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MEMORANDUM

DATE: June 23, 2008
TO: Mayor and City Council, City of San Diego
CC: City Attorney
FROM: Murtaza H. Baxamusa, Ph.D.
SUBJECT: Item 200 on Monday, June 23, 2008.
(Grant Thornton LLP consulting contract)

The Center on Policy Initiatives strongly urges you to **OPPOSE** the authorization of the contract with Grant Thornton LLP. This is for the following reasons:

- (1) Work on this contract proceeded without appropriate Council approval;
- (2) Indefinite contracts are wasteful; and
- (3) Outside consultants for writing the statement of work(s) are unnecessary and inconsistent with Proposition C (2006).

1. Work Proceeding without Council Approval

Grant Thornton LLP was allowed to begin work¹ as San Diego's managed competition consultant, based on its initial bid of \$658,515², although the City Council never approved a contract. The law³ requires consultant contracts over \$250,000 to be approved by Council. The work was performed under discrete task-orders which to date have totaled \$250,000⁴. Initially, the City requested and Grant Thornton LLP granted an approval to extend the pricing offer in anticipation of Council approval. Later, the Purchasing Division "accepted" the proposal to "facilitate task orders underway" without City Council approval.⁵

The Council is now being asked to authorize a contract for \$1.1 million for which the underlying bid was \$658,515. In other words, the Council does not have the Agreement

¹ Limited Notice to Proceed from Lance Wade to Ramon Contreras, dated March 12, 2008.

² Response to request for proposal (RFP) 8520-07-Z-RFP by Grant Thornton LLP dated November 16, 2008.

³ SDMC Sec. 22.3223.

⁴ Mayor's Report to City Council 08-066.

⁵ Letter from Lance Wade (Purchasing Division) to Ramon Contreras (Grant Thornton LLP) dated April 12, 2007 with subject "RFP No. 8520-07-Z-RFP – Preliminary Planning and Statement of Work (SOW) for the Managed Competition Initiative".

that spells out how the \$1.1 million was derived, and what is the specific work being performed for this increased amount. The 2006 RFP is inadequate because the bid amount from Grant Thornton at that time was substantially less than what is being proposed today. If the work has changed so significantly since November 2006, then the RFP should be re-issued, so that other potential bidders have opportunity to resubmit.

Lastly, the Municipal Code requires the approval of City Council each time a contract and subsequent amendments exceed \$250,000 in any fiscal year. Therefore, even if the City Council retroactively approves the contract for FY2007 and prospectively for FY2008, it would still have been performed in FY2006 without Council approval. This is because the Limited Notice to Proceed was dated March 12, 2006 and the first two task orders were issued within FY2006.

2. Indefinite Contracts are Wasteful

In response to the city's RFP, the price submitted by Grant Thornton on Nov. 16, 2006, was \$658,515.⁶ In April, City of San Diego Business Office requested that the Council ratify a contract of \$1,550,000⁷, which was 135% over the initial bid. Now in June, they have changed their request, to spend \$1.1 million⁸ which is 67% over the initial bid.

Consultant Rates:

<i>Name</i>	<i>Contract Labor Category</i>	Hourly Labor Rate
Ramon Contreras	Executive Consultant	\$209
Colleen Miller	Alternate PM/QC	\$169
Denis Brown	Project Manager	\$169
Edward DeLeon	Management Analyst	\$82
Total (Max.)		\$629

Assuming that all the consultants work 24 hours a day, 7 days a week, the theoretical maximum the city can be charged from today to the end of the Fiscal Year on June 30th is \$105,672. The Mayor is asking to approve \$400,000 to be spent in Fiscal Year 2008, which is an unrealistic amount to spend on consultants in 1 week.

The City is intending to use an “Indefinite Delivery/Indefinite Quantity” (ID/IQ) vehicle for contracting. Although the city gives work orders and task orders to implement piecemeal contracts, this specific vehicle (ID/IQ) has never been used. In fact, General Requirement contracts that use this piecemeal approach are specifically for public works. Even so, General Requirement contracts cannot carry any provision that guarantees cumulative Task Orders of more than \$50,000 (SDMC Sec 22.3103(c)). An individual Task Order over \$50,000 is prohibited, except in case of emergency (SDMC 22.3104(c)). Task Order 4 initially issued at \$148,144 on June 4, 2007 exceeded this threshold. This has no basis in San Diego’s municipal law, and would be precedent-setting.

⁶ Pricing from response to request for proposal (RFP) 8520-07-Z-RFP by Grant Thornton LLP dated November 16, 2008.

⁷ Mayor’s Report to Council 08-066.

⁸ Mayor’s Report to Council 08-092.

ID/IQ is derived from the Federal Acquisition Regulations (FAR), section 16.501(a). There have been significant problems with the federal ID/IQ model and it has been blamed for waste, fraud and abuse. According to an interview in the Army Times:⁹

One of the major problems with the multiple award ID/IQ system is the prevalent practice of drafting overly-broad statements of work that cover the sun, the moon and the stars. This causes problems of competition, when orders can be placed for just about any service or product without going through normal contract award channels, and can lead to potential fiscal law problems, since the purpose of the money may not match the type of funds available, even though the order fits within the original broad statement of work.

Interview with Major Gregory Boekin, Trial Attorney, Contract Appeals Division, U.S. Army Litigation Division, in Charlottesville, Va. (Dec. 9, 2004).

Stuart W. Bowen, Jr. Special Inspector General Iraq Reconstruction testified to a Congressional committee that there was a lack of clarity regarding regulatory requirements for definitization of task orders issued under contracts classified as Indefinite-Delivery/Indefinite Quantity (ID/IQ). The following are excerpts of an audit done by the Special Inspector General Iraq Reconstruction of Army contracting in Iraq and Afghanistan:

Results: There was a lack of clarity regarding the regulatory requirement for definitization of task order issued under contracts classified as Indefinite-Delivery/Indefinite-Quantity on the part of the primary U.S. Army organizations involved in awarding and administering different types of contracts for Iraq reconstruction...

Conclusion: The lack of clarity among U.S. Army procurement organization as to the applicability of the DFARS definitization requirements for task order issued under *IDIQ contracts diminishes visibility and control over contractor costs by the government.*

(Office of the Special Inspector General for Iraq Reconstruction, "Review of the use of definitization requirements for contracts supporting reconstruction in Iraq", SIGIR-06-019, July 28, 2006, *emphasis added*)

These statements demonstrate that there is considerable lack of control, oversight, monitoring and enforcement in this federal contracting vehicle (ID/IQ). It should never be used by the City.

Outside Consultants Unnecessary

Outside consultants are being asked to assist in drafting the Statement of Work with service specifications of services the city currently provides. This is a managerial function of the City, to be able to collect and report on service specifications for selected functions. It can be accomplished through internal data gathering with collaboration between department directors and employees. It is unclear what role an external entity

⁹ Army Lawyer, September 1, 2006: Current problems with multiple award indefinite delivery/indefinite quantity contracts: a primer. Wong, Michael C.

would play, given that the City knows best what it does. The detailed and complex reorganization performed during the departments' Business Process Reengineering (BPR) over the past two years testifies to this. These BPRs incorporated teams of management and employees compiling workload data, and assignment of responsibilities. In fact, the Mayor's office has already recruited personnel who are familiar with the federal A-76 process, and should be utilizing its staff without additional cost to taxpayers.

The following is the Fiscal Impact submitted by the City to voters for the passage of Proposition C:

No significant new costs are anticipated as a result of the managed competition process. *The Mayor would be responsible for oversight and contract utilizing existing City staff.* Outside experts on an independent review board will serve without compensation and will be required to comply with strict conflict-of-interest requirements.

(Proposition C Fiscal Impact, 2006 Ballot)

The Grant Thornton LLP contract is a significant new cost to the city, and would be inconsistent with the intent of the ballot measure.

CPI strongly urges you not to authorize this contract, as it is wasteful and unnecessary.

Attachment: Proposition C (2006) Fiscal Analysis.

PROPOSITION C – FISCAL IMPACT

Mayor Sanders has undertaken a number of efforts to streamline city operations with the objective of providing city services in the most cost-effective and efficient manner possible, while protecting the public interest. One method used successfully by other local jurisdictions to achieve greater efficiency has been to seek competitive bids from private- and public-sector providers for certain appropriate services.

However, the City Charter currently limits the City's ability to contract out public services traditionally performed by City employees. This restriction in most cases prevents the City from entering into contracts with private companies even if doing so is shown through the bidding process to save the City money or create improved services or greater efficiencies. Proposition C would expand the City's ability to utilize "managed competition" for delivery of appropriate public services.

No significant new costs are anticipated as a result of the managed competition process. The Mayor would be responsible for oversight and contract utilizing existing City staff. Outside experts on an independent review board will serve without compensation and will be required to comply with strict conflict-of-interest requirements.

Limited costs will be associated with annual financial audits required to confirm that projected savings are in fact being achieved and an independent audit of the process required every five years.

Based on the experience of other jurisdictions, it is anticipated there will be significant cost savings as a result of increased efficiency in operations. The scope of the fiscal impact of this measure is unknown at this time. Cost savings from this measure will not be realized in the FY 07 budget, but will be reflected in future budgets as the program is fully implemented.