



Office of the City Manager

INFORMATION CALENDAR
September 13, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Henry Oyekanmi, Director, Finance
 Subject: Sanctuary City Contracting Compliance Report for FY 2022

INTRODUCTION

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

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

CURRENT SITUATION AND ITS EFFECTS

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

Report Requirements:

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

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

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

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

Motorola: BPD sought to contract with a vendor, Motorola. Motorola indicated they would not be able to sign the SCCO compliance certification attestation form required in all City contracts.

Axon: BPD sought to contract with vendor Axon for body-worn cameras. Concern was raised related to the SCCO, and that Axon may be non-compliant with the SCCO.

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

Motorola: BPD submitted a council item detailing the business case for leasing and use of Motorola radios, along with a request for City Council to approve a waiver of the SCCO for this agreement with Motorola. Motorola had refused to sign the SCCO certification due to concerns about its potentially broad scope. The BPD Motorola item was discussed at the 9/28/21 Council meeting, and, following discussion, City Council approved a waiver of the SCCO via Resolution 70,052-N.S. on 10/5/21 (attached).

A complaint was brought about by a citizen group via email (attached) related to:

- a. The Motorola purchase generally, such as why the City did not explore other radio manufacturers besides Motorola, and
- b. That the Motorola SCCO waiver was not documented in the annual SCCO report.

Response to item a.: See the attachment with the City's business case for continued utilization of Motorola radios, as well as the SCCO waiver.

Response to item b.: The SCCO is to be presented prior to November in order to document the SCCO activities that occurred during the prior fiscal year. City Council discussion and waiver for the lease of Motorola radios occurred in fiscal year 2022, thus the issue was drafted into this report for FY 2022 (see above and attached). Reporting on the Motorola discussion, waiver, and contract was *not* required to be part of the FY 2021 report, but included in the FY 2022 report.

Axon: BPD sought to contract with Axon for body worn cameras and allegations were made by the public regarding potential SCCO concerns. However, Axon submitted the SCCO form, signed by their general counsel, attesting to review of and compliance with the City's SCCO. Thus, no Council waiver was required in order to proceed with the contract with Axon. The complaints were heard in public comments, and the item discussed and voted on by Council.

No other complaints or issues related to non-compliance were brought forward in FY 2022.

BACKGROUND

This report is for FY 2022 and is hereby submitted on September 13, 2022 in advance of the November 2022 due date, and represents compliance issues with the Sanctuary City Contracting Ordinance discovered or brought forth between July 1, 2021 – June 30, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

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

Attachments:

1. Motorola Business Case from BPD/BFD
2. Resolution 70,052-N.S. Council Waiver of SCCO
3. Complaint email string-Motorola decision and waiver report issue
4. City Council Agenda 6/21/2022 Special Meeting – Axon
5. Resolution 70,415-N.S. Axon agreement approval



Office of the City Manager

CONSENT CALENDAR
October 5, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jennifer A. Louis, Interim Chief of Police
Abraham Roman, Interim Fire Chief
Subject: Waiver of Sanctuary City Ordinance for Motorola Solutions Lease

RECOMMENDATION

Adopt a Resolution waiving the contract prohibition of Berkeley Municipal Code Chapter 13, 105, Sanctuary City Contracting, in order to enter into a Public Safety Radio System lease with Motorola Solutions, Incorporated.

FISCAL IMPACTS OF RECOMMENDATION

The approval of this waiver now will allow the City of Berkeley to save \$1 million dollars.

CURRENT SITUATION AND ITS EFFECTS

The Public Safety Radio System is a Strategic Plan Priority Project, advancing our goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities, provide an efficient and financially-healthy City government, and create a resilient, safe, connected, and prepared city.

In order to provide effective and expeditious public safety services for the City of Berkeley, the Police and Fire Departments rely on multiband portable and mobile radio communications to ensure emergency services can be delivered to the City of Berkeley and other regional partners. The preeminent provider of radio communications equipment is Motorola Solutions Incorporated. While Motorola Solutions Incorporated has several divisions within their organization, the radio system and equipment will not be accessible to the United States, Immigrations and Customs Enforcement (ICE) officials. However, Vigilant Solutions is an independently operated subsidiary of Motorola Solutions Incorporated. Vigilant Solutions provides services to the ICE organization. Pursuant to Chapter 13.105, the Sanctuary City Contracting Ordinance, the Council must grant a waiver in order for the City to contract with Motorola Solutions Incorporated.

BACKGROUND

The Police and Fire Department currently use Motorola manufactured portable and mobile radios. Radio communication is critical to providing emergency response services to the City of Berkeley. The majority of the current public safety Motorola radios were purchased in December of 2011 and have exceeded their useful life. Additionally, radio replacement parts will no longer be manufactured, making radio repairs nearly impossible. Furthermore, radios will need to be encryption enabled to be compliant with the California Department of Justice mandates that all transmissions of personal identifiable information and criminal justice information be encrypted to reduce the unauthorized use of confidential information over the public safety radio systems statewide. The Fire Department also has an urgent need to expand the number of radios assigned to support the department redesign. These radios will be used to support enhanced operations in fire prevention, wildland urban interface prevention, and the expanding number of ambulances that will be deployed in FY22-23.

The City of Berkeley is a member agency of the East Bay Regional Communications System Authority (EBRCSA). EBRCSA is a radio communications network system built by Motorola to provide interoperability for emergency responders and others on the network in Alameda and Contra Costa counties. The original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project. All Sheriff, Police, Fire, and EMS agencies in Alameda and Contra Costa Counties are part of EBRCSA network; with the exception of Bay Area Regional Transit Police. Several agencies in Solano County have joined EBRCSA as well. The Berkeley Police and Fire 911-Dispatch radio consoles were also built by EBRCSA with Motorola equipment. EBRCSA owns and maintains the Dispatch consoles. EBRCSA contracts with Motorola for repairs and hardware and software upgrades to the Dispatch consoles.

The lack of radio communication between public safety agencies during major fire events, most notably the 1991 Tunnel Fire was the impetus – which took a decade to implement - behind the initiative to create a radio communications system with reliable, regional, radio interoperability between police and fire responders. There are several pivotal documents that were created following the tunnel fire that are relevant to understanding the scope of not participating in the established regional communications system.

From the United States Fire Administration's (USFA) Technical Report Series, *"The Oakland and East Bay Regional Park District units were having difficulty coordinating their efforts, since each agency's units were on their own radio channels. Passing messages via the dispatchers, then by telephone from one communications center to the other, proved to be a problem."* When responding companies were asked to use the few mutual aid channels that were common to all agencies, *"The mutual aid radio channel was hopelessly jammed with communications, and they were unable to make contact with the Command Post."* This resulted in chaos as *"It was difficult to determine*

resource deployment because so many units were engaged in actions that were unknown to the Command Post. They were engaged in different areas, had no radio contact with the command structure, and were operating on their own initiative.

The USFA report goes on to state *“The shortcomings of the communications system were also a major obstacle to effective incident management. The radio system proved to be inadequate for the scale of operations that was necessary, even for the initial stages of the incident. These factors made effective coordination or control of the mutual aid resources that arrived during the first five hours impossible.”* With the frequency of large, disastrous fires that sweep through entire cities become more commonplace, maintaining every operational advantage that has been hard found for following loss of life and property is essential to our mission moving forward. *“When the fire spread into the City of Berkeley...with the Berkeley Fire Department units utilizing their own radio system. This meant that there were [two] incident commands...working with four separate communications centers and unable to effectively communicate with each other.”*

In a report published by the National Fire Protection Association (NFPA) titled “The Oakland Berkeley Hills Fire”, it is made clear that the previous radio communications systems were unable to handle *“...the sudden and massive buildup of fire fighters summoned to the fire front neighboring departments...”* Additionally the EBSCRA system has near universal coverage in all operational areas of Alameda and Contra Costa Counties, whereas *“The steep hills interfered with radio transmissions, especially those from hand-held radios. Finally, communications between Oakland and Berkeley. were hampered...”* because of inadequate communications technology.

While the fire department is the primary agency responsible for fire suppression and rescue, the police departments are the primary agency responsible for coordinating evacuation. Having common communications between these two professions in these situations is literally critical to protect life. The same NFPA report cites *“The lack of a common radio frequency at the operational level between Oakland fire and police officials hampered evacuation coordination.”*

In *The East Bay Hills Fire A Multi-Agency Review of the October 1991 Fire in the Oakland/Berkeley Hills* written by the California Office of Emergency Services (Cal OES), the impact of uncommon and inadequate radio communications is again highlighted *“As one result of the overcrowding of radio channels, field elements turned to self-assigning their units to activities based on their best judgment. They were not part of a centrally directed response. Others turned to alternate means of communicating: using non-fire frequencies or, in at least one case, speaking to an Oakland police officer who relayed information through his Dispatch center to the Fire Dispatch Center.”* In a startling vision of how significantly challenged the radio communications system became *“An East Bay Regional Park Police helicopter was used over the fire to direct some of the air traffic and provide intelligence. It was unable*

to communicate over the radio, so it had to land several times in order to pass on information to the Command Center.”

Finally, The Alameda County Grand Jury report issued on June 30, 1993 by the Honorable Joseph J Carson cites that *“The failure of the communications system used by the Oakland Fire Department and the Berkeley Fire Department contributed significantly to the chaos of the situation on October 20, 1991.”*

The Sanctuary City Contracting Ordinance, adopted in 2019, prohibits contracting with an entity that provides services to the United States Immigration and Customs Enforcement Department (ICE) unless a waiver is granted by the Council. Section 13.105.030 provides that a waiver can be granted “...based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives

The intent and purpose of the Ordinance is to ensure that the City does not financially support any company that provides services that infringes upon the rights of immigrants. Vigilant Solutions is a wholly owned subsidiary of Motorola Solutions, Inc. Motorola's APX 8000/8500 radios that Berkeley is leasing are a completely separate product line from the Vigilant LPR (license plate recognition) products. The data brokering that Vigilant engages with customers such as ICE does not occur with APX radio products.

With respect to availability of alternate manufactures, as explained above, due to the specialized and proprietary nature of Motorola's equipment, no alternate exists to provide the level of services offered by Motorola. All the public safety agencies currently on the EBRCSA network use Motorola for their primary radios and equipment.

In order to remain reliably and efficiently operable on the EBRCSA system, the Police and Fire Department will need to continue to procure Motorola equipment, such as radios, batteries, related equipment, and software services. Using another radio manufacturer will likely result in unreliable connectivity and functionality on the EBRCSA system. The Global Positioning Services and the Emergency Alert Button will not function on a non-Motorola radio. The Fire Department must use intrinsically safe radios (prevents melting or exploding) for the environment firefighters work in. Motorola provides this verification where other manufacturers may not. With Motorola radios any ongoing software-firmware updates can be done wirelessly. Any other manufactured radios will need to be taken out of service and delivered to radio technicians for service. Moreover, using another manufacturer on the EBRCSA network will likely result in additional costs in the tens of millions to function on a Motorola designed and equipped

infrastructure and would not function efficiently or seamlessly and would likely result in constant on going troubleshooting and reliability problems. Additionally, EBRCSA radio technicians are trained exclusively on Motorola equipment which would limit the ability to troubleshoot issues with a non-Motorola radio product (See Exhibit A).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The ability to push updates to radios over the Motorola secured radio system would save significant staff resources, as well as, associated greenhouse gas emissions savings from not having to deliver each radio to a technician to manually install updates.

RATIONALE FOR RECOMMENDATION

The Berkeley Police and Fire Departments require radio equipment provided by Motorola Solutions, Incorporated and no reliable alternative exists.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions were considered including as described above and found to be cost prohibitive, not practicable, and potentially catastrophic to public safety needs during a natural disaster.

CONTACT PERSONS

Jennifer A. Louis, Interim Chief of Police, 981-5700
Abraham Roman, Interim Fire Chief, 981-5500

Attachments:

- 1: Resolution
 Exhibit A: EBRCSA Sole Source Letter
- 2: Full Grand Jury Final Report
- 3: Cal OES Report
- 4: USFA Technical Report: The East Bay Hills Fire
- 5: Lease
- 6: Motorola Solutions Quote

RESOLUTION NO. ##,###-N.S.

Waiver of Sanctuary City Ordinance for Motorola Solutions Lease

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

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

WHEREAS, the use of radio equipment and associated services provided by Motorola Solutions, Incorporated is essential to provide Police, Fire, and Emergency Medical Services to the City of Berkeley, in addition to, regional and statewide partners; and

WHEREAS, contracting with Motorola Solutions Incorporated to lease radio equipment and services will not violate the intent of the Ordinance, as all City of Berkeley emergency services are available to everyone, without consideration of citizenship status, to ensure life-saving response and emergency services; and

WHEREAS, the original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project; and

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

WHEREAS, no other contractor's product will perform with the entire functionality of the equipment and services to work on the EBRCSA system as provided by Motorola Solutions Incorporated under this lease; and

WHEREAS, developing a separate radio system is estimated to cost in excess of \$20 million dollars and result in a loss of interoperability with City of Berkeley Police, Fire, and Emergency Medical Services with local, regional, and state partners previously approved by City Council; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the radio equipment and services that will be provided under the lease with Motorola Solutions, Incorporated.

Exhibits

A: EBRCSA Sole Source Letter



**East Bay Regional
Communications
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

925-803-7802

September 30, 2021

Jennifer Louis, Chief of Police
City of Berkeley
2100 Martin Luther King Jr. Way
Berkeley, CA 94596

RE: East Bay Regional Communication System Authority Sole Source with Motorola Solutions Inc.

Dear Chief Louis,

EBRCSA is a shared communications system which was designed to integrate all radio communications amongst the different public safety groups in Alameda and Contra Costa County. EBRCSA provides interoperability so that in day to day interaction or response to a major emergency Public Safety Groups can communicate with each other without delay in connecting or needing any special equipment. A system of this magnitude was complicated and difficult to build with few companies willing to respond to the Request for Proposal (RFP). The initial Contract for the two-county radio system was done through RFP, via Contra Costa County, and Motorola was the only respondent to the RFP.

The East Bay Regional Communications System Authority (EBRCSA) is a Joint Powers Agreement between Alameda County and Contra County providing a radio communication system for Law Enforcement, Fire, Emergency Medical Services, and County and City Service agencies. EBRCSA has 49 member agencies and approximately 22,000 radios in service.

The design and build of the system were reviewed by an independent engineering firm which supported the proposal for EBRCSA and the contract was awarded to Motorola Solutions Inc. based on the review of the response to the RFP.

Motorola was able to replace the various radio systems used by Public Safety agencies in Alameda and Contra Costa County and construct a two county 700/800 MHz system which now serves every Public Safety Organization in both counties. Bay Area Rapid Transit is the only Public Safety not a member of EBRCSA. Immigration and Customs Enforcement (ICE) is not a member or user of the EBRCSA System

Motorola built a Master Site in Dublin at the Alameda County Sheriff's Office of Emergency Services. The sites which connect to the EBRCSA Master Site are all built with Motorola equipment. Motorola provides, through a Service Update Agreement (SUA), upgrades and refreshment of the technology on

biennial basis. EBRCSA has a maintenance contract with Motorola to provide response when we have a system problem so that we ensure our Public Safety System is always functioning. The dispatch consoles which are used by the City of Berkeley are Motorola MCC 7500 which is the only console which can be used on the EBRCSA Master Site and are maintained by the Alameda County Department of Information Technology.

The EBRCSA system is Project 25 (P25) digital phase II system and any P25 phase II radio can be used on the system. P25 Phase II is a universal standard for radios that can transmit on the EBRCSA system. A caveat to that is a non-Motorola radio will not provide the access to functionality such as Global Positioning Services (GPS) or in some cases the Emergency Alert Button. These and other functions require a Motorola radio as the software for this is a propriety design by Motorola. One example of the Motorola propriety software allows radios to be updated without returning it to the radio shop. Updates can be sent to the radio via the connectivity from the Master Site to the radio. The best way to explain this is similar to downloading an app or software update to your phone.

The Alameda County Radio Shops provides repair and update services to the City of Berkeley radios and dispatch consoles. EBRCSA has recommended that agencies utilize Motorola radios so that we can ensure the technicians are prepared to work on these radios and have enough replacement parts on hand. We do not have parts for radios manufactured by other companies and the technicians are not trained to repair them. Initial and update training is expensive and timely, so we support the Motorola radios which are used by the majority of our members.

Per the Joint Powers Authority Agreement, the Authority is administered by a Board of Directors consisting of 23 Directors and their respective alternates. Directors and alternates are appointed to ensure equal representation from both counties.

The duties of the Board of Directors include oversight of the acquisition of real property; and the planning, designing, financing, regulation, permitting, environmental evaluation, public outreach, construction, operations, and maintenance of the EBRCSA Project, or any identifiable portion of the EBRCSA Project.

EBRCSA is a shared communications system which was designed to integrate all radio communications amongst the different public safety groups. EBRCSA provides interoperability so that in day to day interaction or response to a major emergency Public Safety Groups can communicate with each other without needing any special equipment or delays in connecting. A system of this magnitude was complicated and difficult to build with few companies willing to respond to the Request for Proposal. The Motorola system has been operating and serving EBRCSA since May 2012.

Sincerely,



Tom McCarthy
Executive Director
East Bay Regional Communications System Authority

RESOLUTION NO. 70,052 N.S.

WAIVER OF SANCTUARY CITY ORDINANCE FOR MOTOROLA SOLUTIONS LEASE

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

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

WHEREAS, the use of radio equipment and associated services provided by Motorola Solutions, Incorporated is essential to provide Police, Fire, and Emergency Medical Services to the City of Berkeley, in addition to, regional and statewide partners; and

WHEREAS, contracting with Motorola Solutions Incorporated to lease radio equipment and services will not violate the intent of the Ordinance, as all City of Berkeley emergency services are available to everyone, without consideration of citizenship status, to ensure life-saving response and emergency services; and

WHEREAS, the original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project; and

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

WHEREAS, no other contractor's product will perform with the entire functionality of the equipment and services to work on the EBRCSA system as provided by Motorola Solutions Incorporated under this lease; and

WHEREAS, developing a separate radio system is estimated to cost in excess of \$20 million dollars and result in a loss of interoperability with City of Berkeley Police, Fire, and Emergency Medical Services with local, regional, and state partners previously approved by City Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the radio equipment and services that will be provided under the lease with Motorola Solutions, Incorporated.

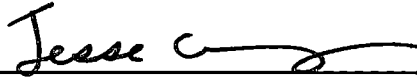
The foregoing Resolution was adopted by the Berkeley City Council on October 5, 2021 by the following vote:

Ayes: Droste, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Abstain: Bartlett and Harrison.

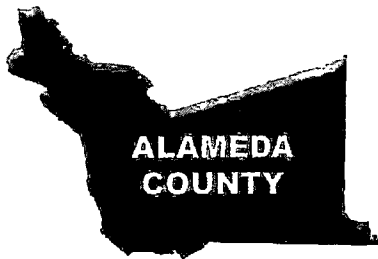
Absent: Hahn.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



**East Bay Regional
Communications
System Authority**



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2100 Martin Luther King Jr. Way
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The design and build of the system were reviewed by an independent engineering firm which supported the proposal for EBRCSA and the contract was awarded to Motorola Solutions Inc. based on the review of the response to the RFP.

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Alameda County Office of Homeland Security and Emergency Services
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • www.ebrcsa.org

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Sincerely,



Tom McCarthy
Executive Director
East Bay Regional Communications System Authority

Sweet, Darryl

From: Oyekanmi, Henry
Sent: Tuesday, April 26, 2022 12:55 PM
To: Sweet, Darryl
Cc: Roben, Josh
Subject: FW: Please Respond: Violation of Sanctuary Contracting Ordinance

Internal

Darryl-did we deal with this already? I thought we did. Any update?

From: Williams-Ridley, Dee
Sent: Tuesday, April 26, 2022 11:45 AM
To: Bellow, LaTanya <LBellow@cityofberkeley.info>; Oyekanmi, Henry <HOyekanmi@cityofberkeley.info>
Cc: Brown, Farimah F. <FBrown@cityofberkeley.info>
Subject: FW: Please Respond: Violation of Sanctuary Contracting Ordinance

fyi

From: Elana Auerbach <elanarobyn@gmail.com>
Sent: Tuesday, April 26, 2022 11:23 AM
To: All Council <council@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>; Manager, C <CManager@cityofberkeley.info>; Auditor <CityAuditor@cityofberkeley.info>
Subject: Please Respond: Violation of Sanctuary Contracting Ordinance

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

YOOHOO. Is anybody out there?

Would someone please respond as to when the report described in the email below will be made public or the reason why the report is not being produced?

Thank you~
Elana Auerbach

On Thu, Mar 24, 2022 at 1:11 PM Elana Auerbach <elanarobyn@gmail.com> wrote:

Greetings All~

It has been almost 5 months since I sent the email below that details how the city is in violation of our sanctuary contracting ordinance and the requirement to detail these violations in a written public report.

“By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section [13.105.030](#) over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section [13.105.030](#), (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.”

Since last fall, I have left voice messages with both the City Manager's office and the City Attorney's office about this issue asking when the required written public report will be made available. I have made public comments at city council meetings. I have spoken to council members. And still, nothing.

When will this report be made public?

Thank you for your attention to this matter~

Elana Auerbach

On Wed, Oct 27, 2021 at 10:15 AM Elana Auerbach <elanarobyn@gmail.com> wrote:

Dear City Manager, City Attorney, City Auditor, Mayor and Council,
This email serves as an official complaint and notice of violation of section [13.105.030](#) of the Sanctuary Contracting Ordinance (SCO) by the City Manager and her designees. The \$6.5M contract with Motorola Solutions violates the SCO as no alternatives to provide Berkeley with public safety radios were considered.

Section 13.105.030 states:

A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following: 1. The intent and purpose of this ordinance; 2. The availability of alternative services, goods and equipment; and 3. Quantifiable additional costs resulting from use of available alternatives.

Based on an email from a distributor of JVCKenwood P25 radios and infrastructure that was sent to all council members, the mayor and the city manager, we know that alternatives to Motorola radios exist. Below are excerpts from the email. The email can be found in its entirety at the end of this letter.

- 1) You do not have to buy Motorola radios. Kenwood P25 radios are designed for and are compatible with, and already operate on systems using the P25 standard protocol and interoperate with Motorola radios, whether encrypted [or] not.
- 2) Unlike Motorola, BK and Harris P25 radios, ours are not sold to ICE- purchasing our radios will keep the City in compliance with your laws and rules.
- 3) Our radios can be equipped as a standard option with the encryption asked for by CA-DOJ to protect individual's private information, and still leave other channels 'open' to scrutiny.

As stated in section 13.105.040 of the SCO:

"By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section [13.105.030](#) over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section [13.105.030](#), (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance."

We look forward to your decision that the current intent to contract with Motorola Solutions be withdrawn and/or reversed, followed by implementation of standard procedures by issuing a Request for Proposal for the City's public safety radio requirements.

Thank you for your prompt attention to this important matter.

Sincerely,

Elana Auerbach, Karl Knobler, Negeene Mosaed & Rivka Polatnick

From: Bill Ballowe <bill@epicmarketing.com>
Date: October 6, 2021 at 2:19:18 PM PDT
To:
Subject: P25 radio Venders for the City of Berkeley

Dear Councilmember,

I read the attached article about the City of Berkeley's need for additional radios and the issues being discussed about the potential vendor and would like to comment to you first in writing.

My name is William Ballowe and I am the regional manager for northern California for the P25 radios and infrastructure from the EF Johnson division of JVCKenwood. I am officed in San Ramon, CA.

I would like to quickly and easily state our position to the issues brought about in the article.

- 1) You do not have to buy Motorola radios. Kenwood P25 radios are designed for and are compatible with, and already operate on systems using the P25 standard protocol and interoperate with Motorola radios, whether encrypted not.
- 2) Unlike Motorola, BK and Harris P25 radios, ours are not sold to ICE- purchasing our radios will keep the City in compliance with your laws and rules.
- 3) Our radios can be equipped as a standard option with the encryption asked for by CA-DOJ to protect individual's private information, and still leave other channels 'open' to scrutiny.
- 4) It was stated in the article about this vendor, Motorola, that "practically has a monopoly on the public safety sector". This thinking is also replicated by an investment management firm, Wedewood Partners in Motorola, earlier this year in this article: <https://www.yahoo.com/now/why-motorola-msi-continues-top-165308836.html>
- 5) If you are not familiar with your vendor and their quarterly need for banking orders and profits, I do suggest that the discount offered was not because they like you; but rather Sept 30th is the last day of the quarter for this public traded company. Indeed, Motorola has some of the oldest technology on the market at some of the highest prices. We encourage the City to obtain a quote from us before proceeding with this purchase.

Hopefully the 'rest of the story' will allow the Berkeley police dept to look into obtaining their compatible and fairly priced P25 radios from another vendor and stay compliant with the City's rules and laws.

Thank you and hope to see you soon.

<https://www.dailycal.org/say-no-to-waiving-berkeleys-sanctuary-contracting-ordinance/>

Best Regards,

"Put us to work for you"
www.epicmarketing.co

William Ballowe | Manufacturers Representative | 3 Crow Canyon Ct., Suite 100 | San Ramon, CA | 925-552-1820 office | 925-552-1829 direct

**ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

**Tuesday, June 21, 2022
4:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81179114559>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 811 7911 4559. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 4:01 p.m.

Present: Kesarwani, Taplin, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Bartlett, Harrison

Councilmember Bartlett present at 4:12 p.m.

Councilmember Harrison present at 4:17 p.m.

Action Calendar – Old Business

1. **Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software** (*Continued from June 14, 2022*)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a Contract with Axon Enterprise, Incorporated to provide body worn cameras, equipment, software, and services for an amount not to exceed \$1,115,000 over the next five years through Fiscal Year 2027.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
Action: 6 speakers. M/S/C (Arreguin/Wengraf) to adopt Resolution No. 70,415–N.S.
Vote: All Ayes.

2. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** (*Continued from June 14, 2022*) (*Item contains supplemental material*)
From: City Manager
Recommendation: Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
Action: 8 speakers. M/S/C (Arreguin/Hahn) to adopt the recommendation in the revised material from Councilmember Harrison in Supplemental Communications Packet #2 and further revised as follows:
 1. Adopt Resolution No. 70,416–N.S. approving the revised Controlled Equipment Impact Statements and Policy 303 (Control Devices and Techniques) from Supplemental Communications Packet #2, conforming to local and state law.
 2. Refer the Annual Equipment Use Report to the Police Accountability Board for review and recommendation within 60 days following City Council approval of the remaining use policies.
 3. Refer all other internal policies relevant to controlled equipment to the Police Accountability Board and Berkeley Police Department to review and conform to the approved Controlled Equipment Impact Statements, and local/state laws for City Council consideration by July 26, 2022.**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste; Absent – None.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Adjourned at 6:02 p.m.

Councilmember Harrison absent at 6:01 p.m.

Communications

Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

1. Berkeley Friends Meeting
2. Police Accountability Board

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

3. Revised material, submitted by Councilmember Harrison
4. Kitt Saginor

Supplemental Communications and Reports 3

Item #1: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software

5. Diana Bohn
6. Elana Auerbach
7. Cheryl Davila

Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

8. Phoebe Anne Sorgen

RESOLUTION NO. 70,415-N.S.

CONTRACT: AXON ENTERPRISE, INCORPORATED FOR BODY WORN CAMERAS
ALONG WITH RELATED HARDWARE, SOFTWARE, AND STORAGE

WHEREAS, The Berkeley Police Department is required to provide evidence in criminal investigations and continues to document police interactions with the community; and

WHEREAS, Charter section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City is using pricing obtained by another public entity through a competitive process; and

WHEREAS, Cooperative purchasing agreements are available for purchasing by state and local governments; and

WHEREAS, the Cooperative purchasing agreements with vendors, provide lower costs on commodities and equipment to participating public agencies; and

WHEREAS, the Berkeley Police Department and Finance-General Services determined available cooperative purchasing agreements meet the needs of the Police Department; and

WHEREAS, the cost of cameras, related hardware, software licenses, storage and support for 5 years will not exceed \$1,115,000.00 and funds are available in the Berkeley Police Department's baseline budget in FY 2023 as follows: \$223,000.00 in budget code 011-71-705-820-0000-000-421-666110 and for each fiscal year through FY 2027.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized under Charter section 67.2 to execute a contract and any amendments to purchase body worn cameras along with the related hardware, software licenses, storage and support for five years from Axon Enterprise, Incorporated through a cooperative purchasing agreement in an amount not to exceed \$1,115,000.00 and for a 5-year term through fiscal year 2027.

The foregoing Resolution was adopted by the Berkeley City Council on June 21, 2022 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Rose Thomsen, Deputy City Clerk

