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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Brooke A. Levin
Interim Director, PWA

SUBJECT: Supplemental Report: Contract for Operation
and Management of Parking Facilities

DATE: January 6, 2014

City Administrator
Approval

Deanna J. Santana

Date

1/6/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council approve a resolution directing the City Administrator (1) to negotiate a multi-year contract for the operation and management of eight (8) City-owned parking garages with Standard Parking Corporation and its partners under the name City of Oakland Parking Partners, the highest scoring respondent to a competitive request for proposal and (2) to return to the City Council upon conclusion of negotiations for final approval of said contract and other parking-related matters.

REASON FOR SUPPLEMENTAL

In a previous supplemental, staff responded to a request from the Public Works Committee for certain documents related to this matter including letters of protest and staff's responses to those letters. This supplemental provides additional documents of this sort that were produced subsequent to the December 3, 2013 meeting of the Committee.

Specifically, this report includes:

1. Second Letter of Protest from Impark Pacific Parking, LLC (*Attachment A*);
2. Response to Second Letter of Protest from Impark Pacific Parking, LLC (*Attachment B*).

Item: 3
Public Works Committee
January 14, 2014

Respectfully submitted,



BROOKE A. LEVIN

Interim Director, Public Work Agency

Reviewed by:

Michael Neary, P.E., Assistant Director
Department of Engineering and Construction

Reviewed by:

Wladimir Wlassowsky, P. E.
Transportation Services Division Manager

Prepared by:

Michael Ford, Parking Garage Management
Transportation Services Division

Attachments:

Attachment A – Second Letter of Protest from Impark Pacific Parking, LLC

Attachment B – Response to Second Letter of Protest from Impark Pacific Parking, LLC

Item:

3

Public Works Committee
January 14, 2014

Attachment A

Second Letter of Protest from Impark Pacific Parking, LLC

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JAN 14 2014

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Steven Kay, Esq.
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December 5, 2013

VIA E-MAIL TO: mford@oaklandnet.com
And FIRST CLASS MAIL

Michael P. Ford, Ph.D.
Project Manager
Transportation Services Division
City of Oakland, Public Works Agency
250 Frank H. Ogawa Plaza, Suite 4344
Oakland, CA 94612-2033

**Re: Further Comments Re: Notice of Protest of Intent to Award
Contract for Operation and Management of Parking Facilities**

Dear Dr. Ford:

As legal counsel for Impark Pacific Parking, LLC., we write following comments made at the December 3, 2013, Public Works Committee meeting and address certain comments in your November 20, 2013 rejection of Impark Pacific Parking, LLC's protest, relating to the Contract for Operation and Management of Parking Facilities in the City of Oakland.

First, in the November 20th rejection letter, you acknowledge the fact that Mr. Rob Noiles, a member of the RFP's "Independent" Selection Committee, was a previous employee of a Joint Venture Partner of Impark Pacific Parking, LLC (for a period until just months before his selection to the Committee), but then conclude that fact "does not call into question his independence." We disagree. In fact, even lesser conflicts have led to rejection of an RFP process. The previous RFP for the City of Oakland was rejected by the City after it was discovered that one of the companies submitting a proposal (Laz Parking) had made an offer to hire the former director of parking (Noel Pinto). In that situation, all that existed was an "offer" of employment – not actual employment. Here, the employment of a member of the "Independent" Selection Committee was actual, a fact acknowledged by your office.

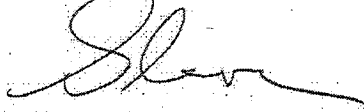
Next, a comment was made at the December 3, 2013 hearing that if Mr. Noiles' scoring was removed from the process, the remaining scores by the other selection committee members would have led to the same result. It was acknowledged by a Public Works Committee member,

Michael P. Ford, Ph.D.
December 5, 2013
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however, that since Mr. Noiles was present and presumably participated in and contributed to the discussions of the "Independent" Selection Committee, the comments may have improperly influenced the scoring of the other members. The conflict cannot be so easily resolved by, in essence, modifying the scoring mechanism which is set forth in the RFP. Too, there is an issue of whether the Transportation Services Division has the authority to modify the selection criteria set forth in the RFP without invalidating the entire process.

Impark Pacific Parking, LLC does not believe the conflict was intentionally created, and we note the comments made at the November 12, 2013 hearing that the "Independent" Selection Committee was appointed prior the submission of proposals. Conflicts could be avoided by appointing the Selection Committee Members after proposals have been submitted to ensure no conflicts exist between Selection Committee Members and those entities which had submitted proposal responses. Unfortunately, that process was not followed here, which led to the direct conflict which has tainted the review and scoring in this situation.

Respectfully submitted,



Steven Kay

cc: Pacific Park Management

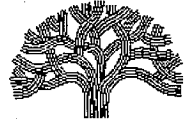
Attachment B

Response to Second Letter of Protest from Impark Pacific Parking, LLC

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CITY OF OAKLAND



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January 6, 2014

Mr. Steven Kay, Esq.
100 The Embarcadero
Penthouse
San Francisco, CA 94105-1291

**RE: Response to Further Comments Re: Notice of Protest of Intent to Award
Contact for Operation and Management of Parking Facilities**

Dear Mr. Kay,

In response to your letter dated December 5, 2013, we offer the following comments:

First, we are all in agreement that Mr. Rob Noiles was a previous employee of Pacific Park Management "for a period just months before his selection to the Committee." Where we disagree is whether or not this former employment relationship disqualifies him from participating on the selection panel. The City originally rejected your protest in part because you failed to "cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based" as required by the RFP (p.28 of 39). You have elected to pursue the matter by responding to the City's decision, yet once again you have failed to cite the statutory provision or common law basis of your client's protest.

Second, you write, "even lesser conflicts have led to rejection of an RFP process." We reject this statement on the grounds that you have yet again failed to make the case (as stipulated in the RFP) that there is indeed a conflict of interest or bias in the present case.

That said, your reference to the previous RFP process does establish an important precedent, but not one that would support your position. The fact that staff elected to withdraw the RFP in the summer of 2012 demonstrates the City's commitment to carrying out fair and objective evaluation processes in its competitive request for proposal processes.

Third, you write, "since Mr. Noiles was present and presumably participated in and contributed to the discussions of the 'Independent' Selection Committee, the comments may have improperly influenced the scoring of the other members." Once again, the argument you are making presupposes certain facts and determinations that remain in question. As you have

repeatedly failed to make the case that there was a conflict of interest or bias, you give the City no reason to question whether Mr. Noiles influenced the other members of the panel, whether properly or improperly. To be sure, staff is obligated to investigate the matter if directed by the Public Works Committee. However, this in no way means that staff agrees with or accepts the premise that there was a conflict or anything improper about Mr. Noiles' role in the evaluation process.

Fourth, you write, "[There] is an issue of whether or not the Transportation Services Division has the authority to modify the selection criteria set forth in the RFP without invalidating the entire process." Staff is not recommending that the selection criteria be modified and will only do so if and when directed by the Council.

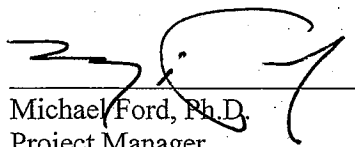
Finally, you write, "Conflicts could be avoided by appointing the Selection Committee Members after proposals have been submitted to ensure no conflicts exist between Selection Committee Members and those entities which had submitted proposal responses." We assume you offer this suggestion in good faith and thank you for it.

Having made the suggestion, however, you draw the following conclusion: "Unfortunately, that process was not followed here, which led to the direct conflict which has tainted the review and scoring in this situation." Again, you have failed to establish any conflict of interest and given staff no legitimate reason to believe the evaluation process was somehow "tainted" – so it is not a question of whether or not the actual process undertaken led to anything of the sort. Rather, the conclusion you have drawn is flawed for an entirely different reason.

It is true: the selection panel for this RFP was appointed prior to the submission of proposals. Indeed, assembling a selection panel for a competitive request for proposal process of this kind is not a trivial undertaking--it takes considerable time and resources across City agencies and municipalities. As such, waiting until after the proposals have been received to appoint panelists is easier said than done.

Nevertheless, if it is necessary to begin the process of building the panel months before an RFP is officially advertised and proposals received, this in no way prevents staff from ensuring that no conflicts or bias exist between that panel and respondents. Staff always had the option, indeed the responsibility to replace a given panelist if a conflict of interest were to arise. In the present case, there was no conflict of interest; it follows then that no panelist would need replacing. This concludes our response to your comments.

Sincerely,


Michael Ford, Ph.D.
Project Manager
Transportation Services Division

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JAN 14 2014