



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 01-24-07

Approved

Date 1-30-07

COUNCIL DISTRICT: City-Wide

SUBJECT: CONSULTANT MASTER AGREEMENTS WITH EISENBERG, OLIVIERI AND ASSOCIATES (EOA) AND OAKLEY WATER STRATEGIES TO PROVIDE REGULATORY ASSISTANCE TO THE CITY'S WATERSHED PROGRAMS

RECOMMENDATION

- (a) Approval of master agreements with EOA and Oakley Water Strategies to provide environmental regulatory assistance and technical support to the City's Watershed Programs for a not-to-exceed amount of \$650,000 and \$250,000 respectively for a term of 3 years.
- (b) Approval of a one-time option to extend each agreement to December 31, 2012.

OUTCOME

Approval of the master agreements with EOA and Oakley Water Strategies will ensure that the City's watershed programs, including the San José/Santa Clara Water Pollution Control Plant and industrial pretreatment program, the South Bay Water Recycling Program, and the Urban Runoff Pollution Prevention Program have access to regulatory and technical assistance required for their regulatory compliance activities and support for environmental abatement and protection programs.

BACKGROUND

The City of San José is faced with the challenge of protecting a critical area located within one of the most complex estuarine ecosystems in the United States, the South San Francisco Bay. The City's integrated watershed protection approach to water quality considers all factors influencing water quality in the South Bay and seeks to solve environmental issues in the most cost-effective manner. The City seeks regulatory certainty for its watershed programs, because industrial and commercial dischargers, as well as the City, must have the ability to plan long-term while maintaining environmental protection and compliance.

The City's water programs face some of the most stringent regulatory requirements in the country, and necessitate expertise in a variety of fields when pursuing comment, discussion and negotiation on regulatory initiatives, reissuance of permits, and adaptation of programs.

This contract will support the City's environmental regulatory and policy initiatives at the local, state, and national levels in order to provide input into regulatory developments, further innovation, prepare for permitting or long-term policy impacts, direct resources to the highest priority issues, and proactively adapt the City's watershed programs.

ANALYSIS

The City is faced with a complex set of regulatory and permit compliance issues affecting the operation of the Plant, South Bay Water Recycling, San José Municipal Water System and the City's Urban Runoff Program. In order to optimize programmatic resources and minimize the potential compliance burden to programs, the City must participate in regulatory and policy developments at the local, state, and national level. This agreement will provide consulting services on an as-needed basis to assist the City with analysis of important federal, state and local regulatory and technical issues in the following focus areas:

1. Federal and State Regulatory Issues, including Clean Air Act, Clean Water Act, Endangered Species Act, State Board orders, and guidance documents. Consultants may assist in preparation of comments, briefing materials, economic, technical and regulatory analysis.
2. NPDES Program Support, including implementation support, preparation of permit reissuance application materials and technical analyses for the Plant by summer of 2007, compliance with a U.S. EPA administrative order requirement to perform an audit of the City's pretreatment program, technical assistance in developing pollution prevention strategies as required by the permits, Total Maximum Daily Load (TMDL) support, and support to the Urban Runoff Program.
3. Local and Regional Regulatory issues, including issues related to the Santa Clara Basin Watershed Management initiative, the salt pond restoration effort, the Regional Monitoring Program, and the Integrated Regional Water Management Plan.
4. Economic Analysis, including cost impact analyses of proposed regulations and guidance on cost accounting data development for program evaluation.

On November 8, 2006, a competitive Request for Proposal (RFP) was issued to solicit proposals from consulting firms to provide regulatory assistance to the City's water programs on an as-needed basis. Since only one acknowledgment form was received by the due date, an addendum extending the due date from December 6 to January 3 was posted on November 21, 2006.

On the closing date of January 3, two proposals were received from EOA and Oakley Water Strategies. The EOA proposal included Larry Walker and Associates, CH2M Hill, and Hilton Farnkopf & Hobson as sub-consultants. The Oakley Water Strategies proposal included Tetra Tech, Limno Tech and Ed Gross as sub-consultants.

Environmental Services staff developed criteria including quality of the proposal, expertise of the consultant in the complex regulatory issues facing the City, technical and economic analysis expertise, quality of previous work, and references.

The proposals were evaluated by two panels (written and oral) that included representation from the various ESD programs as well as the tributary agencies to the Plant. EOA's written submittal scored higher than Oakley Water Strategies in terms of demonstrating broad expertise and knowledge in the four focus areas listed above and overall quality of the proposal. The Oakley proposal demonstrated extensive expertise in the area of TMDL technical support and wastewater treatment plant permit development. EOA applied for and received both the local and small business preference bonus points which calculate an extra 10 percent of total possible points added to the total point value earned. ESD followed the LBE/SBE program as outlined by the City's Purchasing Department. In this case, the selected firm earned the higher point value prior to the application of bonus points; the LBE/SBE program did not create a different outcome because of this preference. The oral panel heard presentations from both firms as well as answers to five formal questions. After the conclusion of the interviews, the oral panel recommended hiring both firms under a master agreement, because each provides unique and needed expertise. The EOA contract would be for the higher amount due to a greater amount of the anticipated work being more within the expertise presented by their proposal. The proposed amount for the Oakley Water Strategies contract reflects the more limited work that is anticipated within their technical and TMDL support areas of expertise.

The Master Agreement includes details concerning Service Order preparation and issuance. Services under either contract will only be performed pursuant to a written Service Order, which has been reviewed by the Attorney's Office. The funds for each specific task will be negotiated prior to issuing notice to proceed on any task. Fee schedules submitted by the recommended consultants were found to be competitive in the bay area market place and rates and contract terms are consistent with what these consultants charge to other agencies in the bay area to provide similar expertise.

POLICY ALTERNATIVES

Alternative #1: In-House completion of regulatory and technical support projects

Pros: In-house completion would not require expenditure for consultants.

Cons: In-house staff does not have the comprehensive expertise needed and staff resources do not exist to meet the timelines required. In particular, one of the first tasks will be to develop a third-party audit of the pretreatment program required by the U.S. EPA administrative order of 2005.

Reason for not recommending: The alternative would not allow timely implementation of requirement from the U.S. EPA audit and therefore result in non-compliance. In mid-2007 major analysis and documents must be prepared to support reissuance of the Plant's permit. The consultant expertise is needed for these technical documents to help ensure that the Plant's

permit reissuance results in permit requirements that are based on accurate data. In addition, in-house expertise on the variety of issues necessary does not exist.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The Request for Proposal was posted on the City's bidline (criteria 1) for eight weeks. In addition, an e-mail notification was sent to potentially interested consultants (criteria 2) initially and when the addendum was posted.

COORDINATION

The project and memorandum have been coordinated with the City Attorney's Office, the City's Planning Department, the City Manager's Budget Office and the Contracting-In Office and is following the City's Contracting-In process. The item is scheduled to be heard at the February 8, 2007 Treatment Plant Advisory Committee (TPAC) meeting.

COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$900,000
2.	COST OF AGREEMENT WITH EACH CONSULTANT	
	EOA, Inc.	\$650,000
	Oakley Water Strategies	\$250,000
	TOTAL AGREEMENT/CONTRACT AMOUNT	\$900,000

3. SOURCE OF FUNDING: 446 – Storm Sewer Operating Fund; 513 – San José/Santa Clara Treatment Plant Operating Fund

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
446	0762	ESD Non-Personal/ Equipment	\$2,181,121	\$50,000	VIII-38	10/17/06 Ord No 27888
513	0762	ESD Non-Personal/ Equipment	\$30,168,232	\$850,000	VIII-38	10/17/06 Ord No 27888

CEQA

CEQA: Not a Project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact Kirsten Struve, Supervising Environmental Services Specialist, at (408) 975-2583.