

MEMORANDUM OF LAW

DATE: December 30, 1991
TO: F. D. Schlesinger, Clean Water Program Director
FROM: City Attorney
SUBJECT: Contingency Amount for Construction Contracts

By means of a recent memorandum, you inquired whether the March 15, 1988 memorandum of then City Manager John Lockwood limiting future contract documents to a 5% contingency reserve was required by operation of law or was articulated City policy. By reason of the following, we believe it was the latter postulated under the administrative authority of the City Manager.

As we have previously opined, the San Diego City Charter provides a Council-Manager form of government with the Council setting policy through its legislative decisions and the Manager responsible for all administrative affairs of the City. San Diego City Attorney Opinion 86-2. Since neither the San Diego Charter nor the Municipal Code has any specified provision or limitation on the amount of contingency reserve, the subject of a proper reserve was a matter of City policy.

Prior to March 15, 1988, the City Manager in his role as administrative officer of the City had, by practice, utilized a 10% contingency reserve to cover minor change orders and eliminate burdensome successive requests on Council. See City Manager's Report 88-17 dated January 29, 1988, attached as Exhibit A.

Wishing to review that administrative policy, the Rules Committee requested a report on the Manager's practice. This was originally scheduled for February 17, 1988 and then continued to March 2, 1988. On that date, the 10% contingency policy was debated and direction given to reduce the contingency reserve to 5%. See record of Rules Committee Agenda of March 2, 1988, attached as Exhibit B. While the agenda shows "forwarded the matter to the full City Council for consideration," an exhaustive search by the City Clerk's Office shows no subsequent action or activity.

Either persuaded by the debate at Rules or taking the unanimous four (4) votes of the Rules Committee as the probable direction of Council, the City Manager issued a March 3, 1988 memorandum to the Director of Engineering and Development (attached as Exhibit C) articulating a new contingency reserve at 5%. This then resulted in the March 15, 1988 directive that you reference as establishing the 5% contingency reserve.

Since there is no City Charter or Municipal Code directive and since there was never a majority vote of the City Council establishing a specified contingency, the March 15, 1988 administrative directive of the City Manager remains the policy of The City of San Diego on the subject.

This directive, not having the permanence of ordinance, may therefore be ratified or reformed within the sound administrative discretion of the City Manager. San Diego City Charter section 28.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:820(x043.2)

Attachments:3

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