



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 7-25-11

Approved

Date

8/2/11

COUNCIL DISTRICT: Citywide

SUBJECT: MASTER SERVICE AGREEMENT(S) WITH BENTYLER ENTERPRISES, INC. AND ENVIRONMENTAL RESOURCES MANAGEMENT-WEST, INC. FOR ENVIRONMENTAL HEALTH & SAFETY CONSULTING SUPPORT FOR THE ENVIRONMENTAL SERVICES DEPARTMENT

RECOMMENDATION

Approval of consultant master agreements with the following firms for Environmental Health and Safety support for the Environmental Services Department:

1. BenTyler Enterprises, Inc. for a variety of on-call Environmental Health & Safety consulting services from the date of execution through June 30, 2014 in an amount not to exceed \$250,000 annually.
2. Environmental Resources Management-West, Inc. for a variety of on-call Environmental Health & Safety consulting services from the date of execution through June 30, 2014 in an amount not to exceed \$250,000 annually.

OUTCOME

Approval of these master service agreements with BenTyler Enterprises, Inc. (BenTyler), and Environmental Resources Management-West, Inc. (ERM) will provide the Environmental Services Department (ESD) with the ability to provide on-call Environmental Health & Safety (EH&S) consultant services for ESD operations and projects on an as-needed basis. These consultant services are needed to assist City staff in delivering EH&S services to maintain regulatory compliance and protect and maintain employee health and safety for all of ESD's operations, with a primary focus on the San Jose/Santa Clara Water Pollution Control Plant (Plant) and the San José Municipal Water System.

BACKGROUND

The San José/Santa Clara Water Pollution Control Plant (Plant), and the San José Municipal Water System (Muni) are industrial utility facilities with complex operations and maintenance, and an extensive capital improvement programs that inherently present extensive occupational safety hazards and high environmental compliance risks. Due to these work settings, the department's Environmental Health and Safety efforts are demanding, complex, and ongoing. Funding for service orders under these master agreements will be primarily drawn from the Water Pollution Control 2012-2016 Capital Improvement Program of \$426.7 million; the Environmental Services Non-Personal/Equipment appropriation in the San José/Santa Clara Treatment Plant Operating Fund, which totals approximately \$25.5 million in 2011-2012; and the Environmental Services Non-Personal/Equipment appropriation in the Water Utility Fund, which totals approximately \$19.8 million in 2011-2012.

City staff does not currently possess all the necessary technical expertise or capacity to meet all of the environmental health and safety needs of ESD. These Master Service Agreements provide the most efficient way to comply with all regulatory required obligations, allow more proactive risk management, and assist in reducing incident rates and worker's compensation expenditures. Anticipated projects include job hazard analyses for work activities that have been identified with higher injury rates, utilization of those analyses in the design and specification of new equipment and constructed facilities, equipment-specific lockout-tagout procedures, EH&S compliance audits to evaluate levels of compliance and risk, air permit evaluation and compliance program design at San José Municipal Water System, and other activities that help ESD maintain regulatory compliance and ensure worker safety.

ANALYSIS

Consultant Selection Process

A consultant selection process was initiated in March 2011 with a Request for Qualifications (RFQ) for EH&S support. Of the 10 firms who responded to the RFQ, the top four were selected for interviews. The selection criteria were based on the following:

- Qualifications of the firm and expertise of the lead personnel
- Service Approach
- Examples of Applicable and Exemplary EH&S Projects
- Classification as local/small firm per Council policy

The top four firms were interviewed on May 18, 2011, by staff from different divisions within Environmental Services. A combination of the written submittal and the interview scores were used to rank the firms. The panel rated BenTyler Enterprises and Environmental Resources Management as the most qualified to provide EH&S services, based on the qualifications presented in their Statement of Qualifications and final interview scores, with only three points separating them. Staff considers both firms equally qualified to provide EH&S services to ESD.

The top two ranked firms are recommended for contract negotiation.

1. BenTyler Enterprises, Inc.
2. Environmental Resources Management-West, Inc.
3. URS Corporation
4. Antea Group

The RFQ process encourages local consultant participation by awarding additional points to firms that are classified as local per Council policy. Both firms selected qualified as having local offices and have extensive experience in San José. BenTyler also qualified as a small business.

Scope of Work

Recent third-party assessments have identified multiple EH&S programmatic areas that need to be developed, refurbished, or maintained, particularly at the Water Pollution Control Plant. EH&S programmatic areas and regulatory requirements are becoming increasingly complex and specialty-oriented. They typically involve many diverse areas of professional expertise such as: safety design engineering, industrial hygiene, air quality and permitting, compliance permitting, job hazard assessments, hazardous waste characterization, and asbestos surveys. The work frequently requires specialized certification, testing, training, expertise, and regulatory knowledge, some of which are not available in-house. Examples of anticipated projects requiring support from these contracts include, but are not limited to:

Plant Fall Protection Analysis

No evaluation of existing roofs and roof access has been performed. The recent Roof replacement project identified the need to perform a Plant-wide assessment of the safety issues related to roof access and fall protection, and to identify standard protection measures that can be implemented on temporary or permanent basis as the roofs are replaced.

Process Hazard Analyses

Process Hazard Analysis (PHA) is a systematic methodology to review existing or new facilities to find consequences of potential equipment or human failure, determine the risk, and decide if design or operational changes should be implemented to reduce the risk or consequence. PHA's should be performed in each of the 12 subareas of the Plant at a feasible rate of approximately 3 PHAs annually, and may be performed at Muni as well.

Plant Lockout/Tagout Procedure and Training Review

CAL OSHA regulations and best practices require a comprehensive Lockout/Tagout process to protect staff and contractors during maintenance or construction and for specific pieces of powered equipment.

SB 14 – Hazardous Waste Source Reduction Requirements

Senate Bill 14 is the Hazardous Waste Source Reduction and Management Review Act of 1989. SB 14 requires hazardous waste generators to seriously consider source reduction as the preferred method of managing hazardous waste. The Plant currently generates a hazardous waste volume well over the law's threshold of approximately 5,500 pounds annually.

Aboveground Storage Tank (AST) Assessments

Certified Unified Program Authority (CUPA) will transfer from the San José Fire Department to the Santa Clara County Hazardous Materials Compliance Division, effective July 1, 2011. Plant ASTs need to be assessed for general safety purposes and to ensure compliance with the new permitting authority and avoid monetary penalties.

Water Pollution Control Plant Security Evaluation

The Plant's security situation (recorded entrance/exit of staff, contractors, vendors, and visitors) has not been reviewed in many years. During emergency situations, no system exists that can reliably establish who of the above named are on the site. The situation becomes potentially dire if there is lag time in emergency services response, should City staff or contractor staff become trapped or endangered with no immediate knowledge of their presence onsite.

Cost Control Measures

Staff will determine the award of individual service orders to each of the consultant firms based on their expertise, cost, and availability. Having more than one firm available will enable staff to issue a Service Order to the firm able to complement staff expertise in a specific technical discipline, ensuring the most cost effective and efficient use of staff and consultant resources. Staff will negotiate costs with the consultants on individual project proposals, on a flat fee or not to exceed time and materials basis. When appropriate, ESD will obtain service order price quotations from both of the consultants to ensure project costs are efficiently managed.

EVALUATION AND FOLLOW-UP

No additional follow up action with the Council is expected at this time. Amendment to the agreements to increase the compensation payable, as needed, will be subject to Council approval at a later date.

POLICY ALTERNATIVES

Alternative # 1: An alternative approach to accomplish this effort would be for all work to be performed by City staff in lieu of the proposed partnership effort with outside professional environmental consulting firms.

Pros: The work would be done by City staff.

Cons: In-house staff does not possess the capacity or all of the required technical capability and specialized equipment across the broad range of expertise anticipated for the wide array of EH&S-related projects. Some of the anticipated work will require regulatory oversight and third-party reporting by registered EH&S experts in various technical specialties which, again, in-house staff may not have.

Reason for not recommending: The City would need to hire several new staff members with the knowledge, expertise, and/or certification in a variety of environmental areas including, but

not limited to: hazardous waste characterization, job hazard analysis, industrial hygiene, and asbestos surveys. Specialized equipment would need to be obtained or leased to perform duties and staff possibly trained and certified to use the equipment. Furthermore, with an extensive capital improvement plan expected to begin, resulting in increased engineering design and construction, existing staff resources will not be able to meet the demand.

Alternative # 2: An alternative approach to accomplish this effort would be to perform a separate RFP process for each of the projects described in the background section of this memo.

Pros: The RFP selection process would focus on the specific needs of each project instead of the broader scope of work specified in the recent RFQ.

Cons: The RFP selection process typically takes six months or more to complete and involves a large amount of staff work to develop a project specific scope, solicit responses, interview consultants, negotiate contracts, and, if needed, obtain Council approval. All of the projects require more timely response due to upcoming regulatory and/or construction deadlines, and ultimately, the safety of departmental staff. By having consultants attached to specific projects, there will be less capacity to respond to unforeseen projects that require immediate response.

Reason for not recommending: This approach will limit the City's flexibility and response time for handling unforeseen EH&S projects, possibly leading to greater risk to workers, missing regulatory deadlines, and possibly subject the City to violations and/or fines. Multiple RFQ's for similar services will lead to much higher staff workloads for ESD and Council.

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)**

This memorandum will be posted on the City's website for the August 16, 2011 Council agenda. Also, a Request for Qualifications was advertised on the City's Internet Bid Line.

COORDINATION

This memorandum was coordinated with the City Manager's Budget Office and the City Attorney's Office. This item is scheduled to be heard at the August 11, 2011 Treatment Plant Advisory Committee meeting.

COST SUMMARY/IMPLICATIONS

Funding for service orders issued under the Master Agreement will likely come from the San Jose- Santa Clara Treatment Plant Capital Fund (Fund 512), the San Jose-Santa Clara Treatment Plant Operating Fund (Fund 513), and/or the Water Utility Fund (Fund 515), depending on the specific service to be provided. Funds will be encumbered as needed from various project appropriations when service orders are developed, but in no case will total more than \$250,000 per contract per fiscal year. All encumbrances will be subject to the appropriation of funds.

CEQA

CEQA: Not a Project, File No.PP10-066 (a), Agreements and Contracts for purchase of professional services.

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions please contact Napp Fukuda, Sustainability and Compliance Division Manager at (408) 975-2594.