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**Title:** CONSIDER AWARDDING AND APPROVING: (1) CONTRACT SERVICES AGREEMENT WITH LEAL TREJO, APC; (2) AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT WITH BOUCHER LAW; (3) CONTRACT SERVICES AGREEMENT WITH BATZA & ASSOCIATES, INC., FOR PROVISION OF ON-CALL EMPLOYEE RELATIONS INVESTIGATION SERVICES (CITY COUNCIL)

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Date	Ver.	Action By	Action	Result
12/1/2020	1	City Council		

**Report to Mayor and City Council**

Tuesday, December 01, 2020

Discussion

**SUBJECT:**

**CONSIDER AWARDDING AND APPROVING: (1) CONTRACT SERVICES AGREEMENT WITH LEAL TREJO, APC; (2) AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT WITH BOUCHER LAW; (3) CONTRACT SERVICES AGREEMENT WITH BATZA & ASSOCIATES, INC., FOR PROVISION OF ON-CALL EMPLOYEE RELATIONS INVESTIGATION SERVICES (CITY COUNCIL)**

**I. SUMMARY**

The City has utilized various third-party consultants for employee relations investigations and related matters in the past. As an initial measure, in 2019, staff solicited interest from investigators recommended by the City Attorney’s Office or senior staff in other cities, and two firms were retained under City Manager contract authority (Harris & Associates and Boucher Law). Subsequently, pursuant to City Council direction and in accordance with the City’s purchasing ordinance, staff issued a Request for Qualifications (“RFQ”) to retain an on-call panel of firms.

Staff issued the RFQ (Exhibit No. 1), evaluated the 15 proposals received in response using an internal panel, and on September 1, 2020, recommended that the City Council award contract service agreements to the four highest rated attorney firms and the one highest rated non-attorney firm according to staff's Internal Panel Rating Worksheet (Exhibit No. 2).

There is no set number of firms that were required to be selected. In the past, the City used one attorney firm for employee investigations. On the other hand, having multiple firms available might facilitate multiple simultaneous investigations. And there is no obligation to use all of them if the need is not there. In this case, staff used the ratings to find a natural break in the scores and recommended those top law firms whose scores were close. As it turned out, four attorney firms had scores in the top cluster of attorney firms, and one non-attorney firm was the high scorer by far above the other non-attorney proposers.

The City Council expressed various concerns over the scoring and number of attorney firms recommended, and requested that an external panel, with one or more attorneys who are experienced in employee investigations, be convened to review the proposals and provide its recommendation.

On October 6, 2020, after establishing and obtaining ratings from the external panel that included two attorneys with experience in employee investigations, staff returned to the City Council with a recommendation to approve the two highest rated attorney firms (Harris & Associates and Boucher Law) and the one highest rated non-attorney firm (Batza & Associates, Inc.) according to the ratings of the external panel. During the discussion of this item, the City Council referred to a separate item that had been before the City Council on June 23, 2020 to amend the City's existing contract with Harris & Associates by adding additional funding. That item had been tabled. The City Council applied that earlier action tabling the proposed amendment to the Harris contract to the action before it and, having removed Harris from consideration, continued the item with a request that Staff return with a modified/updated report and external panel rating worksheet clearly reflecting the proceedings.

Staff now returns to City Council with a recommendation (Recommendation Option 1, below) to award contracts to: (i) the two highest rated attorney firms, Boucher Law and Leal Trejo, APC; and (ii) the highest rated non-attorney firm, Batza & Associates, as reflected in the attached External Panel Updated Rating Worksheet (Exhibit No. 3). In the alternative, if the Council feels that awarding contracts to two attorney firms is unnecessary, staff recommends (Recommendation Option 2, below) awarding contracts to: (i) the highest rated attorney firm, Boucher Law, with the amount of funding authorization increased to include the amount that would be otherwise be awarded to Leal Trejo, APC under Option 1; and (ii) the highest rated non-attorney firm, Batza & Associates as reflected in the attached External Panel Updated Rating Worksheet (Exhibit No. 3).

The recommended award to Boucher Law would be effectuated via the attached Amendment No. 1 to the existing contract that is in place with Boucher Law. (Exhibit No. 4.c). If Recommendation Option 1 is selected, the proposed Amendment No. 1 would make the following key modifications to the existing contract: (1) extend the contract term for three years from the date of full execution of the Amendment (the "Extended Initial Term");

(2) increase the not-to-exceed contract sum by \$200,001, from \$24,999 to \$225,000, for the Extended Initial Term; and (3) add City options to extend the contract term for up to two additional one-year periods beyond the Extended Initial Term, at a compensation limit of \$75,000 for each annual extension period. If Recommendation Option 2 is selected, these amounts would be increased to a total contract sum of \$450,000 for the Extended Initial Term and up to \$150,000 per annual extension period. The existing contract has some approved funding left (approximately \$14,500), which will remain available for the Extended Initial Term in addition to the proposed funding increase, and is currently set to expire in February of 2021.

The recommended award to Batza & Associates would be via approval of a new contract services agreement (Exhibit No. 4.b). The proposed agreement, recommended under both Recommendation Option 1 and Recommendation Option 2, is for a not-to-exceed contract sum of \$75,000 over an initial three-year term, with City options to extend the term of the contract for up to two additional one-year periods thereafter, at a compensation limit of \$25,000 for each annual extension period.

The award to Leal Trejo, APC pursuant to Recommendation Option 2, below, would be via approval of a new contract services agreement (Exhibit No. 4.a). The proposed agreement is for a not-to-exceed contract sum of \$225,000 over an initial three-year term, with City options to extend the term of the contract for up to two additional one-year periods thereafter, at a compensation limit of \$75,000 for each annual extension period.

## **II. RECOMMENDATION**

TAKE the following actions:

### Option 1

1. APPROVE the proposed Contract Services Agreement with Leal Trejo, APC for a not-to-exceed contract sum of \$225,000 over an initial three-year contract term, with two optional one-year extension periods thereafter (at City's option, and subject to a limit of \$75,000 per annual extension term) for the provision of on-call employee relations investigation services (Exhibit No. 4.a; the "Leal Trejo, APC Agreement");
2. APPROVE the proposed Contract Services Agreement with Batza & Associates, Inc. for a not-to-exceed contract sum of \$75,000 over an initial three-year contract term, with two optional one-year extension periods thereafter (at City's option, and subject to a limit of \$25,000 per annual extension term) for the provision of on-call employee relations investigation services (Exhibit No. 4.b; the "Batza Agreement");
3. APPROVE the proposed Amendment No. 1 to the Contract Services Agreement with Boucher Law, increasing the contract sum of the existing contract by \$200,001 and extending the contract term by three years from the date of full execution of the Amendment, with two optional one-year extension periods thereafter (at City's option, and subject to a limit of \$75,000 per annual extension period), for the provision of on-call employee relations investigations services (Exhibit No. 4.c; the "Boucher Amendment");

and

4. AUTHORIZE the Mayor to execute the Leal Trejo, APC Agreement, the Batza Agreement, and the Boucher Amendment, after approval as to form by the City Attorney.

OR

Option 2

1. APPROVE the proposed Batza Agreement (Exhibit No. 4.b);

2. APPROVE the proposed Boucher Amendment (Exhibit No. 4.c), subject to the following modifications to be made by the City Attorney: (i) the contract sum shall be increased by a total of \$425,001 for a total contract sum of \$450,000 over the Extended Initial Term; and (2) the compensation limit per optional annual extension period shall be increased from \$75,000 to \$150,000; and

3. AUTHORIZE the Mayor to execute the Batza Agreement and the Boucher Amendment (as modified per the preceding paragraph), after approval as to form by the City Attorney.

### **III. ALTERNATIVES**

The City Council may take other action deemed appropriate.

### **IV. BACKGROUND**

Over an eight-month period beginning in mid-2019, there were a number of pending City employee relations investigations requiring third party services. The investigations were initially assigned to two investigator firms (Harris & Associates and Boucher Law) retained under City Manager contract authority. Subsequently, an RFQ was issued in compliance with the City's purchasing ordinance to enable the City to award new contracts with higher approved contract sums to a panel of firms that can provide the City with the necessary professional services on an on-call basis.

Carson Municipal Code (CMC) Section 2611(c) applies to the procurement of professional services of attorney(s) or other providers of professional services involving a high degree of technical or individual skill, and provides that the procurement shall be based on demonstrated competence, the professional qualifications necessary for satisfactory performance of the required services, and a fair and reasonable price, after notice to a number of potential offerors adequate to permit reasonable competition consistent with the nature and requirements of the procurement. Offerors shall provide evidence that the person or firm carrying out contract responsibilities possesses the expertise and experience to perform the requisite professional services.

Pursuant to CMC Section 2611(c), staff issued the RFQ (Exhibit No. 1) and obtained 15 responses with quotes/offers for services (7 responses from attorney firms and 8 responses from non-attorney firms). Consistent with Section 2611(c), staff evaluated the

responses based upon the criteria of quality of proposal, investigation approach, staff and pricing. The Rating Worksheet reflecting staff's internal evaluation is attached (Exhibit No 2; the "Internal Panel Rating Worksheet").

On September 1, 2020, staff recommended that the City Council award contracts to the four highest-rated attorney firms (Leal Trejo, APC, Boucher Law, Law Office of Roberta M. Yang, P.C. and Harris & Associates, rated in that order), and the one highest rated non-attorney firm (Batza & Associates), according to the Internal Rating Worksheet. The City Council did not approve staff's recommendation and instead requested that an external panel review the proposals and provide its recommendation.

Staff then established the external panel, which consisted of a private sector attorney who specializes in employee investigators, a former City Attorney for a large city; and a Director of Human Resources for a large full-service city. The external panel and recommended using two attorney firms and one non-attorney firm based upon the average number of investigations conducted externally by the City.

On October 6, 2020, after the external panel completed its ratings, staff recommended that City Council approve the two highest rated attorney firms (Harris & Associates and Boucher Law) and the one highest rated non-attorney firm (Batza & Associates) according to the external panel's ratings. However, the City Council asked staff to remove Harris & Associates from consideration based upon a previous City Council action taken on June 23, 2020, tabling the item under consideration at that meeting, which was to amend the City's existing contract with Harris & Associates by adding additional funding. Accordingly, at its October 6, 2020 meeting, the City Council continued the item before it with a request that Staff return with a modified/updated report and external panel rating worksheet excluding Harris & Associates.

The external panel rating worksheet, modified in light of the foregoing, is attached to this report as Exhibit No. 3 (External Panel Updated Rating Worksheet). Staff recommends that the City Council award contracts to either: (i) the two highest rated attorney firms, Boucher Law and Leal Trejo, APC, and the highest rated non-attorney firm, Batza & Associates, Inc. (Recommendation Option 1); or (ii) the highest rated attorney firm, Boucher Law, and the highest rated non-attorney firm, Batza & Associates, Inc. (Recommendation Option 2) according to the External Panel Updated Rating Worksheet.

The recommended/proposed attorney firms that the City Council selects (Boucher Law alone or both Boucher Law and Leal Trejo, APC) will provide the City with the requisite expertise, availability, and objectivity. The recommended non-attorney-firm (Batza & Associates, Inc.) will be used for situations where the nature of the investigation services does not require an attorney, and thus can be performed at a lower rate. Non-attorney investigation services might include surveillance, record searches, background checks, and skip traces, whereas attorney firms perform full scope investigations, conduct interviews, and issue legal opinions and recommendations, which must be defensible in a court of law.

Based upon past experience with only one attorney firm used for employee investigations and the number of investigations that the City typically has, Staff anticipates that Recommendation Option 1, between the two recommended attorney firms (in addition to

the services of the City Attorney's office where necessary and appropriate) and the recommended non-attorney firm, will provide the City with sufficient service availability to correspond to the City's demand. Recommendation Option 2 would authorize the same amount of total funding as Option 1, but with all of the attorney firm funding being awarded to the one highest ranked attorney firm, Boucher Law. If Council feels that only one attorney firm is necessary (in addition to the services of the City Attorney's office, where necessary and appropriate), it should select Recommendation Option 2.

Because the City has an existing contract with Boucher Law, the contract would be amended, via the proposed Boucher Amendment, in the amounts specified above depending on which Recommendation Option is selected. The contract sum for Leal Trejo, APC, pursuant to the proposed Leal Trejo APC Agreement that would be approved if Recommendation Option 1 is selected, would be \$225,000 over an initial three-year term, plus up to \$75,000 for any optional extension period exercised. The contract sum for Batza & Associates, pursuant to the proposed Batza Agreement (under both Recommendation Options), would be \$75,000 over an initial three-year term, plus up to \$25,000 for any optional extension period exercised.

All three firms proposed to perform the professional services at hourly rates specified in their responses to the RFQ. The proposed Batza Agreement specifies the hourly rates to be charged by Batza & Associates - \$130/hour for investigator services and \$100/hour for subrosa/surveillance services. The hourly rates for Boucher Law will remain as stated in the existing contract with Boucher Law - \$295 for investigations. The hourly rates for Leal Trejo, APC, as stated in the proposed Leal Trejo, APC Agreement, will be \$250/hour for Partner/Of Counsel services, \$225/hour for Associate services, \$150/hour for Paralegal/Law Clerk services, and \$100/hour for legal secretary services.

## **V. FISCAL IMPACT**

No impact to the general fund budget. Funds for these services are budgeted in Account #101-65-680-101-6004.

## **VI. EXHIBITS**

1. RFQ (pgs. 7- 41)
2. Internal Panel Rating Worksheet (pg. 42)
3. External Panel Updated Rating Worksheet (pg. 43)
4. Proposed Contracts (pgs. 44 - 104):
  - a. Leal Trejo, APC Agreement
  - b. Batza & Associates, Inc. Agreement
  - c. Boucher Law Amendment

5. Existing Contract with Boucher Law (pgs. 105 - 120)

Prepared by: Faye Moseley, Director of Human Resources & Risk Management