

1 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
2 testify at the hearing, and to have the matter judicially reviewed;

3 4. This Stipulation is not binding on any other law enforcement agency, and does not
4 preclude the Commission or its staff from referring the matter to, cooperating with, or
5 assisting any other government agency with regard to this matter, or any other matter
6 related to it;

7 5. Respondents violated Section 3.12.140(A) of the Oakland Campaign Reform Act in
8 2013 and 2014 by making four contributions, totaling \$1,400, to committees controlled
9 by City of Oakland officeholders or candidates for City of Oakland office during or
10 within 180 days of negotiating a contract with the City of Oakland that required the
11 Oakland City Council's approval.

12 6. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
13 and is incorporated by reference into this Stipulation;

14 7. The Commission will impose upon Respondents a total administrative fine in the
15 amount of \$3,000;

16 8. A cashier's check from Respondents, in said amount, made payable to the "City of
17 Oakland," is submitted with this Stipulation as full payment of the administrative
18 penalty, to be held by the Commission until the Commission issues its decision and
19 order regarding this matter;

20 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within fifteen business days after the Commission meeting at which the
22 Stipulation is rejected, all payments tendered by Respondents in connection with this
23 Stipulation will be reimbursed to them; and

24 ///

1 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
2 the Commission becomes necessary, neither any member of the Commission, nor the
3 Executive Director, shall be disqualified because of prior consideration of this
4 Stipulation.

5
6
7
8
9 Dated: _____

Milad Dalju, Enforcement Chief of the City of Oakland
Public Ethics Commission, Petitioner

10
11
12
13
14 Dated: _____

Ana Chretien, individually and on behalf of
ABC Security Services, Inc., Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of ABC Security Services, Inc., and Ana Chretien,” PEC Case No. 14-27, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____
_____ Sonya Smith, Chair
City of Oakland Public Ethics Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

In 2014, the City of Oakland's Public Ethics Commission (Commission) initiated pro-active cases into allegations that businesses negotiating contracts with the City of Oakland (City) were violating the City's contractor contribution ban (Contractor Contribution Ban). An ensuing investigation by the Commission's Enforcement Unit (Enforcement Unit) revealed that ABC Security Services, Inc. (ABC Security), and Ana Chretien violated the Contractor Contribution Ban in 2013 and 2014 by making contributions to committees controlled by City officeholders and candidates for City office while ABC Security was negotiating a contract with the City that required City Council approval.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Oakland Campaign Reform Act (OCRA) provisions as they existed at the time of the violations.

Contractor Contribution Ban

A person who contracts or proposes to contract with the City for the rendition of services that requires approval of City Council is prohibited from making a contribution to a candidate for Mayor, City Council, City Attorney, or City Auditor (City office), or any officeholder of such office (City officeholder), or any committee controlled by a City officeholder or candidate for City office, at any time between commencement of negotiations and 180 days after the completion or termination of negotiations for such contract. (OCRA section 3.12.140.) This provision is known as the "Contractor Contribution Ban."

Transactions that require City Council approval include, but are not limited to, contracts for the procurement of professional or consulting services that exceed \$15,000. (OCRA section 3.12.140(E).)

The "commencement of negotiations" occurs when "a contractor or contractor's agent formally submits a bid, proposal, qualification 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." (OCRA section 3.12.140(G).)

The "completion of negotiations" occurs when the City executes the contract or amendment. (OCRA section 3.12.140(K).) The "termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when a City officer or employee accepts the contractor's withdrawal from negotiations. (OCRA section 3.12.140(L).)

A person is defined as any individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. (OCRA section 3.12.040.) An individual and any corporation in which the individual owns a controlling interest are considered a single person for purposes of the Contractor Contribution Ban. (OCRA section 3.12.080(C).)

SUMMARY OF THE FACTS

ABC Security is, and was at all relevant times, an incorporated security firm located in Oakland. Ana Chretien is, and was at all relevant times, the president, chief executive officer, and majority shareholder of ABC Security. ABC Security provided security services for all City facilities from 1998 until 2011.

Rebecca Kaplan has been the City Councilmember, At-Large, since 2009, and was an unsuccessful candidate for City Mayor in the November 4, 2014, election. At all relevant times, *Kaplan for Oakland Mayor 2014* was Ms. Kaplan's controlled committee for the November 4, 2014, election, and *Campaign for Safe Streets and Local Jobs (Organized by Councilmember Rebecca Kaplan)* was Ms. Kaplan's controlled ballot measure committee.

Shereda Nosakhare was an unsuccessful candidate for City Council, District 6, in the November 4, 2014, election. At all relevant times, *Shereda Nosakhare for City Council 2014* was her controlled committee for the November 4, 2014, election.

Ms. Broadhurst was an unsuccessful candidate for City Council, District 4, in the November 4, 2014, election. At all relevant times, *Jill Broadhurst for Council 2014* was her controlled committee for the November 4, 2014, election.

On February 14, 2013, the City issued a request for proposals (RFP) for security services for all City facilities (Security Contract). The RFP was for a contract for professional services in an amount over \$15,000 and therefore was subject to City Council approval. On March 8, 2013, the City received a formal proposal from ABC Security for the Security Contract. ABC Security's formal proposal included a Schedule O signed by Ray Thrower, ABC Security's general manager. ABC Security's signed Schedule O listed Ms. Chretien as the majority owner of ABC Security and included the following acknowledgement:

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specific time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specific in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080. If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

City staff conducted the selection process and compliance review of five proposals for the Security Contract.

At the October 22, 2013, Public Works Committee meeting, City staff presented a report that recommended the Security Contract be awarded to Cypress Private Security, which ranked first in the RFP process. The Public Works Committee, which consisted of Councilmembers Reid, Gallo, Kalb, and Kaplan, directed City staff to return with more information regarding its recommendation.

At the December 3, 2013, Public Works Committee meeting, City staff presented a supplemental report that again recommended that the Security Contract be awarded to Cypress Private Security. The Public Works Committee instructed City staff to return with more information regarding its recommendation.

At the February 11, 2014, Public Works Committee meeting, City staff presented a second supplemental report that again recommended that the Security Contract be awarded to Cypress Private Security. In response to the report, Councilmember Reid made, and Councilmember Kalb seconded, a motion to move the matter to City Council with a recommendation that the City Council adopt City staff's recommendation that the Security Contract be awarded to Cypress Private Security. Councilmembers Kaplan and Gallo voted against the motion and the motion failed. Subsequently, Councilmember Gallo made, and Councilmember Kaplan seconded, a motion to move the matter to City Council with a recommendation that ABC Security and BMT Security, which ranked fourth and fifth, respectively, in the RFP process, be awarded the Security Contract. Councilmembers Reid and Kalb voted against the motion and the motion failed.

At the February 18, 2014, City Council meeting, Councilmember Kaplan made, and Councilmember Gallo seconded, a motion to present, at the next City Council meeting, a recommendation that ABC Security and BMT Security be awarded the Security Contract. Councilmember Kalb followed with a motion that the City staff's reports regarding the Security Contract be presented at the next City Council meeting. The City Council did not vote on either motion.

At the March 4, 2014, City Council meeting, City staff presented a report that recommended that the Security Contract be awarded to Cypress Private Security in the form of a three-year contract for an amount not to exceed \$2,000,000 annually. Councilmember Reid made, and Councilmember Kalb seconded, a motion to adopt City staff's recommendation. The motion passed with Councilmembers Brooks, Gallo, Kalb, Reid, Schaaf, and Kernighan voted in favor and Councilmembers McElhaney and Kaplan abstaining.

///

Between March 8, 2013, and August 31, 2014, Ms. Chretien and ABC Security made the following contributions to committees controlled by a City officeholder or candidate for City office:

Date	Contributor	Receiving Committee	Contribution Amount
9/13/2013	ABC Security	<i>Campaign for Safe Streets and Local Jobs (Organized by Councilmember Rebecca Kaplan)</i>	\$100
6/20/2014	Ana Chretien	<i>Kaplan for Oakland Mayor 2014</i>	\$700
6/26/2014	Ana Chretien	<i>Jill Broadhurst for Council 2014</i>	\$500
6/29/2014	ABC Security	<i>Shereda Nosakhare for City Council 2014</i>	\$100

VIOLATION

Count 1: Unlawful Contributions Made by a Contractor

On March 8, 2013, ABC Security commenced negotiating a contract with the City for rendition of professional services in an amount exceeding \$15,000 by submitting a formal proposal to the City for the Security Contract. On March 4, 2014, the City terminated negotiation of the contract with ABC Security by awarding the contract to another firm. Therefore ABC Security was prohibited from making a contribution to any City officeholder, candidate for City office, or committee controlled by a City officeholder or candidate for City office, between March 8, 2013, and August 31, 2014.

Because Ms. Chretien had a majority interest in ABC Security, all contributions made by Ms. Chretien and ABC Security are considered contributions made by the same person for the purposes of the Contractor Contribution Ban. (OCRA section 3.12.080(A).)

By making four contributions, totaling \$1,400, to committees controlled by City officeholders or candidates for City office during or within 180 days of negotiation a contract with the City that required City Council approval, ABC Security and Mr. Chretien violated OCRA section 3.12.140(A).

CONCLUSION

Pursuant to the Commission’s Enforcement Penalty Guidelines, the Commission determines the appropriate fine amount for a particular violation by starting with the base-level fine amount articulated in the Commission’s Enforcement Penalty Guidelines. The Commission may decrease or increase the fine amount to account for the relevant mitigating and aggravating factors surrounding the particular case, which include, but are not limited to: the seriousness of the violation; the presence or absence of any intention to conceal, deceive or mislead; whether the violation was deliberate, negligent or inadvertent; whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations; whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure; and the degree to which the respondent cooperated with the Commission’s investigation and demonstrated a willingness to remedy any violations.

Violating the Contractor Contribution Ban is a serious violation of OCRA because it creates the perception that a City official's decisions regarding contracts are influenced by contributions by contractors. Additionally, making an unlawful contribution provides an unfair advantage to one candidate over others in an election.

Pursuant to the Commission's Enforcement Penalty Guidelines, the base-level fine amount for a violation of the Contractor Contribution Ban is \$2,000, but the Commission has the authority, pursuant to OCRA, to impose a fine amount up to three times the amount of the unlawful contribution, which amounts to \$4,200 in this matter. (OCRA section 3.12.280(E).)

The violation in this matter is aggravated by the fact that the respondents made four unlawful contributions, totaling \$1,400, to committees controlled by three different candidates for City office. Therefore the violation was part of a pattern of violations rather than an isolated occurrence.

Additionally, the respondents filed a signed Schedule O with the City on March 8, 2013, and therefore should have known that they were making an unlawful contribution at the time they made each of the four contributions.

However, the violation is mitigated by the fact that the respondents were not awarded the Security Contract and have not been awarded a contract with the City since. Moreover, the respondents state that they are making a concerted effort to avoid future violations.

Additionally, the respondents were cooperative with Enforcement Unit's investigation into this matter and agreed to an early resolution to this matter.

PROPOSED PENALTY

Based on the fine amounts prescribed by the Commission's Enforcement Penalty Guidelines and consideration of all the relevant aggravating and mitigating circumstances of this particular case, the Enforcement Unit recommends a fine in the amount of \$3,000.