

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

**FROM: Sharon W. Erickson,
City Auditor**

SUBJECT: *Review of the Request for Proposal for
Food, Beverage and Retail Concessions
for the Norman Y. Mineta San Jose
International Airport*

DATE: May 5, 2008

As part of the 2004 City Manager's reforms, the City Manager suggested and the City Council approved a directive that the City Auditor's Office should review high profile, complex Requests for Proposals (RFP)/Procurements. In 2007, the City Manager's and the City Auditor's Offices agreed on the criteria used to determine whether a RFP/Procurement qualifies as high profile and complex. Per this directive and criteria, the Auditor's Office has worked collaboratively with the Department of Aviation to review the **Request for Proposal for the Food, Beverage and Retail Concessions for the Norman Y. Mineta San Jose International Airport (Concessions RFP)**. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives. We limited our review to the work specified in this memorandum.

Prior to the issuance of the Concessions RFP, staff from the Auditor's Office and the Department of Aviation (Department) met and agreed that the Auditor's Office would review documentation for the following stages of the procurement process:

1. Review of the Request for Proposal;
2. Review of Minimum Qualifications;
3. Review of evaluation forms;
4. Review of the final scoring, including reference checks and oral interviews if necessary; and
5. Review of the City Council memorandum.

It should be noted that the Auditor's Office limited its review to the above-mentioned evaluation areas. We did not participate in the evaluation of proposals or attempt to validate this process. The Auditor's Office participation was in an advisory capacity only and should not be interpreted as performing a management or policymaking function.

We reviewed the Concessions RFP prior to publication and provided the Department with multiple comments based on past experiences or best practices.

We also reviewed the Department's minimum qualifications review, the written and oral evaluation scores, the conflict of interest and the confidentiality forms, the protest and the final memorandum to the City Council. We should note that we completed the minimum qualifications review after the written and oral evaluations had been completed.

We found that a reference¹ for one of the proposers, The Hudson Group, one of the companies within the AMS-SJC JV joint venture, was also one of the evaluators. In accordance with Council Policy 0-35, Procurement and Contract Process Integrity and Conflict of Interest, *"authors of specifications including City employees and paid and unpaid proposers who assist in the procurement process have to follow CPM 5.1.1 to identify any potential conflicts of interest. The Procurement Contact shall discuss any potential conflict of interest identified with the City Attorney's Office and document the resulting determination, and take appropriate action including, but not limited to, removal of an employee, proposer, or outside uncompensated party from the procurement activity or cancellation of a solicitation."* We found that neither had this evaluator identified this potential conflict of interest in her conflict of interest form nor had Department staff formally discussed this with the City Attorney's Office. We brought this to the Department's attention and staff reviewed it with the City Attorney's Office. The City Attorney's Office determined that there was no conflict of interest.

We also found that the Department used someone other than their designated contact for this procurement as a facilitator for the oral presentations. The City's online RFP manual recommends that *"The procurement contact will facilitate the oral interview sessions."* We would advise the Department to strictly adhere to this policy in future RFPs. According to the Purchasing Division's Deputy Director, *"the intent of the guideline was to ensure separation of duties, in that the facilitator would not serve as an evaluator on the committee. The intent of this guideline was met in this case."*

We should note that the Department selected the evaluation committee. The Auditor's Office did not participate in this selection. However, we reviewed the responses on the conflict of interest forms and found that no one reported any potential or perceived conflicts. We should also note that, in our opinion, the City's procurement manual does not provide specific criteria on how the panelists would be selected. We suggest that the Purchasing Division formally document the selection criteria for panelists for future RFPs.

We reviewed the final tabulated scoring for accuracy and consistency. We found some minor inconsistencies in the evaluators' scoring tabulations; however, these inconsistencies did not appear to have any material effect on the final result.

¹ The Concessions RFP required the proposers to submit four professional references with whom they had conducted business transactions during the past three years.

Honorable Mayor And City Council

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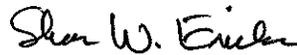
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On April 16, 2008 one of the RFP proposers, Pacific Gateway Concessions, LLC filed a formal protest to the Concessions RFP. The Purchasing Division's Deputy Director responded in writing to this protest on April 28, 2008. We reviewed this response and found that the City followed its process set forth in the RFP for responding to a protest. We should note that we did not review the response for content but simply for adherence to established procedures.

Finally, we reviewed the Department's final memorandum to the City Council and suggested some minor changes.

Based on our review of the Concessions RFP, we found that the process was generally fair and objective and followed City-established procedures and guidelines.



Sharon W. Erickson
City Auditor

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