

1 a. Respondent will pay \$600 in the form of a cashier's check payable to the "City of
2 Oakland." The payment will be held by the Commission staff until the
3 Commission members issue the decision and order in this matter.

4 4. This stipulation will be submitted to the Commission members for consideration and will
5 be subject to approval by the Commission at the Commission's next meeting.

6 5. If approved by the Commission members, this stipulation and the accompanying decision
7 and order will resolve all factual and legal issues raised in this matter and will be the final
8 disposition of this matter by the Commission.

9 6. If the Commission refuses to approve the proposed stipulation, it shall become null and
10 void, and Commission staff will return all payments tendered by the Respondent in this
11 matter within ten days of the Commission's rejection of the stipulation.

12 7. If the Commission rejects the proposed stipulation and a full evidentiary hearing before
13 the Commission becomes necessary, no member of the Commission or its staff shall be
14 disqualified because of prior consideration of the stipulation.

15 8. Respondent understands and knowingly and voluntarily waives all procedural rights
16 under the law, Oakland City Charter, Oakland Municipal Code, and Public Ethics
17 Commission Complaint Procedures which include but are not limited to receiving a
18 finding of probable cause, having the Commission or independent hearing examiner hear
19 the matter, personally appearing at an administrative hearing, confronting and cross-
20 examining witnesses, and subpoenaing witnesses to testify at a hearing.

21 9. Respondent understands and acknowledges that this stipulation and decision is not
22 binding on any other law enforcement agency and does not preclude the Commission or
23 its staff from referring the matter to, cooperating with, or assisting any other government
24 agency with regard to the matter, or any other matter related to it.

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26 DATED: _____

WHITNEY BARAZOTO, Executive Director

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DATED: _____

CYPRESS SECURITY, LLC, Respondent

By: _____

Title: _____

1 DECISION AND ORDER

2 The Public Ethics Commission considered the above STIPULATION at its meeting on
3 _____ . The Commission hereby approves the STIPULATION and
4 orders that, in accordance with the STIPULATION, Respondent pays a fine in the amount of
5 \$600.

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7 DATED: _____

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9 JENNA WHITMAN, Chairman
10 CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION
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Exhibit
PEC Case # 14-26

I. SUMMARY OF COMPLAINT

In late-2014, the Public Ethics Commission (Commission) staff initiated a review of contributions made by Cypress Security, LLC to the *Campaign for Safe Streets and Local Jobs (Organized by Rebecca Kaplan)* committee during the prohibited “blackout” period¹ in which persons contracting with the City are prohibited from contributing to any officeholder-controlled committee under the Oakland Campaign Reform Act (OCRA).

II. FACTUAL SUMMARY

Rebecca Kaplan is the current Councilmember At-Large for the City of Oakland and was a candidate for Oakland Mayor in November 2014. In 2013 and 2014, Ms. Kaplan maintained an officeholder-controlled ballot measure committee called *Campaign for Safe Streets and Local Jobs (Organized by Rebecca Kaplan)*.

The City issued a Request for Proposal (“RFP”) on February 14, 2013, for a security contract for City facilities, including the Civic Center Complex and at City Hall, the Dalziel and Lionel J. Wilson Buildings. City staff conducted the selection process and compliance review, which included four other security companies, and selected Cypress as the company to recommend to the City Council for the security contract. On October 3, 2013, the City Council Rules & Legislation Committee scheduled the security contract to be considered by the Public Works Committee on October 22, 2013. After three meetings during which the Public Works Committee considered this contract, there were not enough votes to approve the contract and the resolution failed. Nonetheless, the Committee voted to move the item, without a recommendation to approve, to the next Council meeting in order for the full City Council to vote on whether to approve the contract.

On December 31, 2013, Cypress Security, LLC, made two separate contributions of \$500 each to the *Campaign for Safe Streets and Local Jobs* committee, for a total of \$1,000.

On March 4, 2014, the City Council voted 6-2 to approve a resolution awarding a “security services contract for City facilities for a term period of three years” to Cypress Private Security, LLC, for “an amount not to exceed \$2,000,000 annually” (Security Services Contract Agenda Report, September 25, 2013, p. 1; Resolution 84867, passed on March 4, 2014).

Upon receiving notification from Commission staff regarding this complaint, Kes Narbutas, CEO of Cypress Private Security, LLC, responded soon after, stating that he expressed his

¹ Whenever a contract transaction would require City Council approval, contractors are prohibited from making any contribution to any City committee controlled by these officeholders or candidates between the commencement of negotiations and for 180 days after the completion or termination of negotiations regarding the contract (O.M.C. 3.12.140(A)). For the purposes of this case analysis we will refer to the period in which contributions by contractors are prohibited as the “blackout period.”

concern about contribution limits to Jason Overman, the campaign manager for the *Campaign for Safe Streets and Local Jobs* committee, and was repeatedly assured by Mr. Overman that the contribution was allowable. Below is a summary of the email conversation that occurred on December 27, 2013:

Jason Overman emailed Cypress Security’s Chief Executive Officer (CEO) Kes Narbutas on December 27, 2013 to solicit funds for the *Campaign for Safe Streets and Local Jobs* committee.

Mr. Narbutas responded to Mr. Overman that Cypress Security could not contribute since “we are prohibited from making any campaign donations because we have a contract currently under consideration by City Council.[...]OMC §3.12060 [sic]” (Email on December 27, 2013 at 1:30 PM from Kes Narbutas to Jason Overman).

Mr. Overman replied by email, “[a]ctually, this account is through the county to support a countywide ballot measure that she supports – there are no contracting restrictions or donor limits. Can we count on your support?” (Email on December 27, 2013 at 2:32 PM from Jason Overman to Kes Narbutas).

To that, Mr. Nabutas responded, “[I]et me run it by counsel but if he says there is no prohibition you can count on us” (Email on December 27, 2013 at 2:35 PM from Kes Narbutas to Jason Overman).

Mr. Overman replied, “[y]eah, I set up the committee so I know with 100% certainty that there is no conflict” (Email on December 27, 2013 at 2:58 PM from Jason Overman to Kes Narbutas).

The two contributions of \$500 each were dated December 31, 2013, from Cypress Security, LLC, to the *Campaign for Safe Streets and Local Jobs* committee.

III. LEGAL SUMMARY

OCRA places various limitations on contributions from contractors with the City of Oakland, the Oakland Redevelopment Agency, and the Oakland Unified School District (Oakland Municipal Cod (“OMC”) §3.12.140). These provisions prohibit those who contract or propose to contract with these agencies from making any campaign contributions to any committees controlled by City officeholders or candidates for elective City office.

Whenever a contract transaction would require City Council approval, contractors are prohibited from making any contribution to any City committee controlled by these officeholders or candidates during the blackout period, which occurs between the commencement of negotiations and for 180 days after the completion or termination of negotiations regarding the contract (O.M.C. 3.12.140(A)).

This blackout period begins with the “commencement of negotiations,” which OCRA defines as commencing when “a contractor or contractor’s agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed city officer or employee or when any elected or appointed city officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor’s agent” (O.M.C. §3.12.140(G)). The blackout period concludes 180 days after the completion or termination of negotiations regarding the contract.

The types of contracts implicated by this section include those “for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the city or for selling any land or building to the city or for purchasing any land or building from the city whenever the value of such a transaction would require approval by the City Council” (O.M.C. §3.12.140(A)).

According to OCRA (O.M.C. 3.12.140(E)), transactions that require approval by the City Council include but are not limited to the following:

1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars (\$15,000.00).
2. Contracts for the procurement of services exceeding fifty thousand dollars (\$50,000.00), other than contracts for professional or consulting services.
3. Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding fifty thousand dollars (\$50,000.00).
4. Contracts for the sale of any building or land to or from the city or the Redevelopment Agency.
5. Amendments to contracts described in subsections (E)(1), (2), (3), and (4) of this section.

IV. ANALYSIS

The City issued an RFP on February 14, 2013, for a City facilities security contract. Cypress Security, LLC submitted an response to the City which included a Schedule O signed by the company’s CEO on March 6, 2013. City staff conducted the selection process and selected Cypress Security, LLC, among four other competing security companies, to recommend to the City Council to award the security contract. The Public Works Committee deliberated over the security contract decision during its meetings on October 22, 2013, December 3, 2013, and February 11, 2014 before the contract was forwarded to the full City Council for consideration.

On December 31, 2013, Cypress Security, LLC, made two separate contributions of \$500 each to the officeholder-controlled *Campaign for Safe Streets and Local Jobs* ballot measure committee.

On March 4, 2014, the City Council voted 6-2 to approve a resolution awarding a “security services contract for City facilities for a term period of three years” to Cypress Private Security, LLC, for “an amount not to exceed \$2,000,000 annually” (City Council March 4, 2014 Agenda, Security Services Contract Agenda Report, dated September 25, 2013, p. 1; Resolution 84867).

The Cypress Security, LLC security contract falls within the jurisdiction of the contractor prohibition because it is a contract for services in an amount of over \$50,000 requiring approval

by the City Council. The contractor contribution blackout period for Cypress Security, LLC, began on February 14, 2013, when the RFP was issued, and continued through 180 days after completion of contract negotiations, which occurred no earlier than March 4, 2014. The contributions were made in the name of Cypress Security, LLC, which is the same company that was proposing to contract with the City and ultimately awarded the security contract.

Therefore, both contributions are in violation of the Oakland Campaign Reform Act contractor prohibition (O.M.C. section §3.12.140).

Cypress Security responded immediately to Commission staff's initial notification and has cooperated fully in this investigation. Respondent contends that they were under the belief that the contributions were not prohibited campaign contributions, based on assertions made by the committee's campaign manager. The email conversation shared with staff provides insight on the respondent's desire to adhere to the law and the misinformation that was given by the campaign representative. While the email thread does not provide a defense for the respondent's violation, it is used here as a mitigating factor in determining an appropriate penalty.

In cases such as these, the Commission typically issues fines at or near the amount of the unlawful contribution. Given the above mitigating factors, staff recommends a reduced penalty, for a total fine of \$600.

Note: The contractor prohibition applies to contractors only; there is no prohibition on candidate or officeholder committees receiving a prohibited contractor contribution. In cases where the Commission has found that a committee received a prohibited contribution, the Commission has requested that the committee remit payment to the City voluntarily in the amount of the prohibited contribution. The *Campaign for Safe Streets and Local Jobs* committee, however, was closed on June 30, 2014.

V. RECOMMENDATION

To resolve this matter, staff recommends that Cypress Security, LLC, pay a fine of \$600.