



Office of the City Manager

CONSENT CALENDAR
December 13, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Farimah Brown, City Attorney
Subject: Waiver of the Sanctuary City Contracting Ordinance's Requirements for AG Witt, LLC Contract

RECOMMENDATION

Adopt a Resolution approving a waiver of the Sanctuary City Contracting ordinance's requirements for the City's FEMA Cost-Recovery Contract with AG Witt LLC.

FISCAL IMPACT

Likely none as the City will be seeking reimbursement through the Federal Emergency Management Agency (FEMA) Public Assistance Program for the costs of the AG Witt contract.

CURRENT SITUATION AND ITS EFFECTS

Since June 2020, AG Witt, LLC has been providing the City with support in developing and submitting reimbursement requests to the FEMA Public Assistance Program for costs incurred during the COVID-10 pandemic. Due to the urgency surrounding this process and the need to comply with federal contracting rules in place at the time, a Sanctuary City compliance certification was not obtained at the time the contract was initially entered into. Although AG Witt has attested that it does not provide any services prohibited by Chapter 13.105, a retroactive waiver is being sought out of an abundance of caution.

BACKGROUND

As part of the City's COVID-19 response, the City underwent a Request for Proposal process to retain a firm to provide disaster cost recovery consulting services. After a selection process that included interviews with the top two responders, the City's evaluation team consisting of representatives from the offices of the City Manager, City Auditor, City Attorney and the Office of Emergency Services, determined that the best qualified firm meeting the City's needs was AG Witt, LLC. In June 2020, the City entered into a contract with AG Witt.

The work AG Witt has done has been extremely helpful in developing policies and processes related to the COVID-19 response. AG Witt has helped the City to prepare

and submit cost reimbursement requests to the FEMA and the California Governor's Office of Emergency Services.

The Sanctuary City Contracting Ordinance prohibits contracting with an entity that provides “data broker” or “extreme vetting” services to the United States Immigration and Customs Enforcement Department unless a waiver is granted by the Council. An AG Witt LLC representative has attested that it does not provide any of the prohibited services and the City is unaware of any information that would contradict this statement. However, because a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a formal Sanctuary City compliance certification from AG Witt, LLC, a retroactive waiver is being sought out of an abundance of caution.

The waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC is not a data broker and is not engaged in “extreme vetting.” 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 states and localities engaged in “Sanctuary City” activities, and the use of the Sanctuary City Contracting Ordinance notices and affidavit would have likely invited the Trump Administration to deny FEMA reimbursement for the substantial expenses incurred by the City in responding to the pandemic. The City has already applied for approximately \$500,000 in reimbursements and the City has no alternative source for this funding.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

RATIONALE FOR RECOMMENDATION

Based on the information described above, the waiver is being sought out of an abundance of caution.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. ##,###-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 is 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.

