

RESOLUTION NO. 74412

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ DENYING THE APPEAL BY PACIFIC GATEWAY CONCESSIONS OF THE DENIAL OF ITS PROTEST REGARDING THE NORMAN Y. MINETA SAN JOSÉ INTERNATIONAL AIRPORT FOOD AND BEVERAGE AND RETAIL CONCESSIONS PROGRAM REQUEST FOR PROPOSALS

WHEREAS, on October 12, 2007, the City of San José issued a Request for Proposals (RFP) for Food and Beverage and Retail Concessions at the Norman Y. Mineta San Jose International Airport; and

WHEREAS, on April 4, 2008, the City issued Notices of Intended Award to all proposers that had responded to the RFP; and

WHEREAS, Pacific Gateway Concessions was not recommended for award of either of the two retail concession packages for which it had submitted a proposal; and

WHEREAS, by letter dated April 16, 2008, Pacific Gateway Concessions submitted a protest of the Notice of Intended Award to the City's Chief Purchasing Officer, alleging: (a) evaluation committee members had conflicts of interest; (b) noncompliance with the City's Lobbying Ordinance; (c) a lack of fairness regarding meeting requests with the City's Director of Aviation; (d) errors in the objections process to the RFP; and (e) unfairness in the evaluation of the proposal submitted by Pacific Gateway Concessions; and

WHEREAS, by letter dated April 28, 2008, the City's Chief Purchasing Officer rejected the April 16, 2008, protest submitted by Pacific Gateway Concessions; and

WHEREAS, by letter dated May 7, 2008, Pacific Gateway Concessions submitted its appeal of the denial of its protest to the City Council, alleging: (a) that the City's procurement process was corrupt; (b) that members of the evaluation committee had conflicts of interest; (c) that an evaluation committee member had inappropriately supported a proposer prior to the start of the RFP process; (d) that the evaluation by City staff of the proposals submitted by Pacific Gateway Concessions was inadequate and unfair; and (e) that the proposed submitted by Pacific Gateway Concessions was superior to the other proposals received by the City; and

WHEREAS, by letter dated May 30, 2008, Pacific Gateway Concessions submitted additional documentation regarding its appeal and specifically alleged that one of the members of the evaluation committee violated Government Code Section 1090; and

WHEREAS, by letter dated June 6, 2008, Pacific Gateway Concessions submitted additional documentation regarding its appeal; and

WHEREAS, on June 10, 2008, the City Council considered the appeal submitted by Pacific Gateway Concessions at a public meeting at which all interested parties were given an opportunity to be heard and to present evidence and testimony regarding the appeal; and

WHEREAS, at the June 10, 2008, appeal hearing, the City Council received and considered the reports, supporting documents and recommendations of City staff, all appeal documentation submitted by Pacific Gateway Concessions, as well as testimony from all interested parties;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN JOSÉ FINDS:

Section 1. After considering the evidence produced at the appeal hearing on this matter, the City Council hereby adopts the following facts:

1. The City conducted extensive outreach to potential proposers during the course of the RFP process.
2. City staff has represented that all applicable City policies and procedures were followed during the course of the RFP process, and there is no evidence that City staff, any evaluation committee members, or any proposers violated any applicable City policy or procedure during the course of the RFP process.
3. The RFP provided that the City's response to all objections received would be in the form of an addendum to the RFP that would be provided to all potential proposers. Addendum #3 to the RFP was the City's response to objections to the RFP submitted by Pacific Gateway Concessions.
4. The proposed minimum annual guarantee and the proposed capital investment were factored into the overall scoring of proposals, which also included other evaluation criteria as provided in the RFP.
5. After sending out Notices of Intended Award to all proposers, City staff offered debriefing sessions to all proposers not recommended for award, and City staff conducted debriefing sessions with Pacific Gateway Concessions and Westfield Concessions Management to discuss the strengths and weaknesses of their respective proposals.
6. The City's evaluation committee for the RFP was an ad hoc committee established by the Director of Aviation for a limited duration to make recommendations to City staff, and the evaluation committee did not have decision making authority on behalf of the City.
7. City evaluation committee member Phaedra Ellis-Lamkins is not a City employee. Ms. Ellis-Lamkins is employed by the South Bay AFL-CIO Labor Council, and she was selected by the Director of Aviation to serve on the City's

evaluation committee because of her experience with labor issues. Ms. Ellis-Lamkins had no financial interest in any of the proposers.

8. City evaluation committee member Amy Shaw is not a City employee. Ms. Shaw is Manager for Aviation Commercial Business at the Seattle-Tacoma Airport, and she was selected by the Director of Aviation to serve on the City's evaluation committee because of her experience with Airport concessions. Ms. Shaw had no financial interest in any of the proposers.

Section 2. Based upon the facts set out in Section 1 above, the Council of the City of San José makes the following findings and conclusions:

1. City staff conducted the RFP in a fair and transparent manner and in accordance with all applicable City policies and procedures, including but not limited to Council Policy 0-35, Procurement and Contracting Process Integrity and Conflict of Interest.
2. Addendum #3 to the RFP, which was the City's response to objections to the RFP submitted by Pacific Gateway Concessions, was issued in accordance with the terms and conditions of the RFP.
3. City evaluation committee member Phaedra Ellis-Lamkins did not have a legal conflict of interest that precluded her from serving on the City evaluation committee, and she was not subject to the conflict of interest provisions of California Government Code Section 1090.
4. City evaluation committee member Amy Shaw did not have a legal conflict of interest that precluded her from serving on the City evaluation committee, and she was not subject to the conflict of interest provisions of California Government Code Section 1090.

5. The City evaluation committee and City staff fairly evaluated all proposals submitted in response to the RFP.
6. Findings 1 through 5 above each constitute an appropriate basis for the City's denial of the appeal submitted by Pacific Gateway Concessions.

Section 3. Based on the above-stated findings and conclusions, the City Council hereby finds, determines and declares that:

The appeal by Pacific Gateway Concessions of the denial of its protest of the Notice of Intended Award for the Airport Food and Beverage and Retail Concessions is hereby denied.

ADOPTED this 10th day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, LICCARDO, NGUYEN,
OLIVERIO, PYLE, WILLIAMS, REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: CHU.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk