



Office of the City Manager

INFORMATION CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Farimah Brown, City Attorney

Submitted by: Iris Mattes, Deputy City Attorney

Subject: Updated Sanctuary City Contracting Compliance Report for FY 2021

INTRODUCTION

City Council adopted ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

This report is an updated version of the FY 2021 report that appeared on the July 26, 2022 agenda. This version reflects that the City Council approved a waiver of the City's contract with AG Witt, LLC on December 13, 2022.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Report Requirements

(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). IFB, RFP, and RFQ public postings generally contain the SCCO language. Signed compliance certificates are submitted with proposals and bid responses.

New and amended contracts and agreements include the Compliance Certificate attesting review of and compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:

Previously reported: City Council issued a waiver of ordinance 7,650-N.S. related to Berkeley Tuolumne Camp Projects. The waiver was issued on 12/10/2019 in order to ensure compliance with FEMA contracting provisions as required for the City to receive a federal reimbursement grant for the construction project.

City Council approved a waiver of the SCCO for contracting with Westlaw, a Thomson Reuters Company, on 6/1/2021, as no reasonable alternative exists.

A contract was entered into with AG Witt, LLC, for an initial amount of \$50,000. The City's social responsibility provisions in the contract form were left intentionally blank so that the contract did not violate federal contracting requirements. The contract scope is for disaster cost recovery and is partially reimbursable by FEMA. The contract was later amended to \$150,000 with approval from City Council (Resolution 69,566-N.S.), and then amended to \$250,000 with approval from City Council (Resolution 69,759-N.S.). The City anticipates this contract to be valid for several more years as cost recovery efforts for Covid-19 expenses continue.

New: The City received a notice of violation concerning its contract with AG Witt, LLC. Although the City does not believe that its contract with AG Witt, LLC violates the SCCO, the City sought a waiver out of an abundance of caution. The City Council approved the waiver on December 13, 2022.

The City also received a notice of violation alleging that the July 26, 2022 FY 21 Compliance Report was itself a violation of the SCCO, because it was issued untimely. Although any violation relating to the timeliness of the July 26, 2022 Compliance Report was cured by the act of issuing that report, this Updated report has been revised to expressly acknowledge that the July 26, 2022 report was issued untimely.

(3) detail actions taken to cure any deficiencies with compliance:

As described above, City Council approved a waiver of the AG Witt, LLC contract on December 13, 2022. This report will serve as the notice required under BMC 13.105.050. Regarding the untimeliness of the FY 21 Compliance Report, the City cured that violation by issuing the July 26, 2022 report and by issuing this updated report.

BACKGROUND

This report is an updated version of the report that was approved by City Council on July 26, 2022. It is intended to supplement the July 26, 2022 report for the purpose of curing alleged violations that were first raised after the issuance of the July 26, 2022 report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts from this report.

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. Resolution 69,907-N.S. Westlaw (Thomson Reuters)
2. Resolution 69,566-N.S. AG Witt, LLC
3. Resolution 69,756-N.S. AG Witt, LLC
4. Resolution 70,635-N.S. AG Witt, LLC

RESOLUTION NO. 69,907-N.S.

ADOPT A RESOLUTION WAIVING THE CONTRACT REQUIREMENTS OF THE SANCTUARY CITY CONTRACTING ORDINANCE PURSUANT TO CHAPTER 13.105 OF THE BERKELEY MUNICIPAL CODE, IN ORDER TO ENTER INTO A CONTRACT WITH WESTLAW, A THOMSON REUTERS COMPANY

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, in order to enter into a contract with Westlaw, a Thomson Reuters Company, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the use of services provided by Westlaw is indispensable to the practice of law; and

WHEREAS, contracting with Westlaw will not violate the intent of the Ordinance as its services will be used to promote the interest of the immigrant community in conformance with the intent and purpose of the Ordinance; and

WHEREAS, no other contractors are available who can provide the services required by this contract; and

WHEREAS, no additional costs are quantifiable as there are no available alternatives; and

WHEREAS, failing to provide this waiver would result in additional costs to use Westlaw on an ala carte basis.

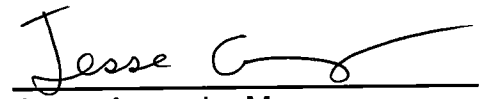
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the services that will be provided under contract with Westlaw, a Thomson Reuters Company.

The foregoing Resolution was adopted by the Berkeley City Council on June 1, 2021 by the following vote:

Ayes: Bartlett, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Droste.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 69,566-N.S.

CONTRACT NO. 32000282 – AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City's needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the City Manager authorization spending amount of \$50,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$150,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City's COVID-19 response.

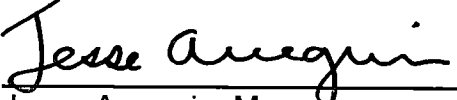
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$150,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on September 22, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 69,756-N.S.

CONTRACT NO. 32000282 - AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City's needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, on May 26, 2020, the City Manager entered into Contract No. 32000282 with AG Witt, LLC for COVID-19 Emergency Operations Cost Recovery Consulting, for a total not to exceed amount of \$50,000; and

WHEREAS, on September 22, 2020 the City Council adopted Resolution No. 69,566-N.S. authorizing the City Manager to execute an amendment to this contract, increasing the amount by \$100,000 for a total not to exceed amount of \$150,000; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the Council authorization spending amount of \$150,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$250,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City's COVID-19 response; and

WHEREAS, staff expects that this engagement with AG Witt will last for multiple years, due to the extended duration of the FEMA cost recovery process and ongoing nature of the COVID-19 pandemic; and

WHEREAS, staff and AG Witt expect that AG Witt's contract costs will be partially reimbursable through the FEMA PA Program.

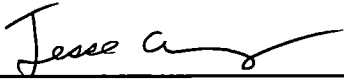
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$250,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on March 23, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Kesarwani.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 70,635-N.S.

APPROVE A WAIVER OF THE SANCTUARY CITY CONTRACTING ORDINANCE'S REQUIREMENTS FOR THE CITY'S COST-RECOVERY CONTRACT WITH AG WITT, LLC

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, prohibits the City from doing business with a vendor that provides the United States Immigration and Customs Enforcement agency with "data broker" or "extreme vetting" services; and

WHEREAS, the City entered into a contract with AG Witt, LLC to provide valuable services related to the City's COVID -19 cost recovery efforts but a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a signed declaration from AG Witt, LLC related to its compliance with the Ordinance; and

WHEREAS, a waiver is being sought out of an abundance of caution; and

WHEREAS, the waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC has attested that it does not provide any of the services prohibited by the Ordinance; and

WHEREAS, no reasonable alternative to the City's actions existed at the time because the President of the United States had repeatedly threatened to withhold FEMA reimbursement to "Sanctuary Cities"; and

WHEREAS, the City has applied for significant reimbursements and has no alternative source for this funding; and


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver of the Ordinance's requirements for the City's cost-recovery contract with AG Witt, LLC is approved.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2022 by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 
Mark Numainville, City Clerk