



## Legislation Text

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**File #:** 16-0499, **Version:** 1

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Recommendation to receive and file the Factfinding Report issued by the Factfinding Panel as part of the impasse process; and

Adopt resolution authorizing implementation of the terms of the City's last, best and final offer to the International Association of Machinists and Aerospace Workers regarding the Long Beach Civic Center Project, pursuant to Government Code Section 3505.4. (Citywide)

The City's representatives and representatives from International Association of Machinists and Aerospace Workers (IAM) have been in negotiations since September 2015 over contracting out bargaining unit work related to the new Civic Center, which is slated to open in 2019. During this time, the parties have met and conferred 12 times. The City has negotiated in good faith but has been unsuccessful in reaching agreement with the IAM over contracting out 11.97 full-time equivalent (FTE) IAM represented positions 1.

On February 26, 2016, the City's Last, Best and Final offer (LBFO) was submitted to the IAM (see Attachment A of Resolution). The LBFO reflected the in-person discussions of February 17, 2016, and included, among other terms, a provision to protect those employees impacted by specifying employees shall not experience a reduction in hours, position, duties, or compensation as a result of the Civic Center project agreement. The City declared impasse on February 26, 2016, and the IAM requested Factfinding on March 22, 2016. The parties completed the Factfinding process and the results of the Factfinding process are provided in this report (see Exhibit A). Government Code section 3505.4 (Meyers-Millas-Brown Act) authorizes the City to implement terms of its LBFO upon the conclusion of the impasse procedure, which includes Factfinding.

### Background

Starting in 2007, the City determined that substantial renovations were needed for City Hall, Main Library, and other public facilities. Given the substantial costs of renovating these City facilities, the City opted to explore a public-private partnership to finance the construction of a new Civic Center (the Project). On December 9, 2014, the City Council selected Plenary Edgemoor Civic Partners (PECP) as its development partner, and directed the City Manager to begin negotiating with PECP over the terms and conditions of the Project. During negotiations with PECP, the City formally learned that PECP required a subcontractor to perform various security, maintenance, and operational services, which City employees perform. Given PECP's responsibility for maintaining the Project facilities according to the 80 percent Facilities Condition Index (FCI), PECP advised the City that it was imperative that PECP maintain direct control over on-site staff and maintenance operations during the term

of the 40-year lease by means of its subcontractor. As a result of this proposal, City employees would no longer perform the custodial, maintenance, and security work when the new Civic Center is completed in 2019.

The City engaged in the meet and confer process with IAM and the Management labor representatives over the proposed positions that would be contracted out. The Management bargaining unit did not object to the City's proposal. IAM initially agreed to the City's proposal as the City's initial proposal provided job security for current IAM-represented employees. Within two days, IAM reversed course and disagreed with the entire premise of contracting out. As a result, the City and IAM held 12 meet and confer sessions between December 4, 2015 and February 17, 2016. During the course of these discussions, the City made further offers to address IAM's concerns. In addition to protecting the jobs of all the employees assigned to the Civic Center who would no longer be performing those duties at the Civic Center, the City offered the following: (1) all six Security Services Officer (SSO) positions at the Civic Center would remain, not be reduced and not be contracted out; (2) the City agreed to meet and confer regarding the reassignment of all impacted employees; (3) the City agreed it would not contract out any positions that had not been specifically identified in the Proposition L study; (4) the City agreed it would meet with the IAM upon any future identifiable impacts; and, (5) that the impacted positions would be reassigned to the Civic Center upon the hand back of the Civic Center. The City also proposed that it would contract out two supplemental security positions who would be responsible for staffing an information desk and checking identifications. The City also informed the IAM that it faced an operational necessity to execute the final Project Agreement by April 28, 2016. Unfortunately, the parties were unable to reach agreement and the City declared impasse and provided the IAM with a LBFO.

The events leading to the submission of the City's LBFO are chronicled below:

**DATE | ACTION**

September 22, 2015 City contacted IAM to begin meet and confer process  
October 6, 2015 IAM indicates it would not meet until request for information is provided  
November 24, 2015 City provided IAM with requested documentation and requests to meet  
December 2, 2015 City contacts IAM representative and schedules initial meet-and-confer session  
December 4, 2015 City and IAM hold first meet-and-confer session  
February 2, 2016 City approved an Early Works Agreement to allow additional time for negotiations with IAM  
December 2015 to February 2016 City and IAM hold twelve (12) meet and confer meetings  
February 26, 2016 Parties are not able to reach agreement. City notified IAM that the City declares impasse and provided IAM with a Last Best Final Offer (LBFO)

March 22, 2016 IAM Request Factfinding  
April 15, 2016 Factfinding Hearing is held  
May 9, 2016 Factfinding Report issued - advisory  
May 19, 2016 Factfinding Report made publicly available  
May 24, 2016 Factfinding Report to City Council

## FACTFINDING

In accordance with Government Code Section 3505.4, the IAM requested that the City's decision to contract out all positions be submitted to a Factfinding panel and submitted a request to the Public Employment Relations Board (PERB), 25 days after receiving the declaration of impasse. Based on the fact that the IAM waited 25 days to request factfinding, it was contemplated that the fact-finding process would not be completed prior to the April 28, 2016 deadline to execute the final Project Agreement. Nonetheless, the City insisted on an expedited fact-finding process with the Factfinding hearing held on April 15, 2016, and the Panel's Factfinding Report being released on May 9, 2016. As part of the Factfinding process, the City is now obligated to have a public meeting on the Factfinding Report. The Factfinding Report is advisory only. The City Council retains the ability to make a final decision on contracting out.

In summary, the Factfinder sought a compromise for both parties and recommended that the City contract out all positions except the Maintenance Assistants (7.15 FTEs) and additional security personnel (2.0 FTEs). The Factfinder also recommended that the City enter into an agreement with the IAM that would allow a contractor to supervise City staff.

The Factfinder's recommendation to allow an outside contractor to supervise City staff is not practical or feasible and creates liability for the City. For example, the contractor could claim that given his duties to supervise and direct employees that he is actually a City employee entitled to City benefits and pension, and the City employees could claim that because they are under the direction of a contractor that they are employees of the contractor entitled to overtime compensation under state laws that apply to private corporations. In order to implement the Factfinder's recommendation, the City would have to enter into an amendment to the Memorandum of Understanding with the IAM (or bargaining unit representative) and we foresee that such negotiations could be protracted. In addition, the implementation of the Factfinder recommendations would require the City to negotiate changes to the Project Agreement, which would undermine the basic premise of the Project Agreement, which is predicated on the design, building finance, operation and maintenance (DBFOM) model. The potential financial exposure of making this change is estimated at \$1 million a year in City payments, increased lifecycle reinvestment program costs of \$55 million, and the loss of the FCI guarantee.

## LBFO Terms

Government Code section 3505.4 authorizes the City to implement terms of its LBFO upon

the conclusion of the impasse procedure, which now includes fact-finding. Section 3504.4 provides:

If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

The LBFO includes the following major provisions:

- Specifies that 11.97 FTE positions will be contracted out
- No employee layoffs, or reduction in classification, hours or pay
- Preserve existing security services
- Union retains future rights to meet and confer
- Commitment to continue to meet and confer on the unknown impacts

The Factfinder report was issued while the IAM decertification election was underway. The Maintenance Assistant employees are part of the bargaining unit that voted to be decertified from the IAM. Since this group of employees is currently unrepresented, staff recommends that the City Council adopt a Resolution that covers these employees to ensure that impacted employees will not be subject to layoffs, or reduction in classification, hours or pay.

The City Council's adoption of the attached Resolution authorizes the implementation of the terms of the City's LBFO of February 26, 2016.

This matter was reviewed by Principal City Attorney Gary J. Anderson and by Budget Analysis Officer Rhutu Amin Gharib on May 20, 2016.

City Council action is requested on May 24, 2016, to implement the LBFO terms regarding contracting out bargaining unit work and memorializing the City commitment to protect certain conditions for the impacted employees.

The City's LBFO included a provision to preserve existing security services (6.0 FTE) in addition to contracting out additional security service personnel (2.0 FTE). This action is consistent with the City Council motion approved on December 15, 2015. The incremental

annual cost of this action is \$410,190, which would be incurred by the City starting in FY 19 when the new Civic Center is occupied.

Approve recommendation.

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ALEJANDRINA R. BASQUEZ  
DIRECTOR DEPARTMENT OF HUMAN RESOURCES

APPROVED:

PATRICK H. WEST  
CITY MANAGER