis.

In light of this joint agency cooperation in which San Diego Transit Corporation has also joined, you ask if Council approval is necessary for the renewal of the policies purchased by the broker of record.

Despite supportive authority for cooperative purchasing with

other governmental agencies (San Diego City Charter section 35 and Council Policy Number 100-1), the purchase of property insurance the cost of which exceeds five thousand dollars (\$5,000) must be done via the competitive bidding process and approved by the City Council.

San Diego's City Charter section 35 and San Diego Municipal Code section 22.0504 make abundantly clear that the power to purchase insurance the cost of which exceeds five thousand dollars (\$5,000) requires seeking competitive proposals and Council approval. While Section 22.0504 authorizes the participation of joint and cooperative purchasing with other governmental agencies as directed by the Council, the five thousand dollar (\$5,000) threshold still applies.

Within the same dollar amounts as set forth herein, the Purchasing Agent is authorized to participate in joint and cooperative purchasing with the State of

California, County of San Diego, the San Diego Unified School District, and such other agencies as the Council may by resolution direct, so long as purchases above five thousand dollars (\$5,000) are made through a

competitive bidding process.

Similarly Resolution No. R-254522 offers no exemption from the above requirements. The resolution authorizes a cooperative contract with the County of San Diego and its broker of record, Robert F. Driver, for fire, property and extended coverage insurance for a fixed period of time. Particularly disturbing is the fact that, although a contract is authorized, no contract with the County of San Diego was ever consummated. We need not speculate then on what effect a cooperative contract would have had the contract jointly empowered the broker of record to renew at the lowest terms available since no such contract exists.

Moreover because of the fixed time provision in Resolution No. R-254522, it is arguable that the approval of the County's broker of record has likewise expired. This construction flows from a comparison of Resolution Nos. 190525 and 206369 hereto attached that appointed a broker of record without any time frame. Although ambiguous, the fixed limitation provision of Resolution No. R-254522 could be read to apply to both the term of the insurance and the broker of record.

Accordingly we recommend that should cooperative purchasing be desired with the County, an agreement be consummated to memorialize each party's respective role and obligations and to ensure that the competitive bidding requirements of the Charter

are preserved. Secondly, in light of the arguable ambiguity of Resolution No. R-254522 in appointing a broker of record, Council approval of a broker of record should be sought.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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