

MEMORANDUM OF LAW

DATE: July 26, 1990

TO: Jim Mueller, Senior Civil Engineer, Water
Utilities Department
FROM: City Attorney
SUBJECT: Purchase of Residual Chlorine Analyzers

By memorandum of July 12, 1990, you requested an opinion on whether the City could purchase residual chlorine analyzers as a "sole source" exception to the competitive bidding requirements of San Diego City charter section 35 and San Diego Municipal Code section 22.0504. As background information we have reviewed a July 2, 1990, letter from Engineering Science, Inc., the design firm studying methods of State Ocean Plan compliance at Point Loma. Their letter describes residual chlorine analyzers manufactured by Wallace and Tiernan that were used in the pilot study of the disinfection facility and concludes "We're not aware of any similar . . . analyzers . . . applied to primary waste stream." Based on this factual background, we conclude that these residual chlorine analyzers are proper exceptions to the competitive bidding requirements. Our analysis follows.

By Memorandum of Law of July 15, 1986, we outlined exceptions to the charter mandated competitive bidding process. As we said, competitive bidding exists to insure that the City will have the advantage of the lowest price. Where there is but one source, there is no advantage to be gained. San Diego Municipal Code section 22.0504 explicitly recognizes this exception: "The Purchasing Agent shall not be required to advertise for sole source procurement provided certification to this effect is approved by the City Manager." Further sole source exceptions have been judicially recognized. *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348 (1930).

In light of both statutory and judicial approval, only the factual basis for a sole source purchase need be established. From the letter of Engineering Science, it is clear that the Wallace and Tiernan chlorine analyzers are the only analyzers known to be available and proven in the pilot study to be able to

test primary effluent. Hence, you may use the Engineering Science letter as certification of sole source to the Purchasing Department. This certification then satisfies the requirements in San Diego Municipal Code section 22.0504 and permits purchase without competitive bidding.

JOHN W. WITT, City Attorney

By
Ted Bromfield
Chief Deputy City Attorney

TB:mk:452.01.01(x043.2)

ML-90-84