



September 21, 2021

Mr. Tim Ballas
Orchard Commercial Inc.
3350 Thomas Road, Suite 201
Santa Clara, CA 95054

Subject: Notice of Protest regarding RFP 20-21-55 dated September 3, 2021

Reference: City of Santa Clara RFP 20-21-55 for Property Management Services

Dear Mr. Ballas,

The City of Santa Clara (City) received the subject letter from Orchard Commercial, Inc. (Orchard) regarding the award recommendation for RFP 20-21-55, Property Management Services. In your letter, you request that the City reconsider its decision not to conduct oral interviews with each proposer prior to making a final recommendation of award to Eugene Burger Management Corporation (EBMC).

Background:

The objective of the referenced RFP for Property Management Services was to select a vendor to provide property management services for two City owned properties, Commerce Plaza and Peddler's Plaza. Proposals were evaluated and scored by a four-member evaluation team with representatives from the City Manager's Office and the Community Development Department. Scoring was based on the following evaluation criteria and corresponding weights: Qualifications and Experience of Firm (25%), Qualifications and Experience of Key Personnel (25%), Demonstrated Capability (30%), and Cost (20%). The RFP requested that proposers respond to a series of questions that mapped to each criterion. The RFP instructions stated that the recommendation of award may be based on the final scores of the written proposals and, at the sole discretion of the City, an optional oral presentation and Best and Final Offer (BAFO).

On August 19, 2021, the City issued a Notice of Intended Award to Eugene Burger Management for property management services based on the scores of their written proposal and Best and Final Offer.

On September 2, 2021, you received a debrief on the RFP with the City's Contracts Manager, who also facilitated the RFP process. The briefing covered Orchard's strengths and weaknesses, and several elements of the RFP including the City's local business preference, ground lease requirements, and the possibility of introducing additional elements to consider as part of the evaluation process.

On September 3, 2021, you submitted your Notice of Protest requesting the City to conduct an oral presentation to provide Orchard the opportunity to address many of the same topics that were discussed in the debrief.

Discussion:

Orchard Commercial's Notice of Protest makes the following arguments to support why the City should reconsider its decision not to conduct oral presentations that would have provided Orchard the opportunity to introduce new requirements that Orchard feels should have been considered by the City.

Argument 1:

- a) Orchard Commercial is an active, local business with a long-standing presence in the City of Santa Clara, offered the lowest pricing, and is willing to accept the City's contractual terms.
- b) Orchard Commercial did not object to the City's contractual terms.
- c) Orchard Commercial scored best in the key areas of cost and qualifications and submitted the lowest bid.

Response:

- a) Santa Clara City Code Section 2.105.260 provides a local preference of 1% for bids where low price is the only award factor. For example, if a vendor located in the City of Santa Clara submits a bid for \$100, that bid will be considered as \$99 when comparing the other bidders. The City does not have a local preference for a "best value" or evaluative process, which was the scoring methodology for this RFP. Notwithstanding, 1% consideration of Orchard's total score would not have changed the outcome of the award.
- b) The evaluation team is aware and noted that Orchard Commercial did not take exceptions to the City's contractual terms.
- c) Considering the evaluation criteria listed above, Orchard's scores were 5% higher, and 44% and 60% lower for Qualifications and Experience of Key Personnel, Qualifications and Experience of Firm, and Demonstrated Capability, respectively.

The cost proposal score is misleading. Although it appears that Orchard's cost is 50% less than EBMC's (20 versus 10 points), the cost proposals were not equally compared because EBMC provided pricing for leasing services (as requested) that was valued at \$360,000, and Orchard elected not to price this item stating that leasing "will be provided by others." A more accurate approach to scoring cost would have been not to consider the \$360,000. When doing so, there is a 25% separation

between the scores, with Orchard's price \$62,660 higher than EBMC's. Adjusting the cost scores by using this more accurate comparison increases the separation between the total scores and has no effect on the overall rankings.

Argument 2:

The City should have conducted oral interviews to better understand the dynamics of the Ground Lease transfer. Several requests for an interview were denied.

Response:

The RFP introduction clearly states that the City was seeking proposals to "provide professional property management services necessary to lease, operate, and manage two properties owned by the City." The statement of work also included requirements for leasing services. In addition, the BAFO required pricing for leasing services.

The RFP required that proposers describe a strategy and provide a cost for leasing services. Orchard elected not to provide this information, and recommended deferring discussion of the requirement pending the completion of other tasks.

After the proposals were submitted and during the evaluation process, Orchard requested an oral interview to discuss the requirement that they did not address in their proposal.

Oral presentations are typically conducted when the City wants clarification or additional information on what was proposed. Oral presentations are not conducted to provide proposers the opportunity to "fill-in" significant omissions that should have been addressed in their proposal. If Orchard wanted additional information or clarification regarding this requirement, the RFP process included a process for Q&A and Objections as discussed below.

Argument 3:

a) The pre-award tabulation report was very limited in terms of what was scored from the written proposal. It only included the following:

- Qualifications and Experience of the Firm
- Qualifications and Experience of Personnel
- Demonstrated Capability
- Cost

b) Orchard did not elaborate (in their proposal) on several service areas, "assuming our (Orchard's) status as a leading Silicon Valley PM firm would be apparent."

Orchard further states that, “this was an oversight on our (Orchard’s) part, but not a basis for inferior scoring.”

- c) Orchard contends that many additional attributes should have been considered in the selection process, and these could have been presented in an oral presentation.

Response

- a) As stated in the Background section of this letter, the RFP requested that proposers respond to a series of questions that map to each of the evaluation criteria described above.
- b) Generally, evaluators are only able to evaluate and score information that is presented to them. There were several areas in the RFP that allowed Orchard to address their status as a leading Silicon Valley firm and elaborate on key service areas. Electing not to address these key areas in your proposal is a basis for lower scoring.
- c) The RFP process included two opportunities for proposers to request the City to consider additional information: 1) the Question & Answer process and 2) the Objections process described in Sections 10 and 11 of the RFP, respectively. Specifically, the Objections section allows proposers to object to the “structure, content or distribution” of the RFP prior to the close of the Q&A period. Orchard did not avail itself of these processes, electing instead to introduce new attributes after the proposal deadline and during the evaluation process, and further requesting that such concerns be considered using the oral presentation process.

If oral presentations are conducted, they occur later in the process, after proposals are received and evaluated. They are never conducted after a proposer is debriefed on the process where the proposer was made aware of the strengths and weaknesses of their proposal. Oral presentations are intended to further explore and understand information that was submitted. Oral presentations are not designed to provide second chances to address significant proposal omissions or consider new information that might change the specifications or evaluation factors, thus requiring a re-bid for the service.

The City elected not to conduct oral presentations because the evaluation team agreed that sufficient information was provided to make a final decision.

Conclusion:

The RFP process was conducted fairly and pursuant to the rules set forth in the RFP. Therefore, I am upholding staff's award recommendation to Eugene Burger Management Corporation and denying your request to further the process by conducting oral presentations.

Thank you for your interest and participation in the RFP process.

Sincerely,

A handwritten signature in black ink that reads "Mark Giovannetti". The signature is written in a cursive, flowing style.

Mark Giovannetti
Purchasing Division Manager