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Title: AWARD OF WORKERS' COMPENSATION DEFENSE ATTORNEY SERVICE CONTRACT FOR FY 2017/18, FY 2018/19 AND FY 2019/20 (CITY COUNCIL)

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Attachments: 1. WC Defense Attorney RFP, 2. WC Defense Attorney Eval and Scoring Sheet, 3. WC Defense Attorney Hourly Fees, 4. Law Offices of Bradford & Barthel Proposal, 5. Laughlin Falbo Levy Moresi Proposal

Date	Ver.	Action By	Action	Result
9/5/2017	1	City Council		

Report to Mayor and City Council

Tuesday, September 05, 2017

Consent

SUBJECT:

AWARD OF WORKERS' COMPENSATION DEFENSE ATTORNEY SERVICE CONTRACT FOR FY 2017/18, FY 2018/19 AND FY 2019/20 (CITY COUNCIL)

I. SUMMARY

The City is self-insured for its Workers' Compensation Program and contracts with a third party administrator ("TPA") to administer the self-insured workers' compensation program. The City contracts separately with a law firm to defend the City against litigated workers' compensation claims. Staff is seeking new defense attorneys to provide legal defense against litigated workers' compensation claims. Request for Proposals ("RFP") were sent out on May 11, 2017 (Exhibit 1).

II. RECOMMENDATION

1. AWARD a three-year contract for workers' compensation defense attorney services with two one-year City renewal options to both the Law Office of Bradford & Barthel, LLP and Laughlin, Falbo, Levy & Moresi from September 1, 2017 to September 1, 2020 and should the City exercise both one-year options the agreements has the potential of reaching September 1, 2022, and

2. AUTHORIZE the Mayor to execute the contract after approval as to form by the City Attorney and AUTHORIZE the City Manager to execute each of the optional extensions in one year increments.

III. ALTERNATIVES

1. SELECT another firm as the City's worker compensation defense attorney.
2. REJECT the proposals and DIRECT staff to reissue the RFP.
3. TAKE any other action the City Council deems appropriate.

IV. BACKGROUND

Human Resources/Risk Management is concerned about the current defense attorney's lack of aggressive legal defense and timely bringing litigation matters to conclusion. Consequently, staff sent out Request for Proposals ("RFP") through the City's online bidding site ("Planet Bids") and published the RFP in OUR WEEKLY. The RFP was opened on May 11, 2017 and emailed to 13 firms. The City received eight 8 responses.

The 8 law firms that electronically submitted proposals through Planet Bids are:

- Adelson, Testan, Brundo, Novell & Jimenez,
- Barragan & Satzman,
- Black & Rose,
- Bradford & Barthel,
- Dabbah & Haddad,
- Laughlin, Falbo, Levy & Moresi,
- Michael Barnard, and
- Mullen & Filippi.

The City has historically retained one law firm to handle workers' compensation legal defense. Staff is recommending that the City Council approve contracts for two defense attorney firms to create a workers' compensation defense attorney panel. Staff believes that having two defense attorneys will lead to greater efficiency and improvement in the time and cost it takes to resolve litigated claims.

Defense Attorney Firm Evaluation

A Proposal Evaluation Team ("PET") convened to interview and evaluate the proposals based on the hourly fees, public entity experience, references, quality of proposal, legal defense approach to cost-effectively resolve litigation, oral/written communications and staff inquiry response time. The evaluation and scoring sheet is attached as Exhibit 2. The firm's hourly fees are detailed in Exhibit 3.

All 8 law firms that timely responded to the RFP and met the RFP criteria were interviewed by staff. After evaluation, scoring of the proposals and interviews, staff recommends that

the City Council award workers' compensation defense attorney contracts to Laughlin, Falbo, Levy & Moresi, LLP and the Law Offices of Bradford & Barthel, LLP for the workers' compensation defense attorney panel.

Recommended Defense Attorney Firms

Law Offices of Bradford & Barthel, LLP

This is a large firm with over 95 attorneys and 13 offices throughout the state. The firm services all of the workers' compensation appeal boards in the state. The firm has been in business since 1997. The firm specializes in only workers' compensation legal defense and subrogation issues. Their client list includes multiple cities and some counties. The references contacted rated them above average. They have very experienced attorneys and staff that will timely respond to the City and meet litigation defense objectives. They understand the City's need for cost-effective, responsive and timely legal defense service.

The firm will work aggressively with the third party workers' compensation administrator and the City to bring litigated claims to conclusion. Staff rated the firm highly due to public entity experience handling litigated workers' compensation matters, response from references, well-thought out plans to vigorously defend against litigated claims. They provide personal attention to their clients and their client's objectives. The hourly fees proposed are competitive.

Laughlin, Falbo, Levy & Moresi, LLP

This firm is one of the largest firms in the state and only provides workers' compensation defense and subrogation services. Their philosophy is to provide a small City feel, looking at each client individually and developing a working relationship with the workers' compensation third party claims administrator and the City. They realize that it is the City's funds and employees. They promote educating their clients. The firm is well received by references contacted.

They have a thorough understanding of public entity workers' compensation issues that require litigation defense. They have experienced attorneys and staff. The firm has been a business since 1930 and under its current firm name since 1985. Their attorney hourly rates are very competitive. There is *no* hourly charge for paralegal services, as the services are *included* in the attorney hourly fees.

Contract Negotiation, Hourly Fees and Work Assigned

Staff believes that, by working with the TPA, litigated claim work can be allocated between two law firms in an amount not to exceed \$360,000 over the three-year contract period, which equals \$120,000 per fiscal year.

The recommended \$360,000 three-year contract amount for both law firms is based on the attorney time and expense needed to resolve longstanding litigated and complicated claims in the California workers' compensation system. California Labor Code Section 3202 *requires* the courts to interpret workers' compensation law liberally, with the purpose of extending benefits to the injured worker which is why aggressive defense is critical for the City.

Staff recommends that the City Attorney negotiate contracts with the new defense

attorneys that include a flat-fee per employee litigated claims arrangement for the *initial* legal claim file review. The City currently has roughly 50 litigated claims, most of which have been in litigation for a long time and are very complex. After the initial legal claim file review is completed and a plan of action is established, the law firms will then continue to bill for legal services based on the hourly rates agreed to in their contracts.

This flat-free approach *will cap* the hours used and cost for the initial claim file review of the litigated claims. Staff recommends that the cap on hours for the initial legal claim file have a standard of 3 hours for *all* litigated claims reviewed for any one employee. Staff requests that the City Attorney negotiate a 3 to 5 hour cap for the contract. The law firms will have to justify billing for more than 3 hours, but *in no case* will a single claim review time be more than 5 hours. The contract should reserve the right for the City to make the final decision on hours used over 3 for any one employee's litigated claims.

Some of the litigated claims are very complex and may warrant review time greater than 3 hours. In addition, staff recommends that the contract includes language that *does not guarantee* that a certain amount of litigated claim defense work will be assigned to *any* one law firm.

V. FISCAL IMPACT

The FY17-18 General Fund budget includes \$100,000 for legal services related to Workers' Compensation in 01-11-000-014-6004. An allocation for future years' services will be included with each fiscal year budget presented to City Council for adoption.

VI. EXHIBITS

1. Workers' Compensation Defense Attorney Services RFP (pgs. 5 to 21)
2. Evaluation and Scoring Sheet Example (pg. 22)
3. Workers' Compensation Defense Attorney Hourly Fee Table (pg. 23)
4. Recommended defense attorney law firm proposal - Law Offices of Bradford & Barthel, LLP (pgs. 24 to 39)
5. Recommended defense attorney law firm proposal - Laughlin, Falbo, Levy & Moresi, LLP (pgs. 40 to 67)

Prepared by: Ed Holton, Sr. Risk Management Analyst