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OAKLAND

2014 JUN 12 PM 4:40

AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: David McPherson
Tax & Revenue Administrator

SUBJECT: Supplemental First Amendment
To The Agreement with Progressive
Solutions Inc.

DATE: June 12, 2014

City Administrator
Approval

Date

6/12/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution waiving the request for proposals ("RFP") competitive selection advertising and competitive bidding requirements, and authorizing the City Administrator to amend the Agreement with Progressive Solutions Inc. ("PSI"), increasing the Agreement compensation by three hundred seventy-three thousand, eight hundred twenty dollars (\$373,820) for Fiscal Year 2014-15 for system maintenance and support services, hardware (new and replacement), training/payment card certificates, forms, letters and mailings, and webhosting services, and completion of the implementation of the Online Business Tax program.

REASON FOR SUPPLEMENTAL REPORT

On June 10, 2014, the Finance and Management Committee directed staff to draft a supplemental report explaining how spending in excess of Contracted and Spending Authority occurred and the controls put in place to prevent overspending from occurring in the future.

OUTCOME

Adoption of the attached Resolution will provide contractual and spending authority for Fiscal Year 2014-15 to manage fiscal responsibilities associated with the City's automated local tax system software and to provide contractual authority for implementation of the City's online business tax program, which allows business to remit their business license tax over the internet.

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ANALYSIS

Bidding Local Tax System

Staff would like to clarify that the bidding out of the local tax system is not taking place at this time. The language "Waiving Request For Proposals ("RFP"), Competitive Selection Advertising And Competitive Bidding Requirements" as stated in the proposed Resolution was inserted as standard language to ensure adherence with the Oakland Municipal Code. However, technology is rapidly changing and it is prudent of City staff to occasionally issue requests for proposals or qualifications to ensure existing systems meet or exceed industry standards and so that the City can take advantage of competitive pricing. Prior to doing so, in accordance with Administrative Instruction 1006, Bureau staff would partner with the Office of Information Technology to ensure proper analysis and procedures are followed.

Key Terms, Definitions of Various Spending Authority:

- Contracted Spending Authority: As used in the original staff report and this supplemental staff report, "Contract or Contracted Authority" is defined as compensation terms of an executed contract or an executed amendment to the contract and the contracts are approved in accordance with the Oakland Municipal Code, Section 2.04.
- Spending Authority: As used in the original staff report and this supplemental staff report, "Spending Authority" is defined as the compensation allowable to Progressive Solutions Inc, as authorized by City Administrator authority or City Council Resolution and within the appropriated budget.
- Budgeted Authority: As used in this supplemental staff report, "Budget Authority" is the total Fiscal Year operations and maintenance expense budget appropriation for the Revenue Management Bureau as adopted by Council.

Discovery

The inability of staff to pay an invoice from PSI in a timely fashion prompted an internal review of purchasing and contracting controls within the Revenue Management Bureau ("Bureau"). As a result of this internal review, staff discovered that payments in excess of Contracted and Spending Authority had occurred across several fiscal years regarding the contract between the City of Oakland and PSI. Upon discovery of the spending in excess of Contract and Spending Authority, staff spoke with the Controller's Office for clarification of City purchasing, encumbering and payment policies. Transparency and ethics are paramount to public trust, to this end staff recognized that the Contract needed to be "trued-up" and the discrepancies brought to the Council's and public's attention.

Oakland Municipal Code

Section 2.04.030 of the Oakland Municipal Code ("OMC") details City Council approval requirements in excess of the City Administrator's Authority. The original contract between PSI

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and the City was in excess of \$600,000, thus required Council approval in accordance with the OMC. The supplies and services contemplated under the contract with PSI were for an Automated Local Tax System software application, implementation of the software application, the work product produced by the system (such as renewal declarations and business tax certificates), and related hardware components. Therefore, any expansion of the original scope of work and associated costs, plus annual routine costs that increase the total compensation of the contract or change the work contemplated under the contract, would require adherence to OMC Section 2.04.030 C. which reads:

“Contract Extensions, Renewals, Amendments. The requirement for City Council approval specified in Section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments that exceed: (1) the City Administrator’s contract approval limit, or (2) the total contract amount approved by Council in a City Resolution.”

History of the Contract

- The original contract for an amount not to exceed \$617,000 was authorized by Resolution No. 80045 and executed on May 17, 2007. The original scope of work was for the software application, implementation of the software, necessary hardware, and maintenance and support services for a period of 3 years.
- During implementation of the software, City project staff approved \$42,287 in necessary change orders to ensure functionality of the system. However, there was no funding contingency for change orders built into the Resolution No. 80045. Thus, while the change orders were necessary, an amendment to the contract should have been executed to encompass the additional contract costs, as well as a Resolution from Council authorizing the additional spending. There is no record of an amendment or Council Resolution.
- According to Bureau records, in late June 2008, a proposal from the vendor was provided to staff to expand PSI’s scope of services to include printing and mailing services. This expansion of services was implemented in December 2008. The expansion of services and associated vendor compensation, should have been brought to Council for approval and authorization to amend the contract in accordance with OMC Section 2.04.030 C. There is no record of an amendment or Council Resolution.
- In October 2011, staff returned to Council seeking authorization to extend the term of the original PSI contract, requesting \$100,000 per year for three years plus two annual, optional renewals for the maintenance and support services of the software application. On October 4, 2011, the City Council approved Resolution No. 83574 and authorized staff’s request but omitted to language to:

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1. Include the expanded scope of services that was currently being provided by PSI since 2008.
 2. Reflect the true annual costs of the contract based upon the expanded scope of services currently being provided by PSI.
 3. True-up the overspending of the contract in excess of both Contracted and Spending Authority that occurred between Fiscal Years 2008-2011, in the amount of \$482,345.
- Finally, when the City Council adopted the FY 2013-15 Biannual Policy Operating Budget, the Council appropriated \$176,000 in FY 2013-14 (for implementation) and \$16,000 in FY 2014-15 (for ongoing maintenance), for PSI to implement an online business tax system. The online business tax system expanded the scope of services currently being provided by PSI. Therefore, it was necessary to execute an amendment to the contract to recognize the expanded scope of services and subsequent increased vendor compensation. No amendment to the contract was executed and the original contract is expired on June 30, 2010.

History of the Spending in Excess of Authority

It is important to note that at no time did the spending in excess of Spending Authority cause the Bureau to exceed its *Budgeted Authority*. The Bureau always remained within its Council approved fiscal year operations and maintenance budget appropriation and no additional funding from the General Purpose Fund is or was required.

Taken together Resolution Nos. 80045 and 83574, and the funding provided to implement the online business tax system in the FY 2013-14 Operating Budget provided total Spending Authority of \$1.09 million from FY2007-08 through FY 2013-14. (Table 1)

Table 1

| Fiscal Year | Resolution No. | Spending Authority | Scope of Services |
|---|----------------|---------------------|---|
| FY 2007-08 | 80045 | \$ 488,000 | Purchase/Implementation of software suite & associated hardware |
| FY 2008-09 | 80045 | \$ 17,000 | Maintenance & support |
| FY 2009-10 | 80045 | \$ 53,300 | Maintenance & support |
| FY 2010-11 | 80045 | \$ 58,700 | Maintenance & support |
| FY 2011-12 | 83574 | \$ 100,000 | Maintenance & support |
| FY 2012-13 | 83574 | \$ 100,000 | Maintenance & support |
| FY 2013-14 | 83574 | \$ 100,000 | Maintenance & support |
| FY 2013-14 Operating Budget | | \$ 176,000 | Implementation of online BT system |
| Total Spending Authority FYs 2008-2014 | | \$ 1,093,000 | |

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Per Resolution No. 80045 the Contract Authority was limited to \$617,000. As previously noted in Table 1, staff returned to Council in October 2011 seeking authority to extend the terms of the contract and increase the total vendor compensation. However, no amendments to the contract were executed. Thus, Contract Authority remained at \$617,000. As noted in Table 2, expenditures were \$1.78 million. Thus, between FYs 2008-2014 two things occurred: (1) spending in excess of Contracted Authority by \$1.16 million; and (2) spending in excess of Spending Authority by \$686,449.

Table 2

Expenditures FYs 2008-2014

| | Maintenance | Business Tax Certificates/ Forms/ Posting | Hardware Contingency | WEB Applications/Support | Training/ Auditing Services | FY Total |
|------------------|-------------|---|-------------------------|-----------------------------|-----------------------------------|---------------------|
| FY 2008 (actual) | \$ | \$ | \$ 7,950 | \$ 417,773 | \$ 1,410 | \$ 427,134 |
| FY 2009 (actual) | \$ 78,190 | \$ 67,473 | \$ 8,286 | \$ 63,900 | \$ 245 | \$ 218,094 |
| FY 2010 (actual) | \$ 64,390 | \$ 82,458 | \$ 3,918 | \$ 14,950 | \$ | \$ 165,716 |
| FY 2011 (actual) | \$ 72,400 | \$ 149,455 | \$ 952 | \$ 55,886 | \$ 9,709 | \$ 288,401 |
| FY 2012 (actual) | \$ 79,237 | \$ 53,406 | \$ 6,961 | \$ 82,500 | \$ | \$ 222,104 |
| FY 2013 (actual) | \$ 94,709 | \$ 60,028 | \$ 4,871 | \$ 8,814 | \$ 5,700 | \$ 174,122 |
| FY 2014 (YTD) | \$ 99,673 | \$ 64,928 | \$ 6,814 | \$ 112,463 | \$ | \$ 283,878 |
| | | | | | Total | \$ 1,779,449 |

How the Spending in Excess of Authority Occurred

Spending in excess of Contracted and Spending Authority occurred when the Bureau staff did not create purchase orders and wholly encumber authorized funds, and when Bureau staff did not follow proper contract procedures and amend the executed contract with each expansion of the scope of services and/or increases in total vendor compensation. Finally spending in excess of Contract and Spending Authority occurred when designated Bureau buyers and approving managers did not verify that the services listed on an invoice aligned with the scope of services provided for in the contract and Resolution.

It is an appropriate practice of budget and contract management to create a purchase order and encumber (or "lock-up") funds within the Bureau's budget, or a project or program, that reflect the totality of the authorized Spending Authority and then drawdown invoice payments against the purchase order. For example if the Bureau had implemented best practices:

- Resolution 83574 provided Spending Authority in an amount not to exceed \$617,000 for a set scope of services AND there was an executed contract that provided Contracted Spending Authority in an amount not to exceed \$617,000 for the same scope of services.

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- The buyer for the Bureau would then create a purchase order and encumber \$617,000 for the scope of services defined in the Resolution and contract, and forward it to the Bureau's approving manager for approval.
- The Bureau's approving manager would review both the contract and Resolution, make sure the scope of services provided for in the Resolution matched the scope of services provided for in the contract and are reflected in the purchase order, and then authorize the purchase order.
- Then, when invoices are presented by the vendor, the Bureau's designated accounts payable person would review the scope of services listed on the invoice, match it to the scope of services listed on the purchase order, create a payment request, which is reviewed and approved by the approving manager, and the payment for the invoice is drawn against the existing purchase order.

Following the above best practices would have prevented all of the spending in excess of Spending and Contracted Authority under an appropriate practices model, between FYs 2008-2014.

- Only three to eight purchase orders would have been created. (3, if purchase orders can encompass more than one fiscal year and 8, if not.) Instead, there were 84 purchase orders created to encumber funds and/or pay PSI between FYs 2008-2014.
- The supporting documentation of the Resolution and the executed contract would only be used to support three to eight purchase orders. Instead, Resolution No. 83574 was notated as supporting documentation 15 times to create purchase orders encumbering a total of \$427,930 when the authorized Spending Authority for FYs 2012-2014 was \$300,000. Resolution No. 80045 was notated as supporting documentation 12 times to create purchase orders encumbering a total of \$358,221 when the authorized Spending Authority from FYs 2008-2011 was \$617,000.
- The supporting documentation of the Resolution and the executed contract scope of services would be used to create purchase orders that matched those scope of services instead;
 - Resolution No. 83574, which was for maintenance and support services, was erroneously referenced to create purchase orders for the online business tax system and printing and mailing services that were not within the scope of the Resolution.
 - Resolution No. 80045, which was for purchase and implementation of the system, and support and maintenance services, was erroneously used for printing and mailing services that were not within the scope of the Resolution. Furthermore, it was used as supporting documentation as late as June 2012, as opposed to June 2010, when the final payment for maintenance and support services provided under that Resolution was due.

Corrective Action

The Bureau and the Administration recognize the seriousness of this issue and is taking steps to ensure that long-term changes are implemented to prevent this from happening in the future.

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Since discovery of the spending in excess of Contracted and Spending Authority the City has adopted the following practices to prevent this from reoccurring:

1. There has been a realignment of staff responsibilities within the Bureau so that contracting procedures are thoroughly adhered to in accordance with City purchasing policies.
2. Training has been provided to all parties in the Bureau that are involved in procurement of goods and services.
3. The Bureau is working with the Controller's office, Contract and Compliance, and other stakeholders to review and document current practices to identify contract and procurement process improvements and proper oversight.
4. Appropriate practices for budget and contract management have been implemented.
 - a. The Bureau's buyer is required to encumber all funds for a designated contract or resolution, no partial encumbrances will be permitted.
 - b. Purchase orders for contracted services will not be established without an executed contract and prior City Council approval, where applicable.
 - c. Purchase orders are required to reflect the negotiated scope of services reflected in the executed contract and/or the City Council approved Resolution.

For questions regarding this report, please contact David McPherson, Revenue & Tax Administrator, at 510-238-6650.

Respectfully submitted,



David McPherson
Revenue & Tax Administrator
Revenue Management Bureau

Prepared by:
Margaret O'Brien, Principal Revenue Analyst
Revenue Management Bureau

Attachments: Resolution Nos. 83574 C.M.S. and 80045 C.M.S

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June 17, 2014

2011 SEP 15 PM 1:08

OAKLAND CITY COUNCIL

Resolution No. 83574 C.M.S.

Resolution Authorizing the City Administrator to Extend the Term of the Current Contract with Progressive Solutions Inc., (PSI) for an Automated Local Tax System Software Maintenance and Support Services for a Period of Three Years In an Amount Not to Exceed \$100,000 per Year with Two Optional Annual Extensions for an Amount Not to Exceed 10% of the Prior Year's Maintenance and Support Services Cost

WHEREAS, the City staff have completed detailed specifications for a new local tax system, and conducted a thorough research and evaluation process to find a viable local tax system that would meet the City's unique requirements; and

WHEREAS, the City staff reviewed product demonstrations from the three leading system vendors, conferred with major enterprise system vendors, surveyed local tax systems used by other California cities and reviewed their local competitive bidding process, performed in depth interviews with those cities who purchased Progressive Solutions Inc. system, and learned that those cities that chose Progressive Solutions Inc. system were extremely satisfied; and

WHEREAS, as a result of the above evaluation processes, staff determined that the local tax system from Progressive Solutions, Inc. was the only viable system that would meet the City's unique requirements; and

WHEREAS, on July 16, 2006, the City Council approved Resolution Number 80045 C.M.S., and awarded the contract to Progressive Solutions, Inc. for an automated local tax system and maintenance support services agreement.

WHEREAS, the original contract term was for a period of three years; and

WHEREAS, the City wishes to extend the term of the current service contract with Progressive Solutions Inc. for an automated local tax system maintenance and support services for a period of three years in an amount not to exceed \$100,000 per year and with two optional annual extensions for an amount not to exceed 10% of the prior year's maintenance and support services cost; and

WHEREAS, the new software maintenance and support services contract term will be for three years commencing July 1, 2011 through June 30, 2014; and

WHEREAS, the City is currently paying approximately \$80,000 for the annual maintenance costs; and

WHEREAS, the Funding for this contract is allocated under Miscellaneous Contract Services Account (54919), Revenue Division's Organization Numbers (08421 & 08441) and General Purpose Fund (1010) and Mandatory Garbage Fund (1700); now, therefore, be it

RESOLVED: That the City Administrator is hereby authorized to extend the term of the software maintenance contract for a period of three years in an amount not to exceed \$100,000 per year and with two optional annual extensions in an amount not to exceed 10% of the prior year's maintenance and support services cost; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code Section 2.04.051B and findings set forth in the City Administrator's report accompanying this item, the City Council finds and determines that is in the best interest of the City to waive the competitive request for proposal/qualifications process for this contract and so waives the requirement.

IN COUNCIL, OAKLAND, CALIFORNIA,
PASSED BY THE FOLLOWING VOTE:

OCT 4 2011

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF AND PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

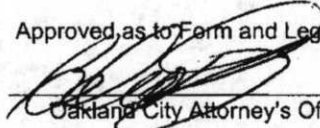
ATTEST:


LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland, California

05 OCT 27 11 0:14

Approved, as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 80045 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO WAIVE COMPETITIVE BIDDING AND ENTER INTO A NEGOTIATED CONTRACT WITH PROGRESSIVE SOLUTIONS, INC. FOR AN AUTOMATED LOCAL TAX SYSTEM AND MAINTENANCE AND SUPPORT SERVICES FOR A PERIOD OF THREE YEARS IN AN AMOUNT NOT TO EXCEED SIX HUNDRED SEVENTEEN THOUSAND DOLLARS (\$617,000.00)

WHEREAS, the City needs a new local tax system to improve customer service, efficiencies, revenue generation, and access to on-line services via the Internet; and

WHEREAS, City staff have completed detailed specifications for a new local tax system, and conducted a thorough research and evaluation process to find a viable local tax system that would meet the City's unique requirements; and

WHEREAS, City staff reviewed product demonstrations from the three leading system vendors, conferred with major enterprise system vendors, surveyed local tax systems used by other California cities and reviewed their local competitive bidding process, performed in-depth interviews with those cities who purchased Progressive Solutions Inc. system, and learned that those cities that chose Progressive Solutions Inc. system were extremely satisfied; and

WHEREAS, As a result of the above evaluation processes, staff determined that the local tax system from Progressive Solutions, Inc. is the only viable system that will meet the City's unique requirements; and

WHEREAS, the services to be provided under the Progressive Solutions, Inc. contract are of a technical, professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service; and

WHEREAS, the first year cost to purchase the system is available: within the General Purpose Fund (1010), Revenue Administration Organization (08411), MG Electronic System Project (A145320) totaling \$125,533; Revenue Audit Organization (08421) totaling \$17,000; Rent Adjustment Organization (88969), Rent Arbitration Project (P190010), totaling \$50,000; Mandatory Refuse Fund (1700), Revenue Collections Organization (08441), MG Electronic System Project (A145310), totaling \$265,535; Revenue Administration Organization (08411), Citywide Imaging Project

(P238810), totaling \$36,932; Excess Litter Fee Fund (2417), Excess Litter Fee Organization (08432), totaling \$10,000; now, therefore, be it

RESOLVED, That pursuant to the Oakland Municipal Code Title 2, Chapter 2.04, Articles 2.04.050.1.5 and 2.04.051.B, the City Council finds and determines that it is in the best interests of the City to waive the competitive bid process for new local tax system software and equipment because Progressive Solutions Inc.'s local tax system is the only viable system that will meet the City's unique requirements; and, be it

FURTHER RESOLVED, six other California cities completed their competitive bidding process to discover that Progressive Solutions, Inc. system was superior to all other systems on the market, and the City wishes to implement a new local tax system prior to the upcoming tax renewal season in order to improve customer service, revenues collected and efficiencies; and, be it

FURTHER RESOLVED, That the City Administrator is authorized to enter into a negotiated contract with Progressive Solutions, Inc. for an automated local tax system and maintenance and support services for a period of three (3) years for an amount not-to-exceed six hundred seventeen thousand dollars (\$ 617,000.00); and, be it

FURTHER RESOLVED, That the Office of the City Attorney will approve the contract as to form and legality, and a copy will be on file in the Office of the City Clerk; and, be it

FURTHER RESOLVED, That the City Administrator is hereby directed to secure contractual terms in the Progressive Solutions Inc. contract whereby Progressive Solutions, Inc. will be required to refund all monies paid by the City in the event that the software does not work or perform to the City's satisfaction.

IN COUNCIL, OAKLAND, CALIFORNIA,

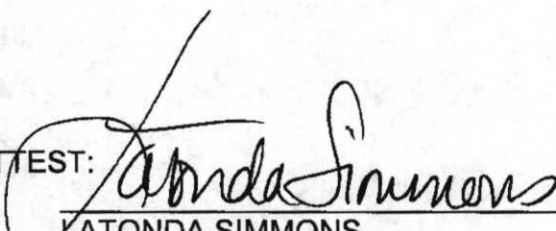
JUL 18 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG,
AND PRESIDENT DE LA FUENTE - 8

NOES - 0
ABSENT - 0
ABSTENTION - 0

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

DRAFT

City Attorney

OAKLAND CITY COUNCIL

2014 JUN 12 PM 1:40

RESOLUTION No. _____ C.M.S.

RESOLUTION WAIVING REQUEST FOR PROPOSALS ("RFP"), COMPETITIVE SELECTION ADVERTISING AND COMPETITIVE BIDDING REQUIREMENTS, AND AUTHORIZING THE CITY ADMINISTRATOR TO: (i) AMEND THE AGREEMENT WITH PROGRESSIVE SOLUTIONS, INC., BY INCREASING THE AGREEMENT COMPENSATION BY ONE MILLION, SIX HUNDRED ELEVEN THOUSAND, TEN DOLLARS (\$1,611,010) THREE HUNDRED SEVENTY-THREE THOUSAND, EIGHT HUNDRED TWENTY DOLLARS (373,820) FOR FISCAL YEAR 2014-15 FOR A TOTAL AMOUNT NOT TO EXCEED TWO MILLION, TWO HUNDRED TWENTY-EIGHT THOUSAND, TEN DOLLARS (\$2,228,010) NINE HUNDRED NINETY THOUSAND, EIGHT HUNDRED TWENTY DOLLARS (\$990,820); FOR SYSTEM MAINTENANCE AND SUPPORT SERVICES, HARDWARE (NEW AND REPLACEMENT), TRAINING/PAYMENT CARD SECURITY COMPLIANCE SERVICES ("PCI COMPLIANCE"), CERTIFICATES, FORMS, LETTERS AND MAILING, AND WEBHOSTING SERVICES, AND COMPLETION OF THE IMPLEMENTATION OF THE ONLINE BUSINESS TAX. AND (ii) ~~EXECUTING ONE OPTIONAL ANNUAL EXTENSION FOR FISCAL YEAR 2014-15 WITH ONE REMAINING OPTIONAL ANNUAL EXTENSION IN AN AMOUNT NOT TO EXCEED THREE HUNDRED THIRTY-EIGHT THOUSAND, NINE HUNDRED SIXTY-THREE DOLLARS (\$338,963) FOR FISCAL YEAR 2015-16.~~

WHEREAS, on July 18, 2006, the City Council approved Resolution No. 80045 authorizing the City Administrator to enter into a negotiated Contract with Progressive Solutions Inc. ("PSI"), for an automated local tax system software, and maintenance and support services for a period of three years, in an amount not to exceed six hundred seventeen thousand dollars (\$617,000); and

WHEREAS, on May 17, 2007, the City executed an Agreement for License of Software, Purchase of Equipment, Information Technology Services, and for Maintenance and Support Services ("Agreement") with Progressive Solutions, Inc.; and

WHEREAS, on October 4, 2011, the City Council approved Resolution No. 83574, authorizing the City Administrator to extend the term of the Agreement for a period of three years in an amount not to exceed one hundred thousand dollars (\$100,000) per year, with two optional annual extensions for an amount not to exceed ten percent (10%) of the prior year's maintenance and support services cost; and

WHEREAS, at the June 27, 2013 special meeting of the Oakland City Council, the Council approved Resolution 84466 adopting the FY2013-15 Policy Budget ("Budget") and, as part of the Budget, appropriated funds in the amount of one hundred seventy-six thousand dollars (\$176,000) in FY2013-14 and sixteen thousand dollars (\$16,000) in FY2014-15 for an online

business tax renewal software application; and

WHEREAS, a First Amendment to the Agreement was not executed with the approval of either Resolution No. 83574 in 2011 or Resolution No.84466 in 2013, and the original Agreement expired on June 30, 2010; and

WHEREAS, while the Council actions established spending authority in a total amount not to exceed one million, three hundred forty thousand dollars (\$1,340,000) through FY2015-16, there is no contractual authority between the City and PSI in excess of the original contracted amount of six hundred seventeen thousand dollars (\$617,000) and original scope of work; and

WHEREAS, since implementation of the Agreement, the scope of work has expanded to include, not only the online renewal system, but also printing and mailing of associated forms, letters and certificates, replacement hardware and necessary training and PCI compliance services; and

WHEREAS, upon the reviewing the expenditures against the Agreement, it was noted that expenditures have exceeded spending authority from FY2007-08 through FY2013-14 by approximately seven hundred fifty five thousand, six hundred thirty five dollars (\$755,635) and exceeded contract authority for the same period by one million, two hundred thirty one thousand, six hundred thirty five dollars (\$1,231,635); and

WHEREAS, there is a need to execute a First Amendment to the Agreement with PSI,(i) in the amount of one million, six hundred eleven thousand, ten dollars (\$1,611,010) three hundred seventy-three thousand, eight hundred twenty dollars (\$373,820) for Fiscal Year 2014-15, for a total Agreement amount not to exceed two million, two hundred twenty eight thousand, ten dollars (\$2,228,010) nine hundred ninety thousand, eight hundred twenty dollars (\$990,820) and, (ii) amend the scope of work to include maintenance, form, letter certificates and mailing, Web applications and support, a contingency for replacement hardware, and training and PCI compliance services, and completion of implementation of the online business tax program, and (iii) exercise an optional annual extension for July 1, 2014 through June 30, 2015; and

WHEREAS, the Amendment includes a true-up of fiscal and contractual authority in the amount of one million, nine thousand, ten dollars (\$1,009,010) for Fiscal Years 2008-2015 of which six hundred seventy eight thousand, five hundred seventy one dollars (\$678,571) was expended in previous fiscal years and has no impact on Fiscal Years 2013-14 or 2014-15; and

WHEREAS, funds in the amount of three hundred ten thousand, two hundred eighty-two dollars the fiscal impact for the remainder of FY 2013-14 is seven thousand, four hundred eighteen dollars (\$7,418) and funds are available in the Finance Department operating budget, General Purpose Fund (1010), Revenue Management Bureau, Business Tax Customer Service Unit (08431); and

WHEREAS, funds in the amount of sixty-three thousand, five hundred thirty-eight dollars (\$63,538) are available for the continued implementation of the online business tax renewal software application in the Finance Department operating budget, General Purpose Fund (1010), Revenue Management Bureau Business Tax Customer Service Unit (08431), Account (54919), Project (A468510), Program (IP59); and

WHEREAS, FY 2014-15, budgeted costs are three hundred seventy nine thousand, three hundred seventy five dollars (\$379,375); of that amount forty nine thousand, nine hundred dollars (\$49,900) is encumbered and available in General Purpose Fund (1010), Revenue

~~Management Bureau, Business Tax Customer Service Unit (08431), Account 52213; for the remaining three hundred twenty nine thousand, four hundred seventy five dollars (\$329,475) sufficient funds are available in the Finance Department's FY 2014-15 adopted Operating Budget, General Purpose Fund (1010), Revenue Management Bureau, Business Tax Customer Service Unit (08431);~~

WHEREAS, Oakland Municipal Code section 2.04.050.A requires the City Administrator to conduct advertising and bidding and award to the lowest responsible, responsive bidder for the purchase of products or goods, and Oakland Municipal Code section 2.04.050.I.5 allows Council to waive advertising and bidding requirements upon a finding by the Council that it is in the best interest of the City to do so; and

WHEREAS, Oakland Municipal Code section 2.04.051.A requires the City Administrator to conduct a request for proposals/qualifications (RFP/Q) process for professional services contracts in excess of \$25,000 and Oakland Municipal Code section 2.04.051.B allows Council to waive the RFP/Q requirements upon a finding by the Council that it is in the best interest of the City to do so; and

WHEREAS, City staff recommends waiving the RFP, advertising and bidding requirements for this contract because it is in the best interests of the City to do so since (a) the requested Council action is authorization to execute a First Amendment to the Contract as was previously authorized by Resolution 83574 C.M.S; (b) PSI is the existing contractor that has the requisite experience and knowledge of the City's business tax information technology system; and (c) conducting an RFP would take several months and cause delay and disruption in the City's business tax operations due to the need to select and transition the system to another contractor; and

WHEREAS, the City Administrator has determined that this contract is of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; and

WHEREAS, Oakland Municipal Code section 2.04.020.B requires Council approval of contracts for technology-related professional products or goods in excess of \$50,000: now, therefore, be it

RESOLVED: That pursuant to OMC 2.04.050.I.5 and the for the reasons stated above and in the City Administrator's report accompanying this item, the City Council finds that it is in the best interests of the City to waive advertising and bidding requirements for this contract and so waives the requirements; and be it

FURTHER RESOLVED: That pursuant to OMC 2.04.051.B and the for the reasons stated above and in the City Administrator's report accompanying this item, the City Council finds that it is in the best interests of the City to waive the Request for Proposals/Qualifications (RFP/Q) requirements for this contract and so waives the requirements; and be it

FURTHER RESOLVED: That based on information provided by the City Administrator, the Council finds that this contract is of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland hereby authorizes (i) the City Administrator to execute a First Amendment to the Agreement with

Progressive Solutions, Inc., increasing Agreement compensation ~~one million six hundred eleven thousand ten dollars (\$1,611,010)~~ three hundred seventy-three thousand, eight hundred twenty dollars (\$373,820) for Fiscal Year 2014-15, for a total Agreement compensation not to exceed ~~two million, two hundred twenty-eight thousand, ten dollars (\$2,228,110)~~ nine hundred ninety thousand, eight hundred twenty dollars (\$990,820); and (ii) amends the scope of work to include system maintenance and support services, hardware (new and replacement), training/payment card security compliance services, certificates, forms, letters and mailing, and webhosting services, and completion of the implementation of the online business tax program., ~~and (iii) executes one optional annual extension for Fiscal Year 2014-15 with one remaining optional annual in an amount not to exceed three hundred thirty-eight thousand, nine hundred sixty-three dollars (\$338,963) for Fiscal Year 2015-16.~~

FURTHER RESOLVED: That the contract shall be reviewed and approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

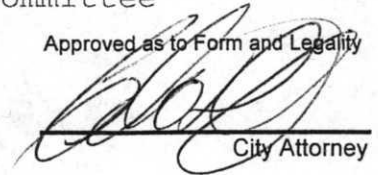
ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2014 JUN 12 PM 4 **RESOLUTION No.** _____ **C.M.S.**

RESOLUTION WAIVING REQUEST FOR PROPOSALS ("RFP"), COMPETITIVE SELECTION ADVERTISING AND COMPETITIVE BIDDING REQUIREMENTS, AND AUTHORIZING THE CITY ADMINISTRATOR TO: (i) AMEND THE AGREEMENT WITH PROGRESSIVE SOLUTIONS, INC., BY INCREASING THE AGREEMENT COMPENSATION BY ONE MILLION, SIX HUNDRED ELEVEN THOUSAND, TEN DOLLARS (\$1,611,010) THREE HUNDRED SEVENTY-THREE THOUSAND, EIGHT HUNDRED TWENTY DOLLARS (373,820) FOR FISCAL YEAR 2014-15 FOR A TOTAL AMOUNT NOT TO EXCEED TWO MILLION, TWO HUNDRED TWENTY EIGHT THOUSAND, TEN DOLLARS (\$2,228,010) NINE HUNDRED NINETY THOUSAND, EIGHT HUNDRED TWENTY DOLLARS (\$990,820); FOR SYSTEM MAINTENANCE AND SUPPORT SERVICES, HARDWARE (NEW AND REPLACEMENT), TRAINING/PAYMENT CARD SECURITY COMPLIANCE SERVICES ("PCI COMPLIANCE"), CERTIFICATES, FORMS, LETTERS AND MAILING, AND WEBHOSTING SERVICES, AND COMPLETION OF THE IMPLEMENTATION OF THE ONLINE BUSINESS TAX. AND (ii) ~~EXECUTING ONE OPTIONAL ANNUAL EXTENSION FOR FISCAL YEAR 2014-15 WITH ONE REMAINING OPTIONAL ANNUAL EXTENSION IN AN AMOUNT NOT TO EXCEED THREE HUNDRED THIRTY EIGHT THOUSAND, NINE HUNDRED SIXTY THREE DOLLARS (\$338,963) FOR FISCAL YEAR 2015-16.~~

WHEREAS, on July 18, 2006, the City Council approved Resolution No. 80045 authorizing the City Administrator to enter into a negotiated Contract with Progressive Solutions Inc. ("PSI"), for an automated local tax system software, and maintenance and support services for a period of three years, in an amount not to exceed six hundred seventeen thousand dollars (\$617,000); and

WHEREAS, on May 17, 2007, the City executed an Agreement for License of Software, Purchase of Equipment, Information Technology Services, and for Maintenance and Support Services ("Agreement") with Progressive Solutions, Inc.; and

WHEREAS, on October 4, 2011, the City Council approved Resolution No. 83574, authorizing the City Administrator to extend the term of the Agreement for a period of three years in an amount not to exceed one hundred thousand dollars (\$100,000) per year, with two optional annual extensions for an amount not to exceed ten percent (10%) of the prior year's maintenance and support services cost; and

WHEREAS, at the June 27, 2013 special meeting of the Oakland City Council, the Council approved Resolution 84466 adopting the FY2013-15 Policy Budget ("Budget") and, as part of the Budget, appropriated funds in the amount of one hundred seventy-six thousand dollars (\$176,000) in FY2013-14 and sixteen thousand dollars (\$16,000) in FY2014-15 for an online

business tax renewal software application; and

WHEREAS, a First Amendment to the Agreement was not executed with the approval of either Resolution No. 83574 in 2011 or Resolution No.84466 in 2013, and the original Agreement expired on June 30, 2010; and

~~**WHEREAS**, while the Council actions established spending authority in a total amount not to exceed one million, three hundred forty thousand dollars (\$1,340,000) through FY2015-16, there is no contractual authority between the City and PSI in excess of the original contracted amount of six hundred seventeen thousand dollars (\$617,000) and original scope of work; and~~

WHEREAS, since implementation of the Agreement, the scope of work has expanded to include, not only the online renewal system, but also printing and mailing of associated forms, letters and certificates, replacement hardware and necessary training and PCI compliance services; and

~~**WHEREAS**, upon the reviewing the expenditures against the Agreement, it was noted that expenditures have exceeded spending authority from FY2007-08 through FY2013-14 by approximately seven hundred fifty five thousand, six hundred thirty five dollars (\$755,635) and exceeded contract authority for the same period by one million, two hundred thirty one thousand, six hundred thirty five dollars (\$1,231,635); and~~

WHEREAS, there is a need to execute a First Amendment to the Agreement with PSI,(i) in the amount of one million, six hundred eleven thousand, ten dollars (\$1,611,010) three hundred seventy-three thousand, eight hundred twenty dollars (\$373,820) for Fiscal Year 2014-15, for a total Agreement amount not to exceed two million, two hundred twenty-eight thousand, ten dollars (\$2,228,010) nine hundred ninety thousand, eight hundred twenty dollars (\$990,820) and, (ii) amend the scope of work to include maintenance, form, letter certificates and mailing, Web applications and support, a contingency for replacement hardware, and training and PCI compliance services, and completion of implementation of the online business tax program, and (iii) exercise an optional annual extension for July 1, 2014 through June 30, 2015; and

~~**WHEREAS**, the Amendment includes a true up of fiscal and contractual authority in the amount of one million, nine thousand, ten dollars (\$1,009,010) for Fiscal Years 2008-2015 of which six hundred seventy-eight thousand, five hundred seventy-one dollars (\$678,571) was expended in previous fiscal years and has no impact on Fiscal Years 2013-14 or 2014-15; and~~

WHEREAS, funds in the amount of three hundred ten thousand, two hundred eighty-two dollars the fiscal impact for the remainder of FY 2013-14 is seven thousand, four hundred eighteen dollars (\$7,418) and funds are available in the Finance Department operating budget, General Purpose Fund (1010), Revenue Management Bureau, Business Tax Customer Service Unit (08431); and

WHEREAS, funds in the amount of sixty-three thousand, five hundred thirty-eight dollars (\$63,538) are available for the continued implementation of the online business tax renewal software application in the Finance Department operating budget, General Purpose Fund (1010), Revenue Management Bureau Business Tax Customer Service Unit (08431), Account (54919), Project (A468510), Program (IP59); and

WHEREAS, FY 2014-15, budgeted costs are three hundred seventy-nine thousand, three hundred seventy-five dollars (\$379,375); of that amount forty-nine thousand, nine hundred dollars (\$49,900) is encumbered and available in General Purpose Fund (1010), Revenue Management Bureau, Business Tax Customer Service Unit (08431), Account 52213; for the

remaining three hundred twenty nine thousand, four hundred seventy five dollars (\$329,475) sufficient funds are available in the Finance Department's FY 2014-15 adopted Operating Budget, General Purpose Fund (1010), Revenue Management Bureau, Business Tax Customer Service Unit (08431);

WHEREAS, Oakland Municipal Code section 2.04.050.A requires the City Administrator to conduct advertising and bidding and award to the lowest responsible, responsive bidder for the purchase of products or goods, and Oakland Municipal Code section 2.04.050.I.5 allows Council to waive advertising and bidding requirements upon a finding by the Council that it is in the best interest of the City to do so; and

WHEREAS, Oakland Municipal Code section 2.04.051.A requires the City Administrator to conduct a request for proposals/qualifications (RFP/Q) process for professional services contracts in excess of \$25,000 and Oakland Municipal Code section 2.04.051.B allows Council to waive the RFP/Q requirements upon a finding by the Council that it is in the best interest of the City to do so; and

WHEREAS, City staff recommends waiving the RFP, advertising and bidding requirements for this contract because it is in the best interests of the City to do so since (a) the requested Council action is authorization to execute a First Amendment to the Contract as was previously authorized by Resolution 83574 C.M.S; (b) PSI is the existing contractor that has the requisite experience and knowledge of the City's business tax information technology system; and (c) conducting an RFP would take several months and cause delay and disruption in the City's business tax operations due to the need to select and transition the system to another contractor; and

WHEREAS, the City Administrator has determined that this contract is of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; and

WHEREAS, Oakland Municipal Code section 2.04.020.B requires Council approval of contracts for technology-related professional products or goods in excess of \$50,000: now, therefore, be it

RESOLVED: That pursuant to OMC 2.04.050.I.5 and the for the reasons stated above and in the City Administrator's report accompanying this item, the City Council finds that it is in the best interests of the City to waive advertising and bidding requirements for this contract and so waives the requirements; and be it

FURTHER RESOLVED: That pursuant to OMC 2.04.051.B and the for the reasons stated above and in the City Administrator's report accompanying this item, the City Council finds that it is in the best interests of the City to waive the Request for Proposals/Qualifications (RFP/Q) requirements for this contract and so waives the requirements; and be it

FURTHER RESOLVED: That based on information provided by the City Administrator, the Council finds that this contract is of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland hereby authorizes (i) the City Administrator to execute a First Amendment to the Agreement with Progressive Solutions, Inc., increasing Agreement compensation ~~one million six hundred eleven thousand ten dollars (\$1,611,010)~~ three hundred seventy-three thousand, eight hundred twenty

~~dollars (\$373,820) for Fiscal Year 2014-15, for a total Agreement compensation not to exceed two million, two hundred twenty eight thousand, ten dollars (\$2,228,110) nine hundred ninety thousand, eight hundred twenty dollars (\$990,820); and (ii) amends the scope of work to include system maintenance and support services, hardware (new and replacement), training/payment card security compliance services, certificates, forms, letters and mailing, and webhosting services, and completion of the implementation of the online business tax program. , and (iii) executes one optional annual extension for Fiscal Year 2014-15 with one remaining optional annual in an amount not to exceed three hundred thirty eight thousand, nine hundred sixty three dollars (\$338,963) for Fiscal Year 2015-16.~~

FURTHER RESOLVED: That the contract shall be reviewed and approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California