



Legislation Text

File #: 2023-0149, Version: 1

Report to Mayor and City Council

Tuesday, March 07, 2023

Consent

SUBJECT:

CONSIDERATION OF VENDOR-REQUESTED CHANGES INCLUDED IN THE PREVIOUSLY-APPROVED CONTRACT SERVICES AGREEMENT WITH THE SEGAL COMPANY TO CONDUCT A CITY-WIDE CLASSIFICATION AND COMPENSATION STUDY

I. SUMMARY

For performance of the City-wide class compensation study, the Segal Company requested changes to the City's standard form contract, as shown in redline in the attached agreement (Exhibit No. 1). The changes were incorporated into the agreement that was approved by Council on February 21, 2023, and were not shown in redline nor explained in the staff report presented to Council on that date. This report is submitted for disclosure purposes to make City Council aware of the changes made by the vendor that were included in the approved contract.

II. RECOMMENDATION

RECEIVE and FILE.

III. ALTERNATIVES

(1) Rescind the Council's February 21, 2023 approval of the agreement and direct staff/City Attorney to negotiate changes with the vendor and return to Council for approval at a later date.

(2) Take another action that the City Council deems appropriate.

IV. BACKGROUND

The clean (non-redline) version of the attached agreement was presented to and approved by City Council on February 21, 2023. The vendor's proposed changes to the City's standard form provisions (shown in redline in the attached) were incorporated into the agreement that was presented to Council, and were not clearly shown or explained to Council on that date. Having since reviewed the changes and received Risk Management approval of the insurance provisions as discussed below, the City Attorney's office has indicated it is willing to approve the agreement as to form without engaging in negotiations with the Segal Company provided that Council is informed of Segal's changes and agrees it does not wish to seek to negotiate modifications to any of them.

Accordingly, Segal's changes in the previously-approved agreement are now being disclosed to the Council. The following is an overview of the changes:

- Section 1.5 (Familiarity with Work) - Adds obligations of City to supply Consultant with the information reasonably needed to complete the services, gives Consultant the right to reasonably rely on the accuracy and completeness of the information without independently verifying it, and disclaims Consultant's liability for same. Deletes language related to the obligation of consultants performing work on City sites to investigate and be acquainted with the conditions of the site and to notify City in the event of any condition that would affect performance of the services and await City direction before proceeding.
- Section 2.4 (Invoices) - Reduces the specified time to pay invoices from 45 days to 30 days but preserves the caveat that City cannot guarantee payment will occur within this time period.
- Section 4.5 (Prohibition Against Subcontracting or Assignment) - Adds an exception to the requirement of prior City approval of any assignment of Consultant's interest in the Agreement, allowing for assignments to affiliates of Consultant within certain limitations.
- Section 5.1 (Insurance Coverages) and Section 5.2 (General Insurance Requirements) - Various edits which have been reviewed and approved by the City's Risk Manager.
- Section 5.3 (Indemnification) - Adds language related to the obligation of Consultant to pay for the defense of legal claims brought against the City arising out of the negligence of Consultant, which may have been intended to limit the Consultant's obligations in this regard to "documented" legal costs and "reasonable" attorneys fees. However, the added language does not achieve this effect because it is found only in the context of examples of the payment obligation, and the general obligation to pay "all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding" preceding such examples remains intact.
- Section 6.1 (Records) - Adds language requiring reasonable notice prior to City accessing Consultant's books and records, and deletes language providing that in

the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor.

- Section 6.3 (Ownership of Documents) - Deletes the existing section providing that all documents and materials prepared by Consultant in the performance of the Agreement shall be City property. Creates an exception for Consultant's "Proprietary Information," defined to include, without limitation, publications, software, know-how, techniques, methodologies and report formats made available to City by Consultant in providing the services. Provides that all documents, data, and other tangible delivered by Consultant to City under the Agreement are the property of City once paid for by City *except to the extent that they are or incorporate Consultant's Proprietary Information*, in which event City will have a right to use, copy, and modify Consultant's Proprietary Information as part of such deliverables internally and for their intended purpose.
- Section 6.4 (Confidentiality and Release of Information) - Provides that Consultant is authorized to: (i) use City information (which Consultant receives from City to perform the services) for internal purposes, and aggregate it with other data collected by Consultant and distribute such data, or analysis of it, to third parties, provided it does not identify City or any City participants or beneficiaries; and (ii) include City's name and logo/trademark in a list of representative cities for marketing/sales purposes. However, Consultant will not sell or receive remuneration for such City information or materials derived from it.
- Section 7.3 (Retention of Funds) - The section previously authorized City to deduct from any amount payable to Consultant, among other things, all amounts for which City may be liable to third parties, by reason of *Consultant's acts or omissions* in performing or failing to perform Consultant's obligation under the Agreement. Adds the word "negligent," to limit this component of the authorization to "*Consultant's negligent acts or omissions. . . .*"
- Section 7.7 (Termination Prior to Expiration of Term) - Amends the language to provide that where Consultant has issued a notice of termination of the Agreement, Consultant shall be entitled to compensation for all services rendered during the 60-day notice period prior to the effective date of the notice of termination.
- Section 8.2 (Conflict of Interest) - Limits the scope of Consultant's covenant in the first sentence to conflicts that Consultant "knows or reasonably should know" would conflict with the interests of City or hinder Consultant's performance of services under the Agreement.

Absent Council direction on an alternative course of action, staff and the City Attorney's office will proceed with execution of the agreement as previously approved.

V. FISCAL IMPACT

No fiscal impact.

VI. EXHIBITS

Exhibit 1 -The Segal Group - Redline Contract Agreement (pgs. 5-43)

Prepared by: The Human Resources Department