

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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Michael J. Aguirre
CITY ATTORNEY

June 20, 2005

REPORT TO THE COMMITTEE ON
GOVERNMENT EFFICIENCY AND OPENNESS

ENFORCEMENT OF CHARTER SECTION 225

INTRODUCTION

In 1992, the San Diego City Charter [Charter] was amended to add section 225 "Mandatory Disclosure of Business Interests." This section imposes a mandatory disclosure of the name and identity of any and all persons who are involved in transacting business with the City. A failure to fully disclose the required information shall be grounds for denial of any application or proposed transaction, and "may result in forfeiture of any and all rights and privileges that have been granted." The Charter section states:

Section 225: Mandatory Disclosure of Business Interests

No right, title or interest in the City's real or personal property, nor any right, title or interest arising out of a contract, or lease, may be granted or bargained pursuant to the City's general municipal powers or otherwise, nor any franchise, right or privilege may be granted pursuant to Section 103 or 103.1 of this Charter, unless the person applying or bargaining therefor makes a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the application or proposed transaction and the precise nature of all interests of all persons therein.

Any transfer of rights, privileges or obligations arising from a franchise, right or privilege granted under Charter Section 103 or 103.1, or any transfer of any right, title or interest in the City's real or personal property, or any right, title or interest arising out of a contract, or lease, which may be granted or bargained pursuant to the City's general municipal powers or otherwise, shall also require a full and complete disclosure as set forth above.

Failure to fully disclose all of the information enumerated above shall be grounds for denial of any application or proposed transaction or transfer and may result in forfeiture of any and all rights and privileges that have been granted heretofore.

For purposes of this Charter section, the term "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity. (Emphasis added).

According to the ballot argument, the Charter section 225 requirements arose out of concerns by the Mayor and members of the City Council that they should be given certain information with regard to persons proposing to transact business with the City. The measure passed with more than 86% of voters approving the amendment. Shortly after the enactment of Charter section 225, this Office prepared a draft Council Policy to provide guidelines on implementation. It is not clear why the policy was never formally reviewed and adopted. Nonetheless, the City has been requiring disclosure for some contracts and real property transactions but compliance does not appear to be standardized throughout the City.

DISCUSSION

A. Current Compliance

In response to a request made by Councilmember Frye at a City Council meeting, the City Manager's Office, through its Council Liaison, has been providing the City Council with information regarding the ownership of companies doing business with the City before such items of business appear on the docket. For example, a March 14, 2005, memorandum detailing the ownership information for various items appearing on the March 14-15, 2005, docket is attached for your review. (See Attachment 1). When one of those items (the matter of renaming the San Diego Sports Arena) came before the City Council at that meeting, supporting information from the City Manager stated that the "the naming rights entity must not be in violation of Charter Section 225 or Council Policy 000-04." A copy of the minutes from the March 14, 2005, meeting reflecting that statement is attached. (See Attachment 2).

Additionally, the Engineering and Capital Projects Department presently requires each company seeking to contract with the City for a public works project exceeding \$250,000 to submit a pre-qualification questionnaire disclosing a variety of information regarding officers and owners of the company. For example, in the case of corporations, the questionnaire seeks the name, position, number of years with the corporation, ownership percentage, and taxpayer identification number for every officer of the company and for every person who owns at least ten percent of the corporation's stock. The questionnaire also requires the disclosure of every company such persons have been associated with over the past five years. If the company is a subsidiary, parent, or holding company, then information regarding that business relationship must be disclosed. A copy of the pre-qualification questionnaire is attached. (See Attachment 3).

There also is some degree of Charter section 225 compliance with regard to contracts for the lease of City real property. Attached are excerpts from several such contracts. One contract contains language stating that "Pursuant to City Charter section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease."

Another contract states: "All assignees and sublessees will be subject [to] review by the City, in accordance with City Charter Section 225, and shall be of good moral character with no prurient interests." (See Attachment 4). Our Office has also been advised by the Real Estate Assets Department that the disclosure of information required by Charter section 225 occurs when reviewing proposals or during lease negotiations that result from the issuance of request for proposals, and that disclosure requirements become incorporated into the contract.

The above are only examples as this Office did not do a City-wide survey of compliance with Charter section 225. However, it appears that there is a lack of uniformity and guidance with regard to the scope of the requirements and the methods of obtaining compliance. For this reason, and as addressed in the following paragraphs, we recommend that the City Council adopt a Council Policy establishing appropriate guidelines for ensuring compliance with Charter section 225.

B. 1992 Proposed Council Policy

Shortly after Charter section 225 went into effect in 1992, our Office drafted a Memorandum of Law [MOL] in response to an inquiry from the Property Department (now the Real Estate Assets Department) with regard to how the requirements of Charter section 225 would impact real property transactions. In the MOL, our Office confirmed that in accordance with Charter section 225, the City Council must be given the name and identity of all persons involved in the proposed transaction and the precise nature of all such interests. 1992 City Att'y MOL 430. (See Attachment 5).

The MOL also identified a problem with a literal interpretation of Charter section 225. "The above language taken literally would require the disclosure of the 'name and identity' of all the stockholders of General Motors together with the 'precise nature of all interests' of such stockholders in any proposed contracts General Motors may desire to enter into with the City. Obviously, it is neither practical nor desirable to interpret the Charter section to require such information." 1992 City Att'y MOL at 431.

At that time, our Office drafted a proposed Council Policy to address concerns regarding how much information would be required of parties transacting business with the City. That draft Council Policy, which is a part of the attached 1992 MOL, proposes thresholds of financial interest that would have to be met before disclosure is required. For example, it would require disclosure from a person who owns an interest representing five percent or more of the total ownership of an entity doing business with the City if that interest was worth \$10,000 or more. It would also require disclosure from any person that could reasonably anticipate benefiting from the transaction in the amount of \$10,000 or more. Under the proposed Council Policy, the disclosures would be made for contracts of any type requiring City Council approval.

It is not clear the extent to which any action or discussion took place with regard to the language we proposed in 1992. It is clear only that it was never adopted as an official Council Policy. Nonetheless, it appears that some disclosures are being made to the City Council. To ensure consistent compliance with Charter section 225, we recommend that the procedures be formalized through a new Council Policy.

CONCLUSION

Charter section 225 requires the disclosure of the name and identity of any person directly or indirectly involved in a transaction with the City. If interpreted literally, this Charter section would require an impractical amount of disclosure of individual interests, including information regarding each individual shareholder in any large company that transacts business with the City. This does not appear to be the intent of the disclosure requirements. Nonetheless, the disclosures must be made to the extent that the City Council can determine the identity of persons that have significant interests in the business transaction. The proposed Council Policy drafted by our Office in 1992 may be an appropriate starting point for discussion of these issues. This Office is ready to assist in the drafting of such guidelines and to provide advice on the appropriate level of disclosure after the committee's discussion on the Charter section requirements.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

MJA:CMB:jb
Attachments
RC-2005-15

City of San Diego
MEMORANDUM

DATE: March 14, 2005
TO: Honorable Mayor and City Council
FROM: Ed Plank, Council Liaison
SUBJECT: Ownership Information – Supplemental Item S406 included

The following information is being provided regarding ownership of companies doing business with the City of San Diego in the form of contracts, leases, or agreements. These items are on the Council docket of March 14 – 15, 2005.

Item No.	Subject	Name of Firm	Ownership Information
101	Award of Contract to Furnish Sodium Hypochlorite 12.5% in Solution	Pioneer Americas, I.I.C	Mike McGovern, Pres. Gary Pittman, CFO Kent Stephenson, VP General Council Jerry Bradley, VP Human Resources Ron Ciora, VP Sales & Marketing Dave Scholes, VP Manufacturing Mike Mazzarello, VP Logistics & Materials
102	Award of Contract to Furnish Ferrous Chloride	Kemiron Companies, Inc.	Lawrence Hjersted, Pres. Mel Blaine, Ops. Mgr. Spence Wolff, VP M Marketing Brian Wodeski, West Coast Logistics

Honorable Mayor and City Council
 March 14, 2005
 Ownership Information

105	Televising Sewer Mains Annual Contract Extension	Tran Consulting Engineers	Information requested.
107	Task Order for MEC Analytical Systems, Inc Regarding Mission Bay Source Identification Study	Weston Solutions, Inc.	William L. Robertson, Chairman Patrick G. McCann, CEO & President Vincent A. Laino Jr., CIO Privately held.
112	First Amendment to Consultant Agreement with Dokken Engineering for SR-163 and Friars Road	Dokken Engineering	Richard A. Dokken, PE, President Privately held.
113	Agreement with BRG Consulting Inc. for professional services to extend life of the Miramar Landfill	BRG Consulting, Inc.	Patricia A. Butler, Exec. President & CEO Erich R. Lathers, President & COO Privately held.
S406	Sports Arena Naming Rights Agreement	I Pay One, Inc.	Marc Gold Ron Blair Doug Manchester John Lynch Board of Directors: Sal Benti, President Ron Hahn Marc Gold Ted Eldredge

 ITEM-S406: Sports Arena Naming Rights Agreement.

(Midway/Pacific Highway Corridor Community Area. District 2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-925) ADOPTED AS RESOLUTION R-300235

Approving renaming the San Diego Sports Arena to "ipayOne Center";

Approving the identification signage as set forth in Section 4.2 of the Naming Rights Agreement between Arena Group 2000, L.P., and I Pay One, Inc.;

Approving the form of the Naming Rights Agreement.

CITY MANAGER SUPPORTING INFORMATION:

Arena Group 2000, L.P. ("AG 2000") is the operator of the San Diego Sports Arena ("Sports Arena"), under an Operating Sublease Agreement ("Operating Sublease"). Pursuant to Resolution No. 296247 dated April 2, 2002, the Mayor and Council authorized the City Manager to execute a fourth amendment to the Operating Sublease with AG 2000 which allows AG 2000 to enter into a naming rights agreement for the Sports Arena provided the following requirements are met:

- The identity of the naming rights entity and the identification signage shall be subject to prior written consent of the City, pursuant to City Council resolution.
- The form of the naming rights agreement shall be subject to the reasonable approval of the City.
- Consideration to the City will be 10% of the gross revenue derived from the naming rights agreement.
- The naming rights entity must not be in violation of Charter Section 225 or Council Policy 000-04.

Accordingly, AG 2000 has submitted the Naming Rights Agreement ("Agreement") entered into with I Pay One, Inc ("IPI"). IPI is a discount real estate brokerage firm, headquartered in Carlsbad. The following is an outline of the terms of the Agreement:

- Minimum term five years, maximum term to coincide with the expiration of the Operating Sublease (May 7, 2017).
- The Sports Arena will be known as the "ipayOne Center".
- The name and associated logo will be featured throughout the arena and on signage located in the arena parking lot, (The location of signage is specified in Section 4.2 of the Agreement. The ipayOne logo is also attached).
- IP1 will pay AG 2000 \$200,000 in the first year of the Agreement; \$500,000 in the second year; \$600,000 in the third, fourth and fifth years; and \$500,000 every year thereafter.

FISCAL IMPACT:

The City will receive \$20,000 in the first year of the Agreement (FY05); \$50,000 in the second year; \$60,000 in the third, fourth and fifth years; and \$50,000 every year thereafter.

Herring/Griffith/GJ

Staff: Gary Jones - (619) 236-6264

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:08 p.m. – 4:46 p.m.)

MOTION BY ZUCCHET TO ADOPT. Second by Maienschein. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-not present, Madaffer-nay, Inzunza-yea, Mayor Murphy-yea.



ITEM-S407: Retention of Outside Counsel in the Matter Related to De Anza Harbor and Resort.

(Mission Bay Community Area. District 6.)

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-950) TRAILED TO TUESDAY, MARCH 15, 2005

CITY OF SAN DIEGO
Engineering and Capital Projects



PRE-QUALIFICATION
QUESTIONNAIRE

PHASE I

(Revised - March, 2003)

PHASE I

Complete Part I before proceeding to Part II

PART I: ESSENTIAL REQUIREMENTS FOR PRE-QUALIFICATION

Firm Name

Firm Address

Phone and Fax Numbers

Date

1. Does the Contractor possess a valid and current California Contractor's license for the project, or projects, for which it intends to submit a bid?
 Yes No

2. Does the Contractor have a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$1,000,000 aggregate (will vary dependent upon project size)?
 Yes No

3. Does the Contractor have a current workers' compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.?
 Yes No Not Applicable - Contractor has no employees

4. Have you attached a copy of your most recent Compiled, Reviewed or Audited Financial Statements, including accompanying notes and supplemental information?
 Yes No

NOTE: The Accountant's/Auditor's Report must be dated within the last twelve (12) months. Also, see the "General Information" page of this packet for the type of Financial Statements required.

5. Have you attached a letter of bond-ability confirming name, address and telephone number of a contact for a California admitted surety company? The letter must also include both single and aggregate bonding capacity totals.
 Yes No

NOTE: This letter should be provided by the surety company or an authorized agent. A letter from an authorized agent must include a power of attorney and notary acknowledgment.

Contractor will be immediately disqualified if the answer to any of questions 1 through 5 is "No".

This document is not a public record.

NOTE: For purposes of this questionnaire, "Person" is defined as individuals who constitute the management of a corporate or other legal entity. Additionally, it includes any individual or other legal entity that: (a) directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a contract; or, (b) conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another person.

6. In the last five years, has any Person in your firm had their Contractors license revoked?
 Yes No
7. In the last five (5) years, has your firm, or any Person, been convicted of a crime involving the awarding of a contract of a government (local, state or federal) construction project, or the bidding or performance of a government contract?
 Yes No
8. In the last five (5) years, has your firm, or any Person, been "defaulted" or "terminated" by an owner (other than for convenience of the project owner) or has your surety completed a contract for your firm?
 Yes No
9. At the time of submitting this pre-qualification form, is your firm, or any Person, ineligible to bid on or be awarded any public works contract, or perform as a subcontractor on a public works contract?
 Yes No

If the answer is "Yes", state the beginning and ending dates of the period of debarment or non-responsibility: _____

10. Has your firm, or any Person, ever been found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?
 Yes No
11. In the last ten (10) years, has your firm, or any Person, ever been convicted of a crime involving any federal, state or local law related to construction, including acts of dishonesty?
 Yes No

Contractor will be immediately disqualified if the answer to either questions 6, 7, 8, 10 or 11 is "Yes". If the answer to question 9 is "Yes", and if debarment would be the sole reason for denial of pre-qualification, any pre-qualification issued will exclude the debarment period.

PHASE I

PART II: ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

A. Current Organization and Structure of the Business

For Firms that Are Corporations:

- 1a. Date incorporated: _____
- 1b. Under the laws of what state: _____
- 1c. Is the status of your corporation still valid? _____
- 1d. Provide all the following information for each Person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer) or (b) the owner of at least ten percent (10%) of the corporation's stock:

Name	Position	Years with Co.	% Ownership	Taxpayer Identification

- 1e. Identify every construction firm that any Person listed above has been associated with (as owner, general partner, limited partner or officer) in the last five (5) years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock if the business is a corporation.

Name	Construction Firm	Date of Participation with Firm

For Firms That Are Partnerships:

- 1a. Date of formation: _____
- 1b. Under the laws of what state: _____
- 1c. Is the status of your partnership still valid? _____
- 1d. Provide all the following information for each Person who owns ten percent (10%) or more of the firm:

Name	Position	Years with Co.	% Ownership	Taxpayer Identification

- 1e. Identify every construction firm that any Person listed above has been associated with (as owner, general partner, limited partner or officer) in the last five (5) years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock, if the business is a corporation.

Name	Construction Firm	Date of Participation with Firm

For Firms With a Joint Venture License:

- 1a. Date of commencement of joint venture _____
- 1b. Is the status of your joint venture still valid? _____
- 1c. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of Firm	% Ownership of Joint Venture

- 1d. Provide all the following information for each Person who owns ten percent (10%) or more of the joint venture:

Name	Position	Years with Co.	% Ownership	Taxpayer Identification

NOTE: New joint ventures are not excluded from forming on a project by project basis after the pre-qualification process. However, in such cases, all parties to the joint venture must have individually pre-qualified in order to bid with the City of San Diego as a joint venture.

For Firms That Are Sole Proprietorships:

- 1a. Date of commencement of business _____
- 1b. Social Security number of company owner _____
- 1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) in the last five (5) years.

Name	Construction Firm	Date of Participation with Firm

B. History of the Business and Organizational Performance

2. In the last five (5) years, have there been any changes in ownership of the firm?

Yes No

(If Yes, explain on a separate signed page)

NOTE: A corporation whose shares are publically traded is not required to answer this question.

3. Is the firm a subsidiary, parent, holding company or Person of another construction firm?

Yes No

(If Yes, explain on a separate signed page)

NOTE: Include information about other firms if one firm owns fifty percent (50%) or more of another, or if a Person of your firm holds a similar position in another firm.

4. Are any Persons in your firm associated with any other construction firms?

Yes No

(If Yes, explain on a separate signed page)

NOTE: Include information about other firms if any Person in your firm holds a similar position in another firm.

5. State your firm's gross revenues for the last three (3) years:

Year Ended	Gross Revenue

6. How many years has your firm been doing business in California as a contractor under your present business name and license number? _____ years

7. Is your firm currently in bankruptcy proceedings?

Yes No

(If Yes, attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.)

This document is not a public record.

8. If your firm is not currently in bankruptcy proceedings, has your firm filed for bankruptcy in the last five (5) years?
- Yes No
- (If Yes, please attach a copy of the bankruptcy petition showing the case number and the date on which the petition was filed, a copy of the Bankruptcy Court's discharge order, or if no discharge order was issued, any other document that ended the case.)

Licenses

9. List all California contractor license numbers, classifications and expiration dates held by your firm and its Persons: _____

10. If any of your firm's license(s) are held in the name of a corporation or partnership, list the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

11. In the last five (5) years, has your firm changed names or license numbers?
- Yes No
- (If Yes, explain on a separate signed page, including the reason for the change)
12. In the last five (5) years, has any Person in your firm operated a construction firm under any other name?
- Yes No
- (If Yes, list and explain on a separate signed page.)
13. In the last five (5) years, has any California State Licensing Board (CSLB) license held by your firm for its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended or revoked?
- Yes No
- (If Yes, explain on a separate signed page)

Disputes

14. In the last five (5) years, has your firm been assessed and paid liquidated damages after completion of a project under construction contract with either a public or private owner because of a delay not contemplated during the bid process?

Yes No

(If Yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.)

15. In the last five (5) years, has your firm, or any firm associated with your firm's Persons, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

Yes No

(If Yes, explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by, name of the company, the Person in your firm who was associated with that company, the year of the event, the owner of the project and the basis for the action.)

NOTE: "Associated with" refers to another construction firm in which a Person in your firm held a similar position, as listed in response to Question 1 in Part II of this form.

16. In the last five (5) years, has your firm been denied an award of a public works contract based on a finding by a public agency that your firm was not a responsible bidder as defined in San Diego Municipal Code Section 22.3003 ?

Yes No

(If Yes, explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.)

NOTE: Questions 17 and 18 refer only to disputes between your firm and the owner of a project. Do not include information about disputes between your firm and the supplier, another contractor, or subcontractor. Do not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner.

17. In the last five (5) years, have any complaints been filed in court against your firm concerning your firm's work on a construction project?

Yes No

(If Yes, on separate signed pages, identify the complaint(s) by providing the project name, date of the complaint, name of the plaintiff, a brief description of the nature of the complaint, the court in which the case was filed and a brief description of the status of the complaint pending or, if resolved, of the resolution.)

18. In the last five (5) years, has your firm filed a complaint in court against a project owner concerning work on a project or payment for a contract?

Yes No

(If Yes, on separate signed pages, identify the complaint(s) by providing the project name, date of the complaint, name of the entity (or entities) against whom the complaint was filed, a brief description of the nature of the complaint, the court in which the case was filed and a brief description of the status of the claim pending or, if resolved, of the resolution.)

19. In the last five (5) years, has any surety company made any payments, on your firm's behalf, to satisfy any claims made against a performance or payment bond issued in connection with a construction project, either public or private?

Yes No

(If yes, explain on separate signed pages)

20. Has your firm, or any Person, ever been found liable in a civil action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

(If Yes, explain on separate signed pages)

C. Compliance with Safety, Workers Compensation, Prevailing Wage, Apprentice Laws and EEO.

21. In the last five (5) years, has CAL OSHA cited and assessed penalties against your firm for any "serious", "willful" or "repeated" violations of its safety or health regulations?

Yes No

(If Yes, explain on separate signed pages)

NOTE: If you have filed an appeal of a citation, and the Occupational Health Appeals Board has not yet ruled on the appeal, you must answer "Yes" to this question.

22. In the last five (5) years, has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm?

Yes No

(If Yes, attach a separate signed page describing each citation)

23. In the last five (5) years, has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against your firm?

Yes No

(If Yes, explain on separate signed pages)

24. How often do you hold documented safety meetings for construction employees and field supervisors during the course of a project? _____

25. List your firm's Experience Modification Rate (EMR) - California workers' compensation insurance - for each of the past three (3) premium years:

Current year: _____

Last year: _____

Two years ago: _____

NOTE: If your EMR for any of these years rated 1.00 or higher, you may attach a letter of explanation.

26. In the last five (5) years, was there any occasion(s) which your firm was required, by a compliance agency, to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

Yes No

(If Yes, explain on separate signed pages)

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

27. In the last five (5) years, was there any occasion(s) which your firm was required, by a compliance agency, to pay either back wages or penalties for failure to comply with the Federal Davis-Bacon prevailing wage requirements?

Yes No

(If Yes, explain on separate signed pages)

28. If your firm operates its own State-approved apprenticeship program:

(a) Identify the craft(s) which your firm provided apprenticeship training in the past year.

(b) State the year in which each apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s). _____

(c) State the number of individuals who were employed by your firm as apprentices at any time during the past three (3) years in each apprenticeship, and the number of persons who, during the past three (3) years, completed apprenticeships in each craft(s) while employed by your firm. _____

29. Provide the name, address and telephone number of the apprenticeship program sponsor(s) approved by the California Division of Apprenticeship Standards that will provide apprentices to your company for use on any public works project for which you are awarded a prevailing wage contract by the City of San Diego.

30. In the last five (5) years, was your firm found in violation of any provision of California apprenticeship laws or regulations, or the laws pertaining to the use of apprentices on public works?

Yes No

(If Yes, provide the date(s) of such findings, and attach copies of the final decision(s).)

Non-Discrimination

31. List all instances within the past ten (10) years where a finding of discrimination was made against your firm or any of its Persons in a legal or administrative proceeding alleging that the firm discriminated against its employees, subcontractors, vendors, or suppliers, **and** a description of the status or resolution of that complaint, including any remedial action taken.

PART III: RECENT CONSTRUCTION PROJECTS COMPLETED

32. Using the form provided, please provide the following information for:

1. The two (2) largest public work projects **completed** within the last five years; **and,**
2. The five (5) largest projects, not including the two listed above, **completed** within the last five years.

Names, references and phone numbers must be current and verifiable. **References will be contacted and interviewed.** If the City is not able to contact a reference at the given phone number, that reference will not be used or considered in the evaluation.

- Project Name
- Location
- Owner
- Owner Contact (name and phone number)
- Architect or Engineer
- Architect or Engineer Contact (name and phone number)
- Construction Manager (name and phone number)
- Description of Project, Scope of Work Performed
- Performed Work as Prime Contractor or Sub Contractor
- Total Value of Construction (including change orders)
- Original Scheduled Completion Date
- Actual Completion Date
- Time Extension Granted (number of days)

* * * * *

I, the undersigned, certify and declare that I have read the pre-qualification questionnaire and all its contents. I further declare, under penalty of perjury, that I have answered, or caused to be answered, all questions, based on my knowledge and belief, and that they are true and correct.

Name and Title

Date

If this form is completed by someone other than the above signer, please print name and title here:

Name

Title

This document is not a public record.

Firm Name _____

RECENT CONSTRUCTION PROJECTS COMPLETED

Names, references and phone numbers must be current and verifiable

References will be contacted and interviewed

(If the City is not able to contact a reference at the given phone number,
that reference will not be used or considered in the evaluation.)

Copy this sheet as necessary and provide the following information regarding:

1. The two (2) largest public work projects **completed** within the last five years; **and**,
2. The five (5) largest projects, not including the two previously listed, **completed** within the last five years.

Project Name: _____

Location: _____

Owner: _____

Contact: _____ **Phone:** _____

**Architect
or Engineer:** _____

Contact: _____ **Phone:** _____

**Construction
Manager:** _____ **Phone:** _____

Description of Project, Scope of Work Performed: _____

Performed Work as: **Prime Contractor** _____ **Sub Contractor** _____

Total Value of Construction (including change orders):* _____

Original Scheduled Completion Date: _____ **Actual Date Of Completion:** _____

**Extension Time Granted
(number of Days):** _____

*Verifiable dollar amounts will be used as part of the bidding capacity calculation.

Note: The City of San Diego reserves the right to check all other sources available.

security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that:

- a. The principal amount of the applicable promissory note or notes shall not exceed eighty (80%) of the value of LESSEE'S interest in the fair market value of the Premises, as determined by an appraisal prepared at LESSEE'S expense by an independent M.A.I. appraiser (or equivalent), reasonably approved by CITY; and,
- b. LESSEE pays additional consideration to CITY as applicable, and as hereinafter set forth in Article 4.7, Additional Consideration to CITY.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

C.S.
225

Upon prior written approval by CITY, an approved mortgagee or beneficiary may assign this lease. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided that the assignee is of a good character and reputation in the community.

If the Lease is subsequently assigned to an entity other than Bartell Hotels or is not an intra-family assignment to a Bartell Hotels affiliate company, then any encumbrances on the premises are subject to the sole and absolute discretion of the City Manager to approve, disapprove or condition any such proposed encumbrance, including but not limited to amending the lease to provide the current rents and provisions.

4.4 Defaults and Remedies.

- a. Default. In the event that:
 1. LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or

SECTION 4: ASSIGNMENT

4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

MISSION BAY

HILTON

C.S.
225

4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. Such consent shall not be unreasonably withheld. All assignees and sublessees will be subject review by the City, in accordance with City Charter Section 225, and shall be of good moral character with no prurient interests. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

Subject to Section 4.7 herein, "Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals. In addition, "Assignment" shall not include intra-corporate transfers or assignments where there is no financial consideration.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as hereinafter set forth in Section 7.21, Additional Consideration, commencing at the effective date of such proposed sublease of the majority portion of the leasehold or assignment and shall further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

CITY ADMINISTRATION BUILDING
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SENIOR CHIEF DEPUTY CITY ATTORNEYS
TED BROMFIELD
FREDERICK C. CONRAD
KENNETH K. SO
CHIEF DEPUTY CITY ATTORNEYS

MEMORANDUM OF LAW

DATE: July 16, 1992
TO: Jim Spotts, Director, Property Department
FROM: City Attorney
SUBJECT: Section 225 of the City Charter - Mandatory Disclosure of Business Interests

By memorandum dated June 17, 1992, copy attached as Attachment 1, you asked several questions regarding interpretation and application of Section 225 of the Charter to Property Department transactions. A copy of Charter Section 225 as it appeared on the ballot for the recent election is attached to your memorandum.

My understanding is that the ballot language for the new Charter section arose out of certain concerns on the part of the Mayor and members of the City Council that they should be given certain information with regard to persons proposing to transact business with the City.

The new Charter section basically requires that the City Council be given "the name and identity of . . . all persons . . . involved in the . . . proposed transaction and the precise nature of all [such] interests . . ."

The Charter section further specifies that failure to fully disclose the required information "shall be grounds for denial of any . . . proposed transaction . . . and may result in forfeiture of any and all rights and privileges that have been granted heretofore."

The section proceeds to define "persons" as "any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity."

Jim Spotts

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July 16, 1992

The above language taken literally would require the disclosure of the "name and identity" of all the stockholders of General Motors together with "the precise nature of all interests" of such stockholders in any proposed contracts General Motors may desire to enter into with the City. Obviously, it is neither practical nor desirable to interpret the Charter section to require such information.

It is clear from the argument on the ballot in favor of the proposition (there was no argument against the proposition) that the Charter section was enacted for the sole benefit of the Mayor and the City Council and that the purpose of the Charter section is to "give the Mayor and City Council the right to know the identities and backgrounds of persons wanting to do business with the City."

Rather than address the particular questions raised by your memorandum, it seems more efficient in light of the above discussion to propose language for a potential Council Policy which will provide guidelines to the City Manager as well as the non-managerial departments as to what information must actually be provided in connection with any transaction which must be approved by the Mayor and Council.

Therefore, I have attached a first draft of a potential Council Policy. Please review the policy and make any suggested modifications and we can begin the process of clearing the policy through the various City departments and then take it to the City Council for review, any revisions the Council may desire, and approval.

With regard to the effective date of the Charter amendment, the amendment becomes effective after the City Council certifies the results of the election and the certification is transmitted to the California Secretary of State. The City Council certified the results on July 13th. While the exact date of filing by the Secretary of State is unknown, you should assume that the filing will occur during the week of July 20th.

JOHN W. WITT, City Attorney

By 

Harold O. Valderhang
Deputy City Attorney

HOV:ps:710(x043.2)
Attachments 2
ML-92-60

CITY OF SAN DIEGO
M E M O R A N D U M

FILE:

DATE: June 17, 1992

TO: Harold O. Valderhaug, Deputy City Attorney, via Maureen A. Stapleton, Assistant City Manager

FROM: James L. Spotts, Property Director

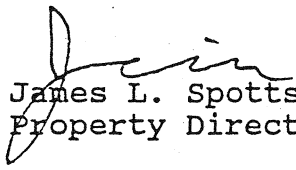
SUBJECT: Section 225 of the City Charter - Mandatory Disclosure of Business Interests

Proposition E regarding mandatory disclosure of business interests was approved by the voters on June 2, 1992. A copy of the Proposition is attached. We need clarification and direction as to its interpretation and application to Property Department matters. In addition, we have the following specific questions:

1. The section requires the name, identity, and nature of interest of certain people or entities with which we do business.
 - a. What type or level of identification is required?
 - b. What types of interests must we identify? For example, must we identify all limited partners in a limited partnership? All of the stockholders of a small company if revealed to have only a minor interest of one percent per person? All of the stockholders of Security Pacific where we sublease space? All of the stockholders of SDG&E where we have a franchise agreement?
2. Does this charter section apply to all Property Department contracts, for example, right of entry permits, options to lease, leases, exchange agreements, easement contracts, sales contracts, purchase agreements, short-term agreements and permits that are executed by the department and house rental agreements?
3. The section specifies that persons directly or indirectly involved must be identified. What does indirectly involved mean?
4. The section specifies that failure to fully disclose the information required shall be grounds for denial of any application or proposed transaction or transfer and may

result in forfeiture of any and all rights and privileges that have been granted heretofore.

- a. Are we obligated to deny a contract if required information is not disclosed? If we find out after the agreement has been fully executed and the subject of the agreement implemented?
 - b. Is the provision regarding forfeiture enforceable?
 - c. Who is empowered to deny an application for a proposed transaction? The Council, the City Manager, Property staff and/or City Attorney?
5. Is it advisable that any portion of the charter section be included in our agreements, contracts, or RFP's? If so, which portion(s) and which contract(s)?
 6. When does this Charter section become effective?


James L. Spotts
Property Director

JLS:MLG:st(3)

Attachment

cc: Robert J. Collins, Deputy Director
Richard D. Greenleaf, Deputy Director
Mary Louise Groarke, Supervising Property Agent

CITY OF SAN DIEGO
Proposition E

(This proposition will appear on the ballot in the following form.)

E AMENDS THE CHARTER OF THE CITY OF SAN DIEGO BY
ADDING SECTION 225.

Adds Section 225 to the City Charter to require that all persons proposing to do business with the City fully disclose the name and identity of all persons involved in the proposed transaction and the nature of their interest therein, if that proposed transaction could result in a contract, lease, or franchise. Provides for potential forfeiture of rights for failure to fully disclose. Defines "person" broadly for purposes of this Section.

PROPOSED CHARTER AMENDMENT

The portions of the charter to be deleted are printed in strike-out type and the portions to be added are underlined.

SECTION 225. MANDATORY DISCLOSURE OF
BUSINESS INTERESTS.

No right, title or interest in the City's real or personal property, nor any right, title or interest arising out of a contract, or lease, may be granted or bargained pursuant to the City's general municipal powers or otherwise, nor any franchise, right or privilege may be granted pursuant to Section 103 or 103.1 of this Charter, unless the person applying or bargaining therefor makes a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the application or proposed transaction and the precise nature of all interests of all persons therein.

Any transfer of rights, privileges or obligations arising from a franchise, right or privilege granted under Charter section 103 or 103.1, or any transfer of any right, title or interest in the City's real or personal property, or any right, title or interest arising out of a contract, or lease, which may be granted or bargained pursuant to the City's general municipal powers or otherwise, shall also require a full and complete disclosure as set forth above.

Failure to fully disclose all of the information enumerated above shall be grounds for denial of any application or proposed transaction or transfer and may result in forfeiture of any and all rights and privileges that have been granted heretofore.

For purposes of this Charter section, the term "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity.

ARGUMENT IN FAVOR OF PROPOSITION E

Would you enter into a business agreement with someone you didn't know? Or even worse perhaps not know his or her name?

Of course not.

But far too often the San Diego City Council is forced into just that kind of predicament. Loopholes in the system allow anonymous "limited partners" to potentially receive millions in taxpayer dollars without the Council having the benefit of knowing who the partners are, or exactly what they do with the money.

San Diegans have a right to know how, and with whom, their tax dollars are being spent.

This charter amendment gives the Mayor and City Council the right to know the identities and backgrounds of persons wanting to do business with the City.

Please give the Council the tools it needs to protect taxpayers' money.

Vote Yes on E!

MAUREEN O'CONNOR
Mayor

VALERIE STALLINGS
Councilmember, District 6

ARGUMENT AGAINST PROPOSITION E

No argument against the proposition was filed in the Office of the City Clerk.

COUNCIL POLICY 000-30

COMPLIANCE WITH CHARTER SECTION 225 - MANDATORY DISCLOSURE OF
BUSINESS INTERESTSPURPOSE

It is the intention of the City Council to establish a uniform procedure for the City's managerial and non-managerial departments, in compliance with the requirements of Charter Section 225, which section requires disclosure of business interests by persons doing business with the City.

POLICY

- A. Any person proposing to enter into a contract of any nature with the City, including leases, franchises, sales agreements, and all other contracts involving real or personal property and personal services requiring City Council approval, shall make a full and complete disclosure of the name and identity of all persons who have a financial interest in any such contract, together with the precise nature of such interests of all such persons.

- B. For the purposes of this policy and as provided for in Charter Section 225 the word "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity.

- C. For the purposes of this policy and for said Charter section the term-"financial interest" shall mean any person who owns an interest representing five percent or more of the total ownership of the person or entity proposing to do business with the City, if such five percent or greater percentage interest has a value of \$10,000 or more. Any person having such a financial interest shall be identified by name and by city and state or country of residence, together with a disclosure of their percentage of ownership interest in the person or entity involved.
- D. In the case of individuals who do not have an ownership interest of five percent or greater but who nevertheless may reasonably anticipate benefiting to the extent of \$10,000 or more from the contract proposed with the City, such individuals shall likewise provide their full name and resident city and state or country, together with an explanation of their financial interest in the contract.
- E. The City Manager (or the non-managerial department head) shall, with each applicable item on the Council docket, submit a separate document identifying the item on the docket and containing the above specified information.
- F. In order to avoid a cloud upon the validity of any contract entered into by the City the City Council, by adopting this Council Policy, expressly finds that, upon receipt of

information substantively in accord with the above requirements, or upon City Council approval of any contract even though some of the information required hereby has not been presented to the City Council, that the requirements of Section 225 regarding disclosure have been met and that the contract is not void or voidable unless the City proves in a court of law that there was fraud or misrepresentation or the intentional withholding of information required by this policy in connection with the disclosure of financial interests made to the Council.

HOV:ps:07/17/92