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September 18, 2012

Hon. Laurie Earl, Presiding Judge
Sacramento County Superior Court
720 9th Street, Department 47
Sacramento, CA 96814

Subject: City of Sacramento Response to Grand Jury Report Issued June 30, 2012 Regarding Solid Waste and Recyclables Contracts

Dear Judge Earl:

Please find enclosed the City of Sacramento response to the Grand Jury Report issued June 30, 2012 regarding City of Sacramento Solid Waste and Recyclables Contracts. The response was approved by the City Council on September 11, 2012, and is hereby submitted to you in advance of the September 28, 2012 deadline.

If you have questions or need additional information, please contact Steve Harriman at (916) 808-4949.

Sincerely,

John F. Shirey
City Manager

Attachment

City of Sacramento
Responses to Findings and Recommendations of the
2011-12 Sacramento County Grand Jury Report
"City's Solid Waste and Recyclables Contract"

Findings and Recommendations

Finding 1.0 The City Council failed to seek competitive bids for the transfer and disposal of residential solid waste for a period of 34 years (1998-2032). This failure ignored the intent of City Code Section 3.60.110, which will likely contribute to the City paying higher than fair market value for its services.

City Response:

The City disagrees in part with the finding that the City Council failed to seek competitive bids for the transfer and disposal of residential solid waste for a period of 34 years (1998-2032). The original agreement between the City and BLT Enterprises (City Agreement No. 98-131), executed in 1998, was the result of a competitive proposal process administered by City staff and consultants. Proposals were submitted by ten waste companies, and BLT was selected based on a combination of price and company qualifications.

The City Council elected to suspend competitive bidding in the execution of the Amended Services Agreement in 2010, as allowed in City Code Section 3.56.230(C). The November 16, 2010 staff report provides the following reasons in support of suspension of competitive bidding: 1) the original BLT agreement (City Agreement No. 98-131) did not grant the City the right to direct waste to a disposal facility other than Lockwood Landfill in Nevada; 2) the term of the original BLT Agreement extended through May, 2019; and 3) the only option available to the City under the original BLT Agreement to direct waste to an in-region landfill such as Kiefer Landfill was to terminate the BLT Agreement at an estimated cost of \$14 million. The best alternative in 2010 to direct waste to Kiefer Landfill in an effort to reduce fuel consumption and greenhouse gas emissions was therefore to amend the original BLT Agreement. In accordance with City Code Section 3.56.230(C), the City Council, upon two-thirds vote, determined that it was in the best interests of the City to suspend competitive bidding and approved Resolution No. 2010-660 accordingly.

Finding 2.0 The City Council failed to seek competitive bids for the sorting and selling of residential recyclables for a period of 25 years (2007-2032). The intent of City Code Section 3.60.110 was ignored. Justification for the exemption from competitive bidding required by City Code Section 3.60.170 was lacking. The City will likely receive less than fair market value for its residential recyclables.

City Response:

The City disagrees in part with this finding. The Amended Recyclables Agreement is for the sale of recyclable materials and not governed by City Code Section 3.60.110. The City agrees with the finding that a period of 25 years will have passed without a competitive proposal process for the sorting and selling of residential recyclables when the term of the Amended Recyclables Agreement expires in 2032.

The Amended Recyclables Agreement does provide a new structure to calculate the revenue received by the City that more accurately measures the composition of curbside recyclable materials through an annual characterization process and through additional materials added to the list of acceptable materials in the curbside recycling program.

Finding 3.0 The City Council voted on multi-million dollar solid waste and recyclables contracts without sufficient financial analysis. These contracts would seem to require additional scrutiny given the exemption from the competitive bidding process.

City Response:

The City disagrees in part with the finding that there was insufficient financial analysis regarding the Amended Services Agreement and the Amended Recyclables Agreement. City staff performed significant financial analyses during the two-year negotiation process for the amended agreements.

The City agrees there was insufficient operational analysis regarding the available City waste tonnage to support the tiered rate structure for disposal fees in the Amended Services Agreement. The City will remain in the highest price tier (Tier 1, <150,000 tons per year) for the duration of the agreement based on the current waste disposal tonnages and the current non-exclusive commercial waste franchise system in the city. There would likely be sufficient tonnage to qualify for Tier 2 (150,001 to 250,000 tons per year), which provides a 5.5%

decrease in disposal fees compared to Tier 1, if the City were to execute exclusive commercial franchises and direct all commercial and multifamily waste to the Sacramento Recycling and Transfer Station.

Finding 4.0 City staff failed to perform adequate due diligence in providing financial analysis on the solid waste disposal and recycling contracts. There was too much reliance on a single source of financial analysis. There was no independent review or oversight. These three factors appear to have contributed to inadequate understanding of financial risks by City Council.

City Response:

The City disagrees in part with the finding that there was too much reliance on a single source of financial analysis. The City negotiating team included several staff from the City Attorney's Office and the Department of Utilities, all of whom participated in reviewing the financial analysis of the amended agreements.

The City agrees that contracts with significant monetary value, such as the Amended Services Agreement and Amended Recyclables Agreement, may benefit from the services of an independent financial consultant. This option will be considered for future contracts and transactions.

Finding 5.0 When BLT came to the City in 2008 to amend the Service Agreement to incorporate increased fuel costs, the City missed an opportunity to address the redirection of waste to a local landfill.

City Response: *The City disagrees with this finding.*

In 2008, the City Council directed City staff to engage in good faith negotiations with BLT to allow in-region disposal. The City Council direction to staff to return within 24 months reflected the complexity of the negotiation process for in-region disposal. Accordingly, the Amended Service Agreement was executed by the City Council on November 16, 2010, which provides for disposal of City waste at Kiefer Landfill.

Finding 6.0 Costs to the City delineated in the buyout clauses of BLT's 1998 and 2010 contracts were higher than fair market value. In conjunction with the length of the contracts, they hampered the City's ability to make reasonable changes to the contracts.

City Response:

The City disagrees with this finding. The Grand Jury provided no basis for the finding that the buyout clauses were higher than fair market value. There is no industry standard to establish fair market value for a buy-out clause of a solid waste transfer and disposal agreement. The basis of the buyout provision was a negotiated item based on a proportion of the guaranteed revenue stream for the remaining term of the agreement.

Finding 7.0 There was inadequate provision for public review and comment throughout the twenty-nine month period that the Amended Service Agreements for Municipal Solid Waste and Recyclables were negotiated.

City Response:

The City disagrees with this finding. A City Council ad-hoc committee was appointed to review and comment on the negotiations and development of the Amended Services Agreement and Amended Recyclables Agreement. Also, the City Council meetings were properly noticed in compliance with the Brown Act. Finally, the Council date was extended one week, from November 9 to November 16, 2010, which provided additional time for public review of the staff report and proposed agreements.

Finding 8.0 Lobbying by immediate past city managers was problematic for some City staff.

City Response:

The City is not in a position to agree or disagree.

It should be noted that there was no violation of the law as City Code Section 2.16.090 allows former City employees to appear personally before the City Council or any department, board or commission or committee of the city as an agent for anyone in connection with a contract after one year of separation from City service. Former City Manager Bill Edgar left City employment in 1999 and began consulting for BLT in 2005. Former City Manager Bob Thomas left City employment in 2005 and began consulting for BLT in 2009.

Finding 9.0 It appears that BLT was in compliance with the City's Living Wage Ordinance.

City Response:

The City agrees with this finding.

Finding 10 Given the evidence the Grand Jury was able to obtain, no fraud or illegal activity by either the City or BLT was identified relative to the contracts in question.

City Response:

The City agrees with this finding.

Recommendation 1.0 The City should provide a comprehensive report to the public by December 31, 2012 documenting the financial, operational and environmental justifications for the 2010 Amended Services Contracts, including both the solid waste and the recycling contracts. Furthermore, an annual report on the Amended Service Agreements should be provided to the City ratepayers outlining costs based on the contracts.

City Response:

A comprehensive report of the financial, operational and environmental justifications for the 2010 Amended Services Contracts was provided in the November 16, 2010 Council Report.

The City will provide an annual report to the City Council outlining the costs of the Amended Services Agreement and the Amended Recyclables Agreement, beginning no later than December 31, 2012.

Recommendation 2.0 The 2012-2013 Grand Jury should consider a follow up review of the City of Sacramento's contracted solid waste and recycling services.

City Response:

The City will comply with any future Grand Jury requests.

Recommendation 3.0 The City must comply with the requirements and the intent of the Competitive Bidding Code. Additionally, the City needs to develop specific compelling criteria for exceptions to competitive bidding code section 3.60.170 D to define what is, "...in the best interests of the City."

City Response:

The City does not concur with the recommendation to develop specific compelling criteria to define what is "in the best interests of the City" but concurs with the recommendation that City staff must comply with City Code requirements and City policies for procurement of supplies and services.

City Administrative Policy 4101 requires Council reports and resolutions that contain a recommendation to suspend competitive bidding to include a written factual justification to support a finding that such an action is "in the best interests of the City." The staff report presented to the City Council on November 16, 2010 for the Amended Service Agreement provided specific compelling criteria to justify the suspension of competitive bidding. That justification is outlined in the City Response to Finding 1.0 above.

Also, City Code reflects that the determination of "...in the best interests of the City" is a policy decision that is appropriate for the City Council as elected representatives. It is a subjective determination that can only be made on a case-by-case basis after sufficient justification is provided by City staff. The two-thirds vote requirement, rather than a simple majority, also reflects that the evidence presented in support of suspension of competitive bidding must overwhelmingly support the action. Any attempt to specifically define "best interests" could not foresee all possible circumstances.

Recommendation 4.0 The City should provide more extensive public notification on any matter where competitive bidding is exempted per City Code 3.60.170D.

City Response:

The City does not concur with this recommendation. The noticing requirements for all City Council agenda items, including those agenda items where staff is recommending suspension of competitive bidding by two-thirds vote of the City Council, are in compliance with state law.

Recommendation 5.0 Staff and City Council need to provide transparency in review of the financial options in large contracts and utilize independent financial analysis, particularly regarding buy out clauses.

City Response: The City concurs with the recommendation that independent financial analysis is appropriate and beneficial in the review and analysis of large contracts and financial transactions.

The City is committed to transparency, as appropriate given the disclosure of proprietary information and as allowable under State law and City Code.

Recommendation 6.0 The City Council should consider a prohibition precluding former City employees from lobbying, consulting or advising on City contracts for a period of 1-5 years after separation from city employment.

City Response:

The City has in place a rule that prohibits former City employees from lobbying, consulting or advising on City contracts for a period of one year after separation from City employment, as noted in the response to Finding 8.0 above.