

MEMORANDUM OF LAW

DATE: March 25, 1993

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Paramedic Contract/RFP

In a memo dated March 16, 1993, you asked our office whether any Charter sections, City Council Policies, or general laws were violated by awarding the paramedic service contract to American Medical Services ("AMS"). It's the opinion of this office that the Request For Credentials and Proposals ("RFP") process was legally sufficient and that applicable laws were not violated. This position is supported by the San Diego County Local Emergency Medical Services ("EMS") Agency. Gail Cooper, Chief of the EMS Division of the County, stated in the Council meeting of February 9, 1993, that the County previously submitted a local EMS plan, in accordance with Health and Safety Code section 1797.224, which included a competitive process and that plan was approved by the State Emergency Medical Services Authority. The County has delegated to the City the authority to conduct its own competitive process to determine who will provide paramedic service in San Diego and has been enmeshed in the RFP process to ensure that a proper competitive process has been followed by the City.

The following is a brief discussion of relevant issues regarding the question asked.

Charter sections 28, 94, and 103

The first paragraph in the RFP states, "The City of San Diego, California solicits submission of credentials and proposals by experienced paramedic providers of services who meet the requirements stipulated in subsequent sections of this document." Thus, the RFP was merely an invitation to make an offer to provide paramedic service in San Diego. (See *Hanley v. Marsh and McLennan-Davis and Son*, 46 Cal. App. 2d 787, 795 (1941).) Offers to provide paramedic service were submitted by AMS, Hartson, and the San Diego Fire Department ("SDFD") in the form of response bid proposals. On February 23, 1993, the Mayor and City Council by a 5-4 vote accepted the response bid proposal of AMS to provide paramedic service in San Diego.

The RFP process was conducted to identify that entity which was the most qualified and cost effective in providing paramedic services. As you know, this paramedic contract is for personal professional services. The City is concerned about the quality of the services and is not constrained to award the contract solely on the basis of cost. Charter section 94 identifies when competitive bidding applies to contracts and provides guidance as to what constitutes a public works contract. Charter section 28 permits the City Manager to contract for professional services with the approval of the Council and competitive bidding is not a requirement. (San Diego Municipal Code section 22.0504 and City Council Policy 300-7 also address this issue.) In *Adam v. Ziegler*, 22 Cal. App. 2d 135 (1937), the City of Pomona hired some artisans without going through the competitive bidding process. The appellate court held that provisions in city charters as to competitive bidding are not applicable to contracts for personal services depending upon the personal skill or ability of the individual. *Id.* at 138. (Attached is Opinion 74-1 written by Robert S. Teaze, then Assistant City Attorney, regarding this issue.)

The paramedic service contract is not a public works contract. However, the City has undertaken a competitive process and must conduct it fairly. It is not required to strictly comply with competitive procurement law. As a matter of fact, the cost of providing paramedic service was just one of many factors to consider in determining which entity would provide the paramedic service.

Charter section 103 sets forth the procedures for granting franchises to companies who seek to use City property to operate their businesses. Our office has opined in the attached memorandum of law dated March 22, 1993, written by Deputy City Attorney Cristie C. McGuire, that the awarding of the contract to AMS does not rise to the level of granting a franchise. Consequently, the award of the contract is not affected by Charter section 103.

Competitive Procurement Law

As already indicated, the paramedic service contract is not bound by the rigid restrictions of a public works contract. Rather, the RFP was an invitation for an offer and subsequent events focus on how the City Manager and then the Council evaluate the qualifying offers. An issue has arisen regarding the statements made by AMS at the City Council meeting of February 23, 1993. AMS indicated it would be willing to enhance EMS coverage by increasing ambulance units and hour shifts. However, this contract is a performance standard based contract for which the City can find AMS in breach of contract if it fails

to meet the established standards in the contract. Thus, the essence of the contract is compliance to established standards versus the amount of proposed ambulance coverage.

The City Clerk minutes indicate that the City Council action was to approve the AMS proposal and to approve a zero subsidy program. This action was consistent with the AMS proposal. Moreover, the RFP process was not jeopardized by comments at the February 23, 1993 Council meeting since the record reflects that express statements were made by the Mayor that responses to inquiries were not negotiations.

The AMS proposal does not vary substantially from the RFP. The first page of the RFP asked for "innovative proposals" and to "provide the most efficient method of providing high quality emergency medical transport services." Again, on page 11-2 of the RFP, "bidders are encouraged to propose innovative systems ..." and lastly on page 11-3, there is language that covers the situation when there is a "major change" in the call triage protocols system. As it relates to the provider handling both ALS and Basic Life Support ("BLS") calls, the RFP was written in such a manner to allow a provider to include within its response bid proposal that it would respond to both types of calls and provided BLS providers sufficient notice that this may occur. (Both AMS's and Hartson's response bid proposal provided an option to handle both ALS and BLS calls.)

CONCLUSION

The City has fairly conducted a competitive process and has followed that process. AMS's response bid proposal is not only consistent with the intent of the RFP, it is, according to the City Council, the most qualified and cost effective paramedic provider for The City of San Diego.

If you have any further questions regarding this extremely important issue, don't hesitate to call.

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By

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Deputy City Attorney

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Attachments (2)

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