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COALITION FOR POLICE ACCOUNTABILITY

February 14, 2018

Comments on the Office of City Attorney RFQ issued November, 2017

Background

Oakland City Charter Section 604 (e)1:

"The City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties as set forth in this section, including budgeting at least one full time equivalent non-City Attorney legal advisor that is specifically charged with providing legal services to the Agency related to investigations and discipline. The one time equivalent non-City Attorney legal advisor shall be assigned by the City Attorney after consultation with the Chair of the Commission."

Issues

OUTSIDE COUNSEL

First, the position to be filled is not "outside counsel," which appears in the RFQ to apply to outside litigation counsel, but rather a full time individual or two part time people. These people could be paid at an hourly contract rate to be determined by the Commission, taking into account the approved budget for the position(s).

Thus, the entire section of the RFQ entitled "CITY OF OAKLAND OUTSIDE COUNSEL POLICY" is not applicable and should be deleted from the RFQ.

However, even if the "one full time equivalent non-City Attorney legal advisor" is technically deemed "outside counsel" for administrative reasons, the OCA outside counsel policies apply only insofar as they are not inconsistent with the provisions of the new section of the City Charter.

The title of the RFQ is incorrect, since it refers to "Outside Counsel."

"OUTSIDE COUNSEL FOR COMMUNITY POLICE REVIEW AGENCY"

The title of the RFQ is incorrect in another way. It indicates that the attorney position is solely for the Community Police Review Agency. However, there is nothing in City Charter Section 604 (e)1 which limits the work of the attorney in that manner. Indeed, by referring to the attorney as a "legal advisor" the Charter contemplates that the attorney will serve as an advisor to the Commission. If the attorney were to be limited to staffing the Agency, the term "legal advisor" would not have been included and the word "solely" would have been substituted for "specifically" before the word "charged." The Commission needs its own "legal advisor" and the drafters of Measure LL made sure of that when they used the term "non-City Attorney legal advisor" not once but twice in the same paragraph.

Furthermore, the language of the Charter regarding staffing makes no distinction between the Commission and the Agency. it states, " The City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties..." (see above)

RFQ INTRODUCTION

The statement that the City Attorney is responsible for providing all legal services for the Oakland Police Commission is incorrect. As noted above the Charter gives the Commission the right to its own legal advisor.

CITY OF OAKLAND OUTSIDE COUNSEL POLICY

This policy as articulated in the RFQ appears to be written for outside litigation counsel. Commission/Agency legal advisors will not be engaged in litigation and thus this section is inapplicable. Furthermore, there is an incorrect statement in the subsection entitled " General Expectations": "It is the policy of the OCA that the City Attorney has the ultimate responsibility for managing every legal matter affecting the City of Oakland."

The Oakland Police Commission is entitled by the City Charter to its own "legal advisor." The Police Commission does not report to the City Attorney, who has no authority to direct, oversee, or manage the Commission in any way. The City Attorney is required to advise the Commission if requested and must act as counsel to the Commission in the event the Commission is sued but the City Attorney has no authority to "manage every legal matter" affecting the Oakland Police Commission. Section 604 of the Oakland City Charter preempts any purported OCA "policy."