

MEMORANDUM OF LAW

DATE: April 12, 1988

TO: Commander R.J. Thorburn, San Diego Police
Department
FROM: City Attorney
SUBJECT: Purchase of Eastern Area Station Modular
Complex

This in response to your memo dated April 6, 1988 inquiring whether the City may purchase a "modular complex" composed of two trailers already in place at the Police Department Eastern Area station from Scotsman Manufacturing without advertising for proposals. You state that the "Police Department intends to pursue sole source purchase" of the complex on the basis that Scotsman has offered to refurbish the units, give the City a month's free rent (the lease agreement expired March 31, 1988) and sell the complex to the City for \$257,006.46. You state that the cost to purchase a new complex, including work site costs, would be \$400,000 to \$500,000.

Section 35 of the City Charter requires that no purchase of supplies, materials, equipment and insurance costing over a certain sum set by ordinance "shall be made without advertising for sealed proposals therefor." San Diego Municipal Code section 22.0504 sets that limit at \$10,000 and further mandates the Purchasing Agent to advertise for sealed proposals and obtain Council approval for any purchase over \$25,000. The ordinance sets forth two exceptions to the requirement of advertising for proposals: 1) in the case of bona fide emergency affecting public health or safety, and 2) "for sole source procurement provided certification to this effect is approved by the City Manager." "Sole source" means that the procurement is available from only one source and there is no permissible substitute. San Diego Municipal Code section 22.0505(e).

In the case of the modular complex at issue, we do not believe procurement is available from only one source or that there is no permissible substitute. There are many trailer manufacturers and many types and models available. The fact that the Scotsman trailers are already in place and the lease has

expired does not make them unique nor transform them into being "sole source." Neither does the fact that the used complex is substantially less expensive than a like new complex.

You and/or the Purchasing Agent are advised to draft specifications and issue Invitations to Bid for purchase of a new

or used modular complex for use by the Traffic Division. Since this process cannot be accomplished in less than a month, you are further advised to extend the current lease with Scotsman Manufacturing for a period of several months, at least.

You further inquired whether the Police Department or the Purchasing Agent is the appropriate entity to process the purchase of a modular complex. The City Charter and San Diego Municipal Code authorize the Purchasing Agent to make purchases and enter contracts for the City; however, the Purchasing Agent may delegate its powers to Police Department personnel. Whether the Purchasing Agent does so is a management decision and does not involve legal issues.

Please contact this office if we can further assist you or the Purchasing Agent in this matter.

JOHN W. WITT, City Attorney

By

Nina B. Deane

Deputy City Attorney

NBD:lfs:277(x043.2)

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