



CITY OF CARSON

Legislation Text

File #: 2019-701, Version: 1

Report to Mayor and City Council

Tuesday, August 20, 2019

Consent

SUBJECT:

**CONSIDER APPROVAL OF CONTRACT SERVICES AGREEMENT WITH
GOVERNMENTJOBS.COM, INC. FOR SOFTWARE SERVICES (D/B/A "NEOGOV")
(CITY COUNCIL)**

I. SUMMARY

The City of Carson began using NeoGov's Insight Hiring Management software and subscribing to Governmentjobs.com in 2014 through a general agreement. A Contract Services Agreement using the City's standard form is required moving forward. Staff is recommending a 3-year contract. The cost of the software agreement exceeds City Manager authority. Staff is seeking approval to continue NeoGov's services via a new agreement using the City's standard form and is requesting Council to award the 3-year contract services agreement, in the amount of \$44,105.76, to Governmentjobs.com, Inc., to provide the software, support and maintenance for Insight Enterprise Software License and the Governmentjobs.com Subscription.

II. RECOMMENDATION

1. WAIVE the bidding requirements in Chapter 6 ("Purchasing System") of Title II of the Carson Municipal Code, pursuant to Carson Municipal Code Section 2611(e) ("Sole Source Purchasing"); and
2. APPROVE the proposed CONTRACT SERVICES AGREEMENT WITH GOVERNMENTJOBS.COM, INC. (D/B/A/ "NEOGOV") and AUTHORIZE the Mayor to execute the same following approval as to form by the City Attorney."

III. ALTERNATIVES

TAKE any action deemed appropriate.

IV. BACKGROUND

On August 15, 2014, the City of Carson signed a service agreement with GovernmentJobs.com, Inc. for Insight Enterprise Edition (subscription license, provisioning and online training - a cloud based application) and Governmentjobs.com Job Posting Subscription License. NeoGov is the leader in human resources software for the public sector. NeoGov's applicant tracking system makes recruiting and hiring easier for Human Resources by reducing the cost per hire, filling positions quickly and improving hiring. The City has made the annual payments under this same agreement. At this time, a contract service agreement with NeoGov is required and Staff would like to enter into a 3-year contract service agreement.

Waiver of Bidding Requirements

Staff recommends waiving the bidding requirements in Chapter 6 ("Purchasing System") of Title II of the Carson Municipal Code, pursuant to the exemption in CMC section 2611(e), which reads as follows:

"Sole Source Purchasing. The City Manager may dispense with this Chapter's bidding requirements if he or she finds that the materials, supplies, equipment, or services are unique because of their quality, durability, availability, or fitness for a particular use and are available only from one (1) source, or, if available from more than one (1) source, can be purchased from the manufacturer or service provider for a lower price. If the cost of such sole source purchasing is \$25,000 or greater, then the City Council's approval shall be required."

No other vendor provides the full range of services tailored to the needs of local government agencies that NeoGov and its software-as-a-services platform offer. NeoGov's services provided under the agreement are unique and are available only from NeoGov. As such, the Sole Source exception to the bidding requirements is applicable here.

Changes to City's Standard Form Contract

NeoGov and the City Attorney's office have negotiated numerous changes to the City's standard form contract provisions as necessary to address the nature of the services being performed under the agreement. The changes are shown in Exhibit B of the attached proposed contract.

The negotiated changes include some significant amendments to the insurance requirements. Most notably, NeoGov would not be required to ensure that all of its subcontractors obtain precisely the same insurance coverages as required of NeoGov under the contract, because the nature of NeoGov's services and the many vendors and third parties it uses to perform small functions within the services provided by NeoGov make such a requirement infeasible, since under a traditional definition of subcontractor, this could be interpreted to require NeoGov to renegotiate many of its existing contracts. Instead, the contract provides that NeoGov must require and ensure that all subcontractors

maintain insurance coverages and limits consistent with industry standards and commensurate with the risks or risk profile applicable to the service or product that such subcontractors are providing under the Agreement.

The insurance provisions would also be changed to add a requirement that NeoGov maintain Cyber Liability insurance, with limits of \$5,000,000, to cover claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information or data breach, theft, loss, damage or misuse, release of private information, extortion and network security, and thereby to protect the City from such risks through the indemnification provision, which has been modified only slightly to ensure that it includes such cyber risks. Risk Management has approved of the changes to the insurance requirements.

Other revisions necessitated by the nature of the services include: (1) addition of intellectual property indemnification in favor of the City; (2) replacement of Section 6.3 relating to ownership of documents with provisions relating to rights to use of trademarks and logos; (3) addition of Section 6.5 (Nondisclosure) for the protection of NeoGov's confidential information, subject to an exemption for disclosures required under the Public Records Act; and (4) addition of Section 9.8 (data processing and privacy), which clarifies ownership rights and responsibilities related to City data provided to NeoGov in connection with the services (which will remain the property and responsibility of City) and platform data reflecting the access to or use of NeoGov's software programs by the City, which will remain the property and responsibility of NeoGov.

A new Section 9.9 ("Limitation of Liability") has been added at NeoGov's demand. The provision would preclude liability of either party from liability for consequential, indirect, incidental, special or exemplary damages arising out of the agreement, including for loss of business opportunity or profit, loss of use, loss of goodwill, or business stoppage. However, the contract does contain a warranty that NeoGov will perform the services consistent with industry standards and use commercially reasonable efforts to provide a continuously functioning service to City and to respond in a timely and diligent manner to all service complaints and requests submitted by the City's contract officer.

Section 9.9 would also limit liability for direct damages arising from the contract to the compensation received by NeoGov from City during the relevant year of the Agreement during which the cause of action arose. A similar provision is contained in Section 8(d) of the 2014 Service Agreement. This is a serious limitation of the City's potential to recover damages from NeoGov under the Agreement, and should not be taken lightly. The City Attorney's office cannot and does not condone or approve of this type of limitation or that in the preceding paragraph; instead, the Council's independent and specific approval is necessary. It is staff's view that the probability of exposure to such risk is limited. The City Attorney's office can continue to negotiate the provision with NeoGov if the Council is not comfortable accepting it in its current form.

Additionally, Section 7.2 (Disputes; Default) has been modified to provide for any withholding of payments by City on the basis of a default by NeoGov to be proportional to the portion of work claimed to be in default.

V. FISCAL IMPACT

Funds have been budgeted for these items in FY 2019/20 under account number 101-50-520-101-6004.

VI. EXHIBITS

1. NeoGov Quote No. SO12272. (pg. 3)
2. Service Agreement dated August 15, 2014. (pgs. 4 - 12)
3. Proposed NeoGov Contract Agreement. (pgs. 12 - 52)

1.

Prepared by: Kevin Kennedy, Manager of Information Technology