

Benjamin M. Reznik
Direct: (310) 201-3572
Fax: (310) 712-8572
bmr@jmbm.com

Ref: 00000-5004

August 15, 2011

VIA HAND DELIVERY, E-MAIL AND FACSIMILE (213) 978-1079

President Eric Garcetti and Honorable Members of the Los Angeles City Council
c/o Brian Walters, City Clerk for City Council
City of Los Angeles
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: Request to Disapprove Contract with Martin Outdoor Media, LLC
and Return the Contract to the Board of Public Works
Hearing Date: August 16, 2011; Agenda Item No. 23; File No. 11-1068

Dear President Garcetti and Honorable City Council Members:

Our office represents Norman Bench Advertising. For the reasons set forth in Council Member Englander's Minority Report and those summarized below we respectfully request that the Los Angeles City Council (the "City Council") disapprove the proposed contract with Martin Outdoor Media, LLC and return the contract to the Board of Public Works.

As a preliminary matter, it is important to note that the City Council is being asked to consider a Majority Report and a Minority Report from the Public Works Committee regarding the above referenced matter. The Majority Report requests various amendments to the contract at issue. However, it is our understanding that, pursuant to City Charter Section 373 and Administrative Code Section 10.5, the Council does not have the power to amend these contract terms. The City Council may either approve the contract as recommended by the Board of Public Works or return the contract to the Board of Public Works for reconsideration and resubmission to Council.

The Minority Report specifically recommends returning the contract to the Board of Public Works for reconsideration and resubmission to Council to allow time to analyze various RFP and contract issues. It seems that the Council could satisfy the goals of the Majority and Minority by sending the contract back to the Board of Public Works for reconsideration on all items set forth in both the Majority and Minority Reports.

Neither the Department of Public Works nor the proposed contractor, Martin Outdoor Media, LLC (the "Proposed Contractor" or the "LLC") have provided the City with sufficient information and assurances to allow the City Council to enter into a contract. Moreover, the Proposed Contractor's legal representative may have violated provisions of the

City's Lobbying Ordinance and the Government Code's conflict of interest statutes. Such allegations should be investigated by the City Ethics Commission and potentially the City Attorney before the City Council takes an action on the contract. Therefore, it would be prudent for the City to refrain from approving the contract at this time.

I. THE PROPOSED CONTRACTOR WAS NOT VETTED THROUGH THE RFP PROCESS AND THE CITY RISKS EXPOSING ITSELF TO LIABILITY BY CONTRACTING WITH THIS UNKNOWN ENTITY

The Board of Public Works has requested approval and authorization to enter into a 10-year contract with Martin Outdoor Media, LLC for a Bus Bench Program. The City Council cannot act on this request because the LLC did not respond to the RFP, did not execute the required forms within applicable timelines, did not attend the required pre-proposal meeting and did not complete the required Contractor Responsibility Questionnaire, among other things.

As stated above, the LLC did not propose on the RFP. Moreover, the LLC does not appear to be a subsidiary of the proposer (Martin Outdoor Media, Inc.). Under the terms of the RFP, the City cannot enter into a contract with an entity that did not respond to the RFP and did not attend the pre-proposal conference. See RFP, p. 11. Nevertheless, City staff engaged in negotiations with the LLC, an entity that 1) was not a proposer under the RFP and 2) did not even exist until on or around January 2011. Now the Public Works Committee Majority Report recommends that the City Council approve a contract with the LLC with various amendments. Such a recommendation is in direct violation of the RFP procedures and pertinent provisions of the City's Administrative Code. Therefore, an action in accordance with the Majority Report is not in the best interest of the City.

Councilmember Englander recommended that the City Council disapprove the proposed contract with Martin Outdoor Media, LLC for a Citywide bus bench program and return the contract to the Board of Public Works for reconsideration and resubmission to Council. He further requested that the City Attorney prepare a report relative to any ramifications of Martin Outdoor Media LLC changing its name after submission of the proposals. His recommendation protects the City from potential liability and should therefore be adopted by the City Council.

II. IMPROPER CHANGES TO RFP TERMS COULD RESULT IN LESS REVENUE TO THE CITY

The Department of Public Works also improperly allowed changes in material RFP terms. These inappropriate revisions are not in the best interest of the City and could result in the City collecting less revenue. Specifically, the Department has improperly changed or added terms related to advertising on trash cans, ownership of benches, alcohol advertising and percent of revenue owed to the City, among other issues. RFP proposers were not given the

opportunity to provide projected revenues based on the ultimate contract deal points. Therefore, the City has no idea whether other proposers may have provided the City with more revenue.

Councilmember Englander identified these issues and his Minority Report which specifically requests the City Attorney to report relative to the existence of a 'significant difference' between the Request for Proposal and the proposed contract with Martin Outdoor Media.

III. THE CITY COUNCIL SHOULD NOT ACT UNTIL ALLEGATIONS OF ETHICAL VIOLATIONS ARE PROPERLY INVESTIGATED

The Proposed Contractor is represented by Christopher M. Westhoff who served as General Counsel to the Department of Public Works until on or around February 27, 2010. It is our understanding that Mr. Westhoff was intimately involved with the creation of the RFP at issue. Of course the City's Ethics Ordinance specifically prohibits "a former City official or employee of any agency who personally and substantially participated in a decision, proceeding, claim, contract, legislation or other specific matter during his or her City service" from "attempting to influence any action on that specific matter on behalf of any person other than the agency." City *See* LAMC § 49.5.11(A). Moreover, Government Code Section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested.

As stated above, the Department of Public Works was formulating this RFP while Mr. Westhoff served as its General Counsel. Mr. Westhoff now represents the Proposed Contractor. His representation may put any contract award in jeopardy. The City Ethics Commission and potentially the City Attorney should investigate these potential ethical violations. If such violations exist, the Council's approval of the contract could be void. Therefore, it would be in the best interest of the City for the City Council to ask the Ethics Commission and potentially the City Attorney to investigate these potential ethical violations.

IV. NORMAN BENCH ADVERTISING WILL NOT REMOVE ANY BUS BENCHES PENDING THE INVESTIGATION AND FINAL AWARD OF THE PROPOSED CONTRACT, UNLESS REQUESTED TO DO SO BY THE CITY

There have been recent press stories accusing Norman Bench Advertising of removing bus benches out of sheer spite for having lost the contract. These reports are totally false and defamatory. Norman Bench Advertising is obligated to remove damaged bus benches and is under direct orders from the City not to replace or install new benches (see attached email correspondence between Shannon Eastenson at Bureau of Street Services and Angie Campos at Norman Bench Advertising dated Aug. 24, 2010, Exhibit "A"). Indeed, as is evident from the attached emails, Norman Bench Advertising has always been in close communication with Bureau of Street Services when it comes to removal of bus benches. *See* Exhibit "B."

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In fact, when Councilman Richard Alarcon requested a new bus bench on Glenoaks at Sayer, Norman Bench Advertising was specifically instructed by Bureau of Street Services staff not to install it. (See attached email correspondence dated September 21 and 22, 2010, Exhibit "C").

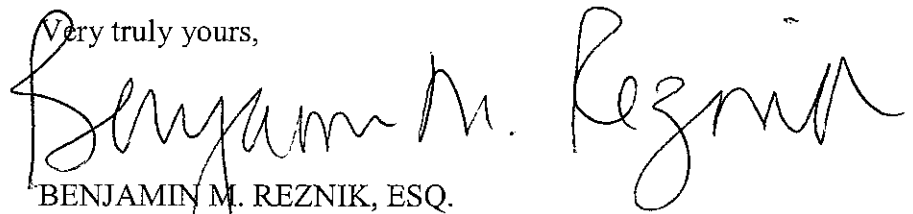
Norman Bench Advertising hereby commits to continue to maintain and repair all existing bus benches pending the City's investigation and final award of the proposed contract.

V. CONCLUSION

The proposed contract with Martin Outdoor Media, LLC is mired in various legal issues and deficiencies. If the City Council nevertheless chooses to proceed with approving the contract, it is important to note that potential ethical violations could render the contract void. Numerous other issues related to the contract and RFP were identified in Norman Bench Advertising's May 20, 2011 letter to the Board of Public Works. *See* Exhibit "D." Finally, the Public Works Majority Report recommends various amendments which cannot be accomplished without returning the contract to the Board of Public Works for reconsideration and resubmission to the Council. Therefore, it is in the best interest of the City to adopt Councilmember Englander's Minority Report and disapprove the proposed contract with Martin Outdoor Media, LLC for a Citywide bus bench program and return the contract to the Board of Public Works for reconsideration and resubmission to Council.

Thank you for your consideration.

Very truly yours,



BENJAMIN M. REZNIK, ESQ.
ELIZABETH SMAGALA, ESQ. of
Jeffer Mangels Butler & Mitchell LLP

BMR/exs

Enclosures

cc: Hon. Carmen Trutanich, City Attorney
William Carter, Chief Deputy
Ms. Andrea Alarcon, President, Board of Public Works
Mr. Gerry Miller, Chief Legislative Analyst
Mr. Miguel Santana, City Administrative Officer
Ted Jordan, Esq., Assistant City Attorney
Mr. Lance Oishi, Bureau of Street Services
Ms. Shannon Eastenson, Bureau of Street Services

EXHIBIT A

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:10 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Request for Bench Installations

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Tuesday, August 24, 2010 1:14 PM
To: Angie Campos
Subject: Re: Request for Bench Installations

Okay, thanks for the information. Shannon

On Tue, Aug 24, 2010 at 12:12 PM, Angie Campos <angiec@benchad.com> wrote:
Hi Shannon,

The request was from Woody Yee at Metro (213) 922-5063 and yes they have asked this before.

Thank you,

Angie Campos
Office Manager
Coast United Advertising
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Tuesday, August 24, 2010 8:08 AM
To: Angie Campos
Cc: Lance Oishi
Subject: Re: Request for Bench Installations

Hi Angie,

No, I think that we need to keep the verbal agreement that we had and not install any new benches. If you can tell me who at Metro it was that requested the benches, I'd be happy to call and let them know that this is a City decision, and it's not coming from Norman. Let me know. Thanks, Shannon

PS. Just out of curiosity, have they ever asked this of you before?

On Mon, Aug 23, 2010 at 4:34 PM, Angie Campos <angiec@benchad.com> wrote:
Hi Shannon,

We received a request from METRO to install bus benches at the following intersections:

Soto St. and 1st St. southwest corner
1st St. and Soto St. northwest corner
1st St. and Soto St. southwest corner

Do you want us to install the benches? Please let us know.

Thank you,

Angie Campos
Office Manager
Coast United Advertising
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

Mail Stop 550

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

Mail Stop 550

EXHIBIT B

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:13 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: EB Ventura FS Hazeltine

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Friday, October 01, 2010 4:38 PM
To: Angie Campos
Subject: Re: EB Ventura FS Hazeltine

Hi Angie,

Thank you, and I'll speak with them next week. Shannon

On Fri, Oct 1, 2010 at 4:27 PM, Angie Campos <angiec@benchad.com> wrote:
Hi Shannon,

The bench was removed this morning.

Also, can you please contact West Valley Alliance again because they are continuing to paint our benches. Their telephone # is (818) 885-8885.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Thursday, September 30, 2010 10:18 AM
To: Angie Campos
Subject: EB Ventura FS Hazeltine

Hi Angie,

We need you to remove a bench at this location. The property owner is complaining about the stop being dirty and is currently lobbying Metro to move the stop. Please let me know when it has been removed. Thanks, Shannon

--

Shannon Eastenson
Bureau of Street Services

8/15/2011

1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

Mail Stop 550

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

Mail Stop 550

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:14 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Ventura and Serrania

From: Angie Campos [mailto:angiec@benchad.com]
Sent: Thursday, October 28, 2010 4:49 PM
To: 'Shannon Eastenson'
Subject: RE: Ventura and Serrania

Hi Shannon,

The benches were removed today.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Tuesday, October 19, 2010 9:18 AM
To: Angie Campos
Cc: Lance Oishi
Subject: Ventura and Serrania

Hi Angie,

CD 3 has informed me that the bus stop at this location has been moved. Can you please remove the benches that are at this location? Thanks, Shannon

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

Mail Stop 550

8/15/2011

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:18 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Damaged Bus Bench - NB Van Ness between Slauson & 54th Street

From: Lance Oishi [mailto:lance.oishi@lacity.org]
Sent: Thursday, March 24, 2011 3:48 PM
To: Angie Campos
Subject: Re: Damaged Bus Bench - NB Van Ness between Slauson & 54th Street

Hi Angie,

Thank you for the follow-up. Much obliged.

-Lance O.

On Thu, Mar 24, 2011 at 1:47 PM, Angie Campos <angiec@benchad.com> wrote:
Hi Lance,

Your request was completed on Tuesday morning.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Lance Oishi [mailto:lance.oishi@lacity.org]
Sent: Monday, March 21, 2011 11:13 AM
To: Angie Campos
Cc: Larry Morales; Shannon Eastenson
Subject: Damaged Bus Bench - NB Van Ness between Slauson & 54th Street

Hi Angie,

I took in a call a little earlier this morning from Council District 8 about a damaged bus bench that was lying in the northbound lanes of Van Ness Avenue between Slauson Ave. and 54th Street. Please dispatch a crew out to that location to either secure or remove the bench in question. Thank you in advance for attending to this concern promptly.

Sincerely,

--

8/15/2011

Lance Oishi, Contract Administrator
Streetscape Development and Coordinated Street Furniture Programs
Bureau of Street Services

Phone: (213) 847-0903

Fax: (213) 847-0975

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:33 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Bus furniture along Adams From Western Until

From: Lance Oishi [mailto:lance.oishi@lacity.org]
Sent: Tuesday, March 15, 2011 3:41 PM
To: Angie Campos
Cc: Albert Lord; Shannon Eastenson; Larry Morales
Subject: Re: Bus furniture along Adams From Western Until

Hi Angie,

Much obliged. Thank you for your prompt response.

-Lance O.

On Tue, Mar 15, 2011 at 2:51 PM, Angie Campos <angiec@benchad.com> wrote:

Hi Lance,

We took care of it this morning.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Lance Oishi [mailto:lance.oishi@lacity.org]
Sent: Tuesday, March 15, 2011 2:15 PM
To: Angie Campos
Cc: Shannon Eastenson; Larry Morales
Subject: Fwd: Bus furniture along Adams From Western Until

Hi Angie.

I'm forwarding you the attached request from CD-10. Sounds like the problematic bench is at EB Adams FS Crenshaw. Please either repair the bench or have it removed if it is beyond repair. Thank you in advance for your assistance with this request.

Sincerely,

--

8/15/2011

Lance Oishi, Contract Administrator
Streetscape Development and Coordinated Street Furniture Programs
Bureau of Street Services

Phone: (213) 847-0903

Fax: (213) 847-0975

----- Forwarded message -----

From: **Albert Lord** <albert.lord@lacity.org>

Date: Tue, Mar 15, 2011 at 12:06 PM

Subject: Bus furniture along Adams From Western Until

To: Lance Oishi <lance.oishi@lacity.org>

Lance,

Do you oversee bus bench installs along adams?

I have a question and a request for repair of a damage bench at the
Adams/Crenshaw intersection East bound lane, SE corner.

Albert Edmund Lord III
Field Deputy
Office of the Council Member
HERB J. WESSON, JR.
1819 Western Avenue
Los Angeles, CA
90006
tel 323 733 8233
albert.lord@lacity.org

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:36 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: SB Figueroa FS La Loma

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Tuesday, April 26, 2011 9:52 AM
To: Angie Campos
Subject: Re: SB Figueroa FS La Loma

Hi Angie,

Metro said that bus patron went unseen by a bus driver and was therefore passed by. They think it is too far from the stop. We don't want to relocate it at this time. Thank you, Shannon

On Tue, Apr 26, 2011 at 9:48 AM, Angie Campos <angiec@benchad.com> wrote:

Hi Shannon,

What is the complaint that Metro has regarding the location at Figueroa and La Loma Northwest corner? Here is the picture of the location.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Friday, April 22, 2011 9:13 AM
To: Angie Campos
Subject: SB Figueroa FS La Loma

Hi Angie,

We've gotten a complaint from Metro about the bench at this location. Please remove the bench as soon as possible and let me know when it's been done. Thanks, Shannon

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872

8/15/2011

(213) 847-0975 (fax)
Mail Stop 550

--

Shannon Eastenson
Bureau of Street Services
1149 South Broadway, Ste. 400
Los Angeles, CA 90015
(213) 847-0872
(213) 847-0975 (fax)
Mail Stop 550

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:49 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Bus bench on 3rd and Lorraine

From: Lance Oishi [mailto:lance.oishi@lacity.org]
Sent: Wednesday, June 29, 2011 4:04 PM
To: Angie Campos
Cc: Sheila Irani; Shannon Eastenson; Larry Morales
Subject: Fwd: Bus bench on 3rd and Lorraine

Hi Angie,

Apparently this bench location continues to attract the homeless so CD-4 is now requesting us to have the bench removed. I'd appreciate it if you could have your crews remove the bench in question.

Thank you in advance for your assistance with this request.

--
Lance Oishi, Contract Administrator
Streetscape Development and Coordinated Street Furniture Programs
Bureau of Street Services

Phone: (213) 847-0903
Fax: (213) 847-0975

----- Forwarded message -----
From: **Sheila Irani** <sheila.irani@lacity.org>
Date: Wed, Jun 29, 2011 at 2:35 PM
Subject: Bus bench on 3rd and Lorraine
To: Lance Oishi <lance.oishi@lacity.org>

It appears our homeless man has returned and the community is asking the District to make arrangements to have the bus bench removed at 3rd and Lorraine. Would very much appreciate it if you we could expedite this since this has been dealt with for two months in trying to get the homeless man relocated and LAPD has really gone above the call of duty to deal with him.
Sheila

The only phone number found on the bench was:

The company is 'Bench Ad' and here is the phone number 800-234-5460. Can you please have it removed through Lance's Office. That would be great if you could get this done.
Thanks again,

8/15/2011

David

----- Forwarded message -----

From: Baudistel, David <dbaudistel@financialguide.com>
Date: Wed, Jun 29, 2011 at 12:01 PM
Subject: RE: Fwd: N WINDSOR BLVD NWP
To: Sheila Irani <sheila.irani@lacity.org>

Hi Sheila,

Unfortunately the homeless guy is back and has reestablished himself on that MTA bench. I walked by this morning and he was urinating all over the bench. Also, the bench and area surrounding it was never cleaned despite your request. Is there a way to remove the bench...because that will be the only way of stopping him from living there. Thanks for your attention to this matter.

-David

From: Sheila Irani [<mailto:sheila.irani@lacity.org>]
Sent: Saturday, June 11, 2011 7:31 AM
To: Baudistel, David

Subject: Re: Fwd: N WINDSOR BLVD NWP

I have requested the bench and area to be cleaned. Please let me know if it doesn't get handled and I'll forward to our CD4 crew. Hope our homeless friend has found a better home at the Weingart Ctr so the neighborhood can enjoy the bus stop.

Best,

From: Sheila Irani <sheila.irani@lacity.org>
To: 'dbaudistel@financialguide.com' <dbaudistel@financialguide.com>
Sent: Mon Jun 06 13:06:19 2011
Subject: Re: Fwd: N WINDSOR BLVD NWP

As always it is my pleasure helping you to make your community safer and cleaner. I'm available any time.

From: Baudistel, David <dbaudistel@financialguide.com>
To: Sheila Irani <sheila.irani@lacity.org>
Sent: Mon Jun 06 12:18:51 2011
Subject: RE: Fwd: N WINDSOR BLVD NWP

Sheila,

You have been terrific. Thanks for your unbelievable attention to these matters. Hopefully he will not return. Thanks again.

-David

From: Sheila Irani [<mailto:sheila.irani@lacity.org>]
Sent: Monday, June 06, 2011 12:10 PM
To: 31762@lapd.lacity.org; Baudistel, David
Subject: Re: Fwd: N WINDSOR BLVD NWP

If he should return I now have a contact for the bench removal.

8/15/2011

From: JOSEPH PELAYO <31762@lapd.lacity.org>
To: dbaudistel@financialguide.com <dbaudistel@financialguide.com>; Sheila Irani <sheila.irani@lacity.org>
Sent: Mon Jun 06 09:22:12 2011
Subject: Re: Fwd: N WINDSOR BLVD NWP

I removed the homeless man from 2nd and Windsor this morning. He is the same man that was hanging out on the bus bench on 3rd and Lorraine. I transported him to the Weingart Center in downtown Los Angeles, which is a center that assists the homeless. I hope this resolves the issue with the bus bench as well. I will continue to monitor the area and address the issue if he returns.

Thanks again for your help.
SLO Pelayo

>>> Sheila Irani <sheila.irani@lacity.org> 6/6/2011 7:07 AM >>>
I will contact Jeannie Shen at LADOT and ask to expedite. Thanks for handling the homeless guy again.

From: JOSEPH PELAYO <31762@lapd.lacity.org>
To: Sheila Irani <sheila.irani@lacity.org>
Sent: Mon Jun 06 06:27:19 2011
Subject: Fwd: N WINDSOR BLVD NWP

Good Morning Sheila,
Can you take a look at the email below and let me know if you can assist. I am on my way to Lorraine and 3rd to deal with the homeless issue. I don't have a contact with the MTA, however they've been helpful in removing benches in the past when homeless have set up camp around them.

--
Sheila Irani, Field Deputy and Deputy of Transportation
Councilman Tom LaBonge
200 N. Spring St., Room 480
Los Angeles, CA 90012
office: 213-473-2340
cell: 323-632-4377

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:49 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: Bus Bench on 3rd and Lorraine

From: Angie Campos [mailto:angiec@benchad.com]
Sent: Friday, July 01, 2011 3:21 PM
To: 'Sheila Irani'
Subject: Bus Bench on 3rd and Lorraine

Dear Councilman Tom LaBonge and Sheila Irani,

Norman Bench Advertising removed the bus bench at 3rd and Lorraine as per your request.

If we can be of further assistance you may contact us at angiec@benchad.com or (818) 313-8644.

Have a great 4th of July weekend!

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

8/15/2011

EXHIBIT C

Ibaraki, Kathlyn S.

From: Angie Campos [angiec@benchad.com]
Sent: Monday, August 15, 2011 5:12 PM
To: Reznik, Benjamin M.
Cc: Smagala, Elizabeth
Subject: FW: FW: Glenoaks at Sayre - Request for Bench installation

From: Shannon Eastenson [mailto:shannon.eastenson@lacity.org]
Sent: Wednesday, September 22, 2010 1:14 PM
To: Angie Campos
Subject: Re: FW: Glenoaks at Sayre - Request for Bench installation

Hi Angie,

No, we can't install new benches. If you give me the name of the person that requested it, I will explain the situation to them. Let me know. Thanks, Shannon

On Wed, Sep 22, 2010 at 12:36 PM, Angie Campos <angiec@benchad.com> wrote:

Hi Shannon,

I am following up on the request from Councilman Richard Alarcon's office to install a bench. Please let us know.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING
COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

From: Angie Campos [mailto:angiec@benchad.com]
Sent: Tuesday, September 21, 2010 12:04 PM
To: 'Shannon Eastenson'
Subject: Glenoaks at Sayre - Request for Bench installation

Hi Shannon,

We received a request from Councilman Richard Alarcon's office to place a bench on Glenoaks at Sayre going Southbound (South west corner). Do you want us to place the bench? Please let us know.

Thank you,

Angie Campos
Office Manager
NORMAN BENCH ADVERTISING

8/15/2011

COAST UNITED ADVERTISING
8020 Deering Avenue
Canoga Park, CA 91304
Tel: (818) 313-8644
Fax: (818) 313-9024
angiec@benchad.com

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Shannon Eastenson
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May 20, 2011

Cynthia M. Ruiz, President
Andrea Alarcon, Vice President
Paula A. Daniels, Member
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Board of Public Works
Room 361-P
200 North Spring Street
Los Angeles, CA 90012-4801

Re: Request For Proposal for Bus Bench Program Contract
Calendar Years 2011 through 2021

Dear Members of the Board of Public Works:

As you are aware, this office represents Norman Bench Advertising.¹ Thank you for the opportunity to submit additional information that we believe requires you to reject all bids because Martin Outdoor Media, Inc. (MOM-INC.) is non-responsible, submitted a non-responsive proposal, and, if awarded, the referenced contract would violate competitive bidding.

NON-RESPONSIBLE PROPOSER

MOM-INC. submitted a proposal in response to Request for Proposal for the Bus Bench Program Contract (RFP) without having been registered with the California Secretary of State as a foreign corporation. Corporations Code § 2105(a) specifies: "[a] foreign corporation shall not conduct intrastate business without having first obtained from the Secretary of State a certificate of qualification. Corporations Code § 191 defines transacting intrastate business as: "entering into repeated and successive transactions of its business in this state other than interstate or foreign commerce." MOM-INC. listed several subcontractors with whom it intends to enter into contracts in support of its proposal response. LNI Custom Manufacturing, Waste Management, Monarch Litho and CR&A Custom, Inc. are all California corporations. Thus, in order to perform the contract, MOM-INC. would be entering into successive business

¹ Norman Bench Advertising, Inc. and Coast United Advertising Co., Inc. submitted a responsive and responsible proposal to the referenced RFP.

transactions. It never obtained the required certificate. In not having the required certificate, MOM-INC. cannot conduct intrastate business. It lacks the capacity to transact business in California. MOM-INC. is a non-responsible proposer who's bid should have been rejected.

The definition of a responsible bidder is found in Public Contract Code § 1103:

"Responsible bidder," as used in this part [sic, probably should be "code"], means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.

The Legislature finds and declares that this section is declaratory of existing law.

This definition was restated in *City of Inglewood - Los Angeles County Civic Center Authority v. Superior Court* (1972) 7 C3d 861, 867:

"[R]esponsible" in the context of the statute ... includes the attribute of trustworthiness, [and] it also has reference to the quality, fitness and capacity of the low bidder to satisfactorily perform the proposed work."

The fact that MOM-INC. did not and does not have a certificate of qualification from the Secretary of State means that it cannot transact business in California. MOM-INC. lacks capacity to perform this contract, and is, therefore, non-responsible.

There is another issue associated with MOM-INC.'s lack of responsibility. Miami-Dade County sued MOM-INC. for \$180,000 for breach of contract. [See ATTACHMENT 1.] This issue was not disclosed in MOM-INC.'s RFP response and should have been.²

Lastly, MOM-INC. identified LNI Custom Manufacturing as its supplier of bus benches for \$5,000,000. LNI Custom Manufacturing filed a voluntary petition for bankruptcy under Chapter 11. Though this may mean reorganization, it can also be resolved through a liquidation plan. [11 U.S.C. § 1123(a)(5)(D).] A hearing is necessary to verify whether or not LNI Custom Manufacturing, and by extension MOM-INC., can perform the requirements of the RFP. [See *City of Inglewood-Los Angeles County Civic Center Auth. v. Superior Court* (1972) 7 C3d 861, 867.] No such hearing was held.

² This non-disclosed item also reflect on the responsiveness of MOM-INC.'s RFP response. See discussion below.

NON-RESPONSIVE PROPOSAL

The proposal by MOM-INC. contained three irregularities that cannot be waived, not withstanding LAAC § 10.15(c): (1) failure to submit a non-collusion affidavit in compliance with Public Contract Code § 7016; (2) failure to possess a Class C-8 Specialty Contractor's License pursuant to Business and Professions Code § 7028.5; and (3) subcontracting in excess of the allowable 51% of the contract.

The (RFP) Section 2.6 AWARD OF CONTRACT, specifies as follows: "Award of contract is made to the Proposer with the best combination of compensation, experience, product quality, and services." However, if the proposer fails to do what the bidding instructions require, the deviations from those requirements are considered informalities in the bid.

In *D.H. Williams Construction, Inc. v. Clovis Unified School District* (2007) 146 CA4th 757, 763-64, the court discussed the issue of responsiveness of a bid. In addition to the determination whether a bidder is responsible, the agency must also determine whether the bid is responsive to the call for bids, that is, whether the bid "promises to do what the bidding instructions demand." (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341.) For example, in *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1443, 49 Cal.Rptr.2d 184, the bid documents required that subcontractors perform less than 50 percent of the contemplated construction project. The lowest bid stated that subcontractors would perform over 80 percent of the work. The court held this bid nonresponsive and concluded the city was not permitted to award the contract based on the nonresponsive bid. (*Ibid.*)

In the usual case, the determination that a bid is nonresponsive is not based on disputed facts, does not involve an exercise of agency discretion, and does not require a hearing for the excluded bidder. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1342-1343.)

Los Angeles Administrative Code (LAAC) § 10.15(c) allows the City to waive any informality in the proposal when to do so would be for the benefit of the City. The ability to waive informalities is the issue of responsiveness of the bid or proposal and is not unfettered. To be waivable the informality or irregularity in the bid "cannot have [1] affected the amount of the bid or [2] given a bidder an advantage or benefit not allowed other bidders ..." *Konica Business Machines v. Regents of University of California* (1988) 206 CA3d 449, 454. These are two distinct tests. If either is met, the defect cannot be waived and the defective bid must be rejected.

MOM-INC.'s failure to provide the legally required non-collusion affidavit and proper contractor's license violates the law. And California courts have found that subcontracting in excess of 51% creates an unfair competitive advantage as discussed below.

1. **MOM-INC. FAILED TO SUBMIT A NON-COLLUSION AFFIDAVIT**

City Charter § 371(d) specifies, in pertinent part:

All bids and proposals shall comply with additional requirements provided by ordinance, including, but not limited to, the furnishing of a bid bond, performance bond and **affidavit of non-collusion**. Further procedures for competitive bidding shall be prescribed by ordinance. (Emphasis added.)

Los Angeles Administrative Code § 10.15(d) specifies, in pertinent part:

Every bid or proposal to perform a contract with the City, or with any board, officer or employee thereof, shall include in the **affidavit of the bidder or proposer that such bid or proposal is genuine, and not sham or collusive, nor made in the interest or on behalf of any person not therein named**. The affidavit shall further state that the bidder or proposer has not directly or indirectly induced or solicited any other bidder or proposer to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder or proposer has not in any manner sought by collusion to secure for itself an advantage over any other bidder or proposer. Any bid or proposal made without such affidavit, or in violation thereof, shall not be considered. (Emphasis Added.)

The City Charter and the LAAC both require that a bidder or proposer submit an affidavit. The RFP included a signature under penalty of perjury for attesting to the non-collusion statement. However, an affidavit is not a declaration under penalty of perjury. CCP § 2003 defines an affidavit as "a written declaration under oath, made without notice to the adverse party." Public Contracts Code § 7106 sets forth the format for the affidavit for a public works contract. The affidavit requires a jurat, certifying that the affidavit was made under oath administered by a notary. The contract for the installation of bus benches is a public contract. Public Contracts Code § 1101 defines a public works contract very broadly as an agreement for the "erection, construction, alteration, repair, or improvement of any . . . other public improvement of any kind."

The PROPOSER SIGNATURE DECLARATION PAGE, ¶ 11. RFP, P. 31, was executed by MOM-INC., president, Scott Martin, under penalty of perjury. [ATTACHMENT 2.] This was not an affidavit, but a declaration under penalty of perjury. Since MOM-INC. did not comply with LAAC § 10.15(d) by submitting a properly notarized non-collusion affidavit, its proposal should not have been considered.³

2. THE REQUEST FOR PROPOSALS (RFP) DID NOT INCLUDE THE REQUIREMENT FOR A C-8 CONTRACTOR'S LICENSE

MOM-INC. specified in its IMPLEMENTATION SCHEDULE [ATTACHMENT 3] that it would remove and replace existing bus benches and install new benches having first obtained a blanket-building permit. MOM-INC. must have an "A" Permit for concrete installation.⁴ MOM-INC. must install concrete pads for approximately 10% of the bus benches to be installed. [See ATTACHMENT 5, p. 2, Answer #5.]

LAMC § 62.105 requires that:

No person shall lay, construct, reconstruct or repair in any street or in, over or through any property or right of way owned by or under the control of the City, any curb, sidewalk, gutter, driveway, approach, roadway surface, pavement, sanitary sewer, sewage works, storm drain, culvert, stairway, retaining wall or similar structure, building or improvement, or perform any grading or filling, or subject any sewer or storm drain to excessive live or dead loading without first obtaining a written permit therefor from the Board and without first obtaining approval of plans and specifications and the lines and grades therefor from the City Engineer.

MOM-INC. was advised of the need for the appropriate City and other permits.⁵ Business and Professions Code § 7031.5 specifies that when a city requires the

³ The RFP did not include the proper format for the non-collusion affidavit. However, MOM-INC. still had an obligation to comply with the City's Charter and LAAC requirements. It did not do so.

⁴ See also proposed contract, p. 34, Section 6.2.17.5.2 CONCRETE and ARTICLE 19, P. 47 LICENSES, PERMITS AND CERTIFICATIONS.

⁵ **Question 5(b)** of PRE-SUBMITTED QUESTIONS FOR THE PROPOSAL CONFERENCE (June 30, 2010), p. 2, asks: "What permit(s) are necessary to install a bench and what is the cost?" **Answer:** "Certain activities related to the installation of a bus bench such as placement of the concrete landing may require a City permit such as an 'A' permit. . . . In some locations, a State Coastal Permit or a Cal Trans Permit may be required. . . ." [ATTACHMENT 4.] In ANSWERS TO QUESTIONS FROM THE PRE-PROPOSAL CONFERENCE (July 8, 2010) p. 2, **Number 5:** "There are approximately 600-700 sites that require a concrete pad. If there is a

issuance of a permit as a condition precedent to the improvement or repair of any structure, it shall also require that such applicant provide a statement that the applicant has a contractor's license. Business and Professions Code § 7033 specifies that every city that requires the issuance of a business license as a condition of engaging in business in the city, and such business is the subject of regulation under the Business and Professions Code licensing requirements, shall require the contractor to provide the city with a statement that the licensee has the appropriate contractor's license.

Title 16 of the California Code of Regulations § 832.08 provides that a Class C-8 specialty contractors license is required for a contractor who is one that "forms, pours, places and installs specified mass, pavement flat and other concrete work. . ."

MOM-INC. did not provide proof of a Class C-8 license with its proposal, nor did it list any subcontractor properly licensed to perform such work. Yet, MOM-Inc. was informed that it must obtain an "A" Permit for concrete work and have a BTRC with the City. For this reason the proposal by MOM-INC. was non-responsive.

Business and Professions Code § 7028.15 (e) provides:

Unless one of the foregoing exceptions applies [(1) person is exempt from license law, (2) local agency contract with federal funding, (3) joint venture bidder] a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter **shall be considered nonresponsive and shall be rejected by the public agency.** (Emphasis added.)

MOM-INC. does not possess a Class C-8 license, so it cannot do the work with its own forces, nor did it list a subcontractor who has the proper license. Thus, Business and Professions Code § 7028.15(e) mandates that MOM-INC.'s proposal was non-responsive and should have been rejected.

permit required, it will make it very expensive to install the bench." **Answer:** Yes, we understand that will increase the costs. Those are some of the parameters that are set upon the City by ADA and their code requirements, which were not contemplated at the time of the previous bus bench contract." [ATTACHMENT 5.]

3. SUBCONTRACTING IN EXCESS OF THE 51% SPECIFIED RENDERS THE BID OF MOM-INC. NON-RESPONSIVE.

RFP, P. 12, Section 3.8 PRIME CONTRACTOR states that:

The proposer awarded the contract must be the prime contractor performing the primary functions of the contract for a total of 51% of the contract. If any portion of the contract is to be subcontracted, it must be clearly set forth in the proposal document as to what part(s) are to be subcontracted and a listing of the subcontractors provided.

MOM-INC. identified the following subcontractors and dollar value of the subcontract for the 10-year life of the contract. [ATTACHMENT 6.]

1.	LNI Custom Manufacturing ⁶	\$ 5,000,000
2.	Waste Management	\$ 1,200,000
3.	Shelter Clean (\$1,200,000/yr.)	\$12,000,000
4.	Davis Blueprint Co. (\$200,000/yr.)	\$ 2,000,000
5.	Monarch Litho (\$200,000/yr.)	\$ 2,000,000
6.	CR&A Custom, Inc. (\$200,000/yr.)	\$ 2,000,000
	TOTAL	\$24,200,000

Under the terms of the Contract, Section 6.2.13 FEE AND PAYMENT TO THE CITY, the total minimum annual fee payable to the City would be \$2,760,000. Assuming that the minimum annual fee is equivalent to the percentage fee of 10% of annual gross cash receipts, then gross revenue for the life of the contract would be \$27,600,000. Of course the gross revenue may be higher and thus payment to the City higher. However, in order for the subcontracting dollar value to comply with the RFP, P. 12, Section 3.8 PRIME CONTRACTOR, the gross revenue would need to be in excess of \$49,387,755. In order to achieve this revenue stream, the anticipated gross receipts would need to increase by almost 79%.

However, the speculation of the gross receipts is irrelevant. Clearly, subcontracting exceeded the dollar amount permitted by the RFP, Section 3.8. The court in *Valley Crest Landscape, Inc. v. City Council* (1996) 41 CA4th 1432, 1442, considered the award of a contract where the contractor had exceeded the subcontracting maximum by 33%. The court determined that the bidder had an unfair competitive advantage, rendering

⁶ LNI Custom Manufacturing is currently in bankruptcy. It manufactures bus benches. The petition is ATTACHMENT 7. The lack of a responsible subcontractor should render the proposer MOM.INC. non-responsible since without LNI Custom Manufacturing, MOM-Inc. lacks the capacity to perform.

its bid non-responsive. Thus, similarly, the proposal of MOM-INC. was non-responsive.

4. FAILURE TO PROPERLY COMPLETE APPENDIX B [ATTACHMENT 12] RENDERS THE PROPOSAL NON-RESPONSIVE.

As already discussed, MOM-INC. failed to disclose that Miami-Dade County sued MOM-INC. for \$180,000 for breach of contract. [See ATTACHMENT 8.] This issue was not disclosed in MOM-INC.'s RFP response Appendix B, p. 5, Section F (13). Indeed, MOM-INC. RFP response, Appendix K [ATTACHMENT 8, p. 2] states: We have not had any conflicts regarding our contracts with municipal organizations. This response is a lie.

RFP, Appendix B, p. 5, Section F (13) asks: "In the past 5 years, has your firm, been the defendant in court on a matter relating to any of the following issues: (b): Work performance on a contract?" MOM-INC. responded "NO." Yet Miami- Dade County sued it for breach of contract in 2007. This response was a lie.

SOLE SOURCE CONTRACT

In addition to the lack of responsiveness of the proposal by MOM-Inc., there is the issue that the City is awarding sole source contract in violation of competitive bidding. [LAAC § 10.15(b).] The proposal in response to the RFP identifies the proposer as Martin Outdoor Media, Inc. [See PROPOSER SIGNATURE DECLARATION PAGE, ATTACHMENT 2.] Staff is requesting the Board approve a contract with Martin Outdoor Media, LLC (LLC). The LLC did not exist as a certified foreign corporation with the California Secretary of State until January 10, 2011. Most importantly, the LLC did not submit a proposal.

THE LLC WAS NOT THE PROPOSER

On January 7, 2011, staff for the Department of Public Works requested authority to negotiate a Bus Bench Program Contract with MOM-INC. On March 9, 2011, staff returned to the Board, requesting an additional 60 days in order to negotiate a contract with Martin Outdoor Media. Thereafter on March 8, 2011, staff received a letter from the LLC agreeing to extend the time to negotiate the contract. That letter was followed by a letter from LLC, signed by Scott Martin, dated March 15, 2011 that stated:

We understand that the Request for Proposal promulgated by the City states that the proposals submitted pursuant thereto are irrevocable for 240 days, which would mean that our proposal is set to expire on March 30, 2011. Please be advised that we hereby agree to extend our proposal

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for 60 days, and would [sic] thus our proposal will now have an expiration date of May 31, 2011. [Attachment 9.]

The problem is that the proposer for the RFP was not LLC. The proposer was MOM-INC. [ATTACHMENT 2 PROPOSER SIGNATURE DECLARATION PAGE identifies the proposer MOM-INC.] Since the LLC was not the proposer in response to the RFP, LLC lacked the capacity to extend the proposal of MOM-INC. RFP, P. 9, Section 2.1.3 AUTHORIZED SIGNATURES specifies:

Proposals must be signed by a duly authorized officer eligible to sign contract documents and authorized to bind the company to all commitments made in the proposal.

Since the LLC did not submit the proposal, the LLC was not duly authorized by MOM-INC. to extend its proposal.

Moreover, the LLC does not appear to be a subsidiary of MOM-INC. In its application to operate as a foreign corporation in Florida, the LLC states that its managing members are InSiteMediaCom 2, LLC located in Plantation, FL, and MOM-INC. However, the managing member who is authorized to act on behalf of the LLC is Glen Flutie. The authorized representative for MOM-INC. is Scott Martin.

Creative Outdoor Media was also asked to extend its firm offer on April 19, 2011. Unfortunately, the proposal had expired on March 30, 2011. So in offering a proposal on the same terms and conditions as the original proposal, Creative Outdoor Media was offering a new proposal that was not in response to any RFP.

City staff engaged in negotiations with an entity that was not a proposer under the RFP. The LLC did not even exist as a registered entity with the Secretary of State until January 10, 2011.⁷ [ATTACHMENT 10 is the registration as a business entity with the Secretary of State.] MOM-INC. is still not registered with the Secretary of State as a corporation licensed to do business in California.⁸

Section 2.6 of the referenced Request for Proposal (RFP) - AWARD OF CONTRACT provides:

⁷ The LLC did not exist as a Delaware corporation until January 3, 2011 when it was known as Martin Outdoor Media of Los Angeles, LLC. The name was changed to Martin Outdoor Media, LLC in Delaware on February 16, 2011. The California LLC registered on January 10, 2011 lists the same address as the Florida LLC with both claiming prior registration in Delaware. There is definitely a problem in the chain of the name. [See ATTACHMENT 11.]

⁸ It is problematic for MOM-INC. to propose on a contract where an entity is not registered to engage in business.

Award of contract is made to the Proposer with the best combination of compensation, experience, product quality, and services. This award process flows from the Board of Public Works, to the City Council, to the Mayor.

Section 5.9 of the RFP - DETERMINATION OF BIDDER RESPONSIBILITY POLICY provides:

This contract will only be awarded to a responsible, responsive bidder. All businesses or individuals seeking contracts with the Department of Public Works are required to demonstrate that they possess the quality, fitness and capacity to perform the work set forth in the contract under the terms of the criteria set forth in the DETERMINATION of BIDDER RESPONSIBILITY POLICY shown in "Appendix K". Proposers are required to return the Signature and Affidavit Sheet provided with notarized signatures along with their RFP response package. Completion of the corresponding BIDDER'S WORK HISTORY AND QUALIFICATIONS Questionnaire will be provided for inclusion in the bids of any proposer that qualifies.

THE LLC WAS NOT THE PROPOSER.

Under the terms of the RFP, the City cannot enter into a contract with an entity that did not respond to the RFP, nor attend the pre-proposal conference.⁹ RFP, p. 11, section 2.1.3 requires the proposal to identify the responsible entity. That entity was MOM-INC. MOM-INC. was the proposer. It provided the required information when it submitted its proposal. For example, MOM-INC. submitted an audited financial statement. [MOM-INC. RFP Response Tab M]. None of this information was submitted by LLC. Yet Board staff negotiated a contract with LLC. It negotiated a contract with an entity that did not propose in response to the RFP. Thus, the proposed contract was not the result of a competitive process, but a sole source negotiation with an entity that did not even exist at the time the proposal was submitted.

There is no proposed contract between the City and MOM-INC. Since the MOM-INC. proposal expired, it could not be extended beyond the 240 days specified for firm offers in the RFP, p. 11, Section 2.4 Withdrawal of Proposals, the contracting party cannot be changed. Further, MOM-INC. is not eligible because it submitted a proposal that was non-responsible and its proposal was a non-responsive.

⁹ RFP, p. 8, Section 1.5 MANDATORY PREBID CONFERENCE specifies that failure to attend the mandatory pre-proposal conference will result in disqualification of the firm.

Obviously, there is a problem of confusion between the entities. This is highlighted by the proposed contract with LLC that attaches a Certificate of Liability Insurance naming the insured entity as MOM-INC. Either the contract is with MOM-INC. or with the LLC. Neither can enter into a contract with the City for the reasons discussed. However, for argument's sake, and to underscore this confusion of entities, the Certificate of Liability Insurance demonstrates the apparent bate and switch that is occurring. Since MOM-INC. is not a signatory to the contract, the Certificate of Insurance that should name the City as an additional insured, is irrelevant. MOM-INC., because it is not the signatory to the contract, can't be sued and if the LLC is sued, the indemnity provisions of the contract that should be backed by insurance are nonexistent, leaving the City on the hook and the LLC able to disappear.

APPEARANCE OF BIAS IN THE SELECTION PROCESS

The selection process engaged in by staff was flawed and created the appearance that the RFP was merely a pretext to comply with competitive bidding law.

Staff's bias in favor of MOM-INC. is apparent in the flagrant mathematical errors in scoring Norman Bench Advertising. The total score for each of the evaluations were 62, 62 and 60; for an average score of 61. [ATTACHMENT 13] The Proposal Review Spread Sheet scored Norman Bench Advertising with 57. It shows rater #1 with a score for Norman Bench Advertising of 50 not 62. [Attachment 14.]

The lack of criteria for the scoring of the proposal responses to the RFP leads to the appearance of bias. The evaluation criteria are set forth in the RFP, p. 27 Section 7 EVALUATION CRITERIA, which allocated a total of 100 points as follows:

Past performance	20 points
Compensation package	25 points
Proposed Program	25 points
Maintenance & Serv. Plan	20 points
Financial Stability	10 points

The problem is that there was no objective basis for grading within the point structure. There were no objective checks in the process. The reason this is a problem is that the Contract Administrator, Lance Oishi, created the RFP and ran all pre-bid responses, such as the pre-proposal conference and answering vendor questions. Lance Oishi was also a member of the Review Panel and Lance Oishi is the Contract Administrator for the bus bench contract having negotiated the deal. So the appearance is that once Lance Oishi decided with whom he wanted to contract for whatever reason, he had the ability to create a self-fulfilling prophecy. Review team members would give deference to him since it would be his contract. In the end, Lance Oishi was able to get the vendor he wanted. This was apparent after the

January 10, 2011 Board meeting when the Board elected to negotiate with MOM-INC. and Lance Oishi and Shannon Eastenson both gave a thumbs up to the MOM-INC. staff and hugs all around.

As the court noted in the recent decision in *Schram Construction, Inc. v. Regents of the University of California* (2010) 187 CA4th 1040, 1054, in discussing the purposes of competitive bidding in light of the purpose for which it exists:

[to] invit[e] competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable . . . (Citations omitted.) . . . [and]. . . should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest. (Citations omitted.) "These provisions are strictly construed by the courts, and will not be extended beyond their reasonable purpose. (Citations omitted.)

The procedure utilized by staff creates the appearance of favoritism. The court in *Schram Construction, Inc. v. Regents of the University of California*, 187 CA4th at 1060, considered an award by the Regents based upon the best value statutory scheme. Though not identical to the RFP process, the dicta are instructive.

We recognize that the hearing officer found no evidence of favoritism or bias. But regardless of whether the University acted with an improper motive, in our view, the Committee's knowledge of bidder identities permitted the University to control the results by its selection of the bid packages to be awarded. In requiring the University to adopt procedures that "ensure" that the selection will be impartial, section 10506.4, subdivision (c) suggests it is not enough to simply refrain from favoritism; the University must put affirmative safeguards in place to prevent bias and other arbitrary factors from influencing the bid selection. We also conclude that the University's procedure here created an appearance of favoritism and undermined the integrity of the public bidding process, particularly since DPR had done a substantial amount of work with both Southland and ACCO in the previous five years.

Here, the involvement of Lance Oishi in every phase of the evaluation and procurement process raises the specter of favoritism. There were no safeguards in place to prevent Lance Oishi from manipulating the contract award.

There are numerous examples where the requirements of the RFP and MOM-INC. RFP response were modified in the final contract. The end result was a contractual agreement that did not comply with the requirements of the RFP. The following are

several examples where the ultimate contract would produce a revenue stream less than that demanded by the RFP.

1. 6000 BENCHES

The RFP, p. 16, Section 4.2.1 CONCEPT PLAN SITING BENCHES provides that installation of the 6000 benches called for in the RFP will take no longer than one year. The proposed contract, p. 14, Section 6.2.4 INSTALLATION OF NEW BUS BENCHES allows for installation over two years to place 6000 benches instead of the one year in the RFP. Spreading the installation of benches over two years will result in a reduced revenue stream. Gross receipts are based upon the number of benches that contain advertising. Reduce the number of benches, reduce the revenue. Moreover, extending the installation schedule materially affects the pricing response to the RFP because by extending installation, costs are spread over a longer time frame. That change impacts the way in which a proposer would have responded to the RFP.

2. LIQUIDATED DAMAGES

RFP, p. 26, Section 5.25.1 LIQUIDATED DAMAGES provides that the vendor will be responsible for liquidated damages in the amount of \$50 to \$125 per day depending on severity of the violation. The proposed contract sets liquidated damages at Section 6.2.10.3, p. 25 as \$0 first notification, \$50 second notification and \$100 third notification. The RFP and contract requirements bear no relationship. The contract provides for a slap on the wrist approach. Further, this is not what other proposals were based on.

3. REDUCED COMPENSATION

RFP, p. 19, Section 4.6 COMPENSATION TO THE CITY provides that the selected proposer would compensate the City if gross revenues exceeded \$10,000,000 per year with an additional 5% of the difference between the actual annual gross revenue and the \$10,000,000. This compensation term is not included in the proposed contract.

RFP, p. 7, Section 1.4 DEFINITION OF GROSS REVENUES includes in the definition:

advertising sales, barter or in kind services (eg. airline tickets, hotel accommodations, media access) or any other type of non-monetary compensation, that are derived by the Franchisee as a result of the installation of Franchise Bus Benches and the display of advertising thereon or as a result of rental of any Franchise Bus Benches.

The proposed contract definition of Gross Cash Receipts defines the term as: "Total Compensation (including in-kind payments) actually received by the CONTRACTOR for the display of advertising on Ad Panels." In-kind services were defined in the RFP as airline tickets, hotel accommodations and media access. In-kind services in the RFP were separate and apart from barter. The value of the barter, as a

part of gross revenues that should be the basis for computing compensation to the City is missing from the RFP. This is money left on the table and may have materially affected the compensation package offered by a proposer in response to the RFP.

4. PERSONAL PROPERTY TAX REVENUES

RFP, p. 19, Section 4.7 OWNERSHIP OF BUS BENCHES states that "[t]he bus benches will remain the property of the Franchisee during the term of the Franchise Contract." The proposed contract, p. 39, Section 8.9 OWNERSHIP OF BUS BENCHES states, "[a]ll bus benches become the property of the City upon installation.

This change in ownership of the benches during the life of the proposed contract impacts the City's revenue. According to Los Angeles County Assessor the following is considered business personal property for purposes 571-L tax obligations [ATTACHMENT 15]: Machinery, Computers, Equipment, Telephones, Furniture, Supplies, and Tangible property owned, claimed, possessed or controlled in the conduct of a profession, trade or business. The Business Personal Property is valued annually as of January 1. This assessment includes equipment that is on lease or rent to others. Ownership of the benches and leasing or renting the ad space means that the bus benches have value for purposes of personal property tax. If title to the benches is held by the City, the County and by extension the City, do not receive the revenue from the taxes. Again, the removal of this cost to the vendor means that the revenue stream offered the City was materially impacted, negatively. Thus, affecting the compensation packages offered in response to the RFP.

Each of these concessions by Lance Oishi would appear to indicate a desire to grant the contractor more in compensation than was required by the RFP. Since Lance Oishi was engaged in a sole source negotiation, he had no fall back position. He was negotiating in a competitive disadvantage in order to get a contract in place. These concessions underscore the perils of sole source negotiations. Further, these concessions demonstrate the need to re-advertize the solicitation.

ISSUES OF FUNDAMENTAL FAIRNESS AND INTEGRITY

1. PROTEST PROCEDURES

RFP, p. 11, Section 2.8 PROTEST PROCEDURES mandates that:

Any protest to a proposal must be in writing and filed within ten (10) days after proposal submissions. Upon receipt of the protest, the Contract Administrator will furnish protestor with a written statement acknowledging receipt of the protest and setting a date 30 days hence for a hearing before the Board of Public Works.

This procedure is impossible to observe for any RFP process. The Board does not release the proposals and evaluations until after the contract is negotiated. In this case the proposals and evaluations were not released in response to a California Public Records Act Request until May 11, 2011, 282 days after bid opening, and 42 days after the proposals had expired.

Any protest filed prior to receipt of the proposals and evaluations would have been rejected as unfounded. Yet the RFP denies the concept of fundamental fairness by obstructing the ability of a legitimately aggrieved protester to present a well-founded protest. If the intent of the RFP was to deny the ability of proposers to protest, then fundamental fairness has been denied.

There cannot be any rational reason not to honor the protest provisions in the context of allowing a protest within 10 days of the proposals being made available. This timeline would be consistent with the intent of the RFP provision. Having taken 284 days to get to the Board, what possible prejudice is there to the process in order to allow proper time to file a protest and have it heard. Norman Bench Advertising, Inc. should have been given 10 days within which to craft its protest, instead of the 7 days allocated. Moreover, staff should have set the hearing on the protest 30 days from receipt of the protest. The appearance of a truncated timeline could lead to the conclusion that the outcome is a foregone conclusion.

Simply put, the issues raised here are not being given enough time to be fairly considered. Norman Bench Advertising, Inc. should have been given 10 days. Staff should have taken 30 days to consider the issues raised, instead of requesting that MOM-INC. or LLC respond to the comments of this letter. The implication is that whatever response MOM-INC. or LLC provide, the Board will adopt that as its position without any independent assessment. Such an implication underscores the apparent bias in this RFP process.

2. QUESTIONS OF INTEGRITY

The fact that the RFP does not fairly address the protest process raises concerns about the integrity of the process. This concern is underscored by the fact that MOM-INC. is currently part of an investigation by the Florida Elections Commission in possibly undervaluing the cost of advertisements on bus benches in the North Miami Beach mayoral race. [ATTACHMENT 16.] At a minimum staff should have investigated the allegations and notified the Board. The bidding process, even if it is an RFP, demands an open and fair process. The current process is far too flawed for this Board to consider any award that flowed from it.

Members of the Board of Public Works
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CONCLUSION

For the foregoing reasons, the Board should direct staff to re-advertize for the bus bench contract and put sufficient safeguards in place to avoid the appearance of bias or that the RFP is merely a pretext with which to appear compliant with the laws of Competitive bidding.

Very truly yours,

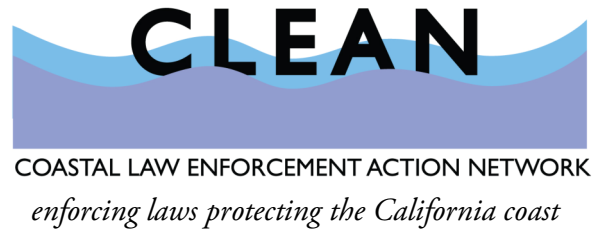


Marcia Haber Kamine

MPHK:hs

cc: Norman Bench Advertising, Inc.
Members of the Los Angeles City Council
City Attorney Carmen Trutanich
Assistant City Attorney Edward "Ted" Jordan
The Mayor's Office

Attachments



August 15, 2011

The Honorable Bill Rosendahl & all Honorable Los Angeles City Councilmembers
The Honorable Antonio Villaraigosa, Mayor
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012

Re: Council File #11-1068 – Item #23 – August 16, 2011 agenda

Dear Councilman Rosendahl, Councilmembers and Mayor Villaraigosa:

We are writing in regards to the above referenced item, specifically the Council's consideration of approval of a proposed contract with Martin Outdoor Media LLC for a Citywide bus bench program.

We ask that you delay approval of this item until the following substantial issues are properly dealt with in favor of the public trust. These issues were not properly addressed when past contracts were approved, and this opportunity provides the change to rectify significant problems in regards to neighborhood blight and coastal regulations.

1. There has been no CEQA analysis. Aesthetics, visual blight and quality of life issues are measures that must be analyzed under the California Environmental Quality Act (CEQA) – and there is case law to support this requirement. In addition, installing the structures contemplated under this proposed contract in the Coastal Zone (both in the 11th district and the 15th district) also requires CEQA analysis.
2. Many of the structures contemplated by the proposed contract in the 11th and the 15th districts will be placed in the Coastal Zone, and under the previous contractor(s), these structures were constructed and installed illegally in terms of the California Coastal Act – i.e., there were no Coastal Development Permits (CDPs) granted by either the City of Los Angeles or the Coastal Commission (in the 11th district, it is required that both entities grant CDPs.) The proposed contract with the proposed contractor states that it is the contractor's responsibility to obtain all permits. However, the Coastal Commission has never granted outdoor signage structures in the Coastal Zone, and, in fact, two illegal billboard structures on and near Lincoln Blvd. were denied for permits and at least one of them has been removed.

More...

*a project of the International Humanities Center
322 Culver Blvd., #317, Playa del Rey, CA 90293 ~ 310-821-9045*

Letter from CLEAN, August 15, 2011

The Honorable Bill Rosendahl & all Honorable Los Angeles City Councilmembers

The Honorable Antonio Villaraigosa, Mayor

Bus Bench Contract

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At the very least, the contract needs to state SPECIFICALLY that coastal development permits are required, so that there is full notice to the contractor that these structures require a permit process that is governed by the Coastal Act. In the best case scenario it would be made clear that it is unlikely any such structures that include advertising would be allowed in the Coastal Zone.

3. Granting this contract seems to be contrary to both the letter and the intent of the current CITY-APPROVED and COURT-UPHELD ban on new offsite signage (billboard advertising) in the City of Los Angeles. Approving this contract might undermine and prejudice enforcement of that current city-wide off-site signage ban. It is absolutely essential that the City Attorney's office have time to properly review and provide an opinion on this matter that the public can review and the City Council can properly consider.

In summary, regardless of the previous contractor ripping out its bus benches, as reported in the Los Angeles Times last week, this contract is not ready to be approved unless and until the three issues outline above are resolved. We urge you to delay approval of this matter until such time.

With best regards,

Marcia Hanscom /s/

Marcia Hanscom
Managing Director
CLEAN ~ Coastal Law Enforcement Action Network

Cc: The Honorable Carmen Trutanich, Los Angeles City Attorney