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February 4, 2009

To: Supervisor Don Knabe, Chairman
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Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

DEPARTMENT OF PUBLIC WORKS WASTE HAULING FRANCHISE AGREEMENT SOLICITATION - FINAL REPORT

On December 2, 2008, your Board, on motion of Supervisor Knabe, continued to January 6, 2009, the Director of Public Works' recommendation that the County award an exclusive franchise agreement to Athens Services for residential solid waste handling services for the unincorporated area of Hacienda Heights. With respect to this issue, your Board then instructed the Chief Executive Officer to convene a panel and establish parameters to allow the proposers for this franchise agreement to seek review of the solicitation and evaluation process and report the results back to your Board in 30 days.

Via our December 31, 2008 memorandum, we reported back to your Board that our Office, in collaboration with the Department of Public Works (DPW) and County Counsel, had established a process using Board Policy No. 5.055 Services Contract Solicitation Protest Policy (Protest Policy), to allow the proposers for the Request for Proposals (RFP) for Exclusive Franchise Agreement for the Area of Hacienda Heights (2008-FA021) to seek review of the solicitation. We also reported that the proposers were provided with copies of every proposal received in respect of the RFP and that DPW had confirmed the Protest Policy was included in the RFP.

At that time, we indicated that proposers had until January 5, 2009, to request a County Review Panel (Panel) and, as such, we would need additional time to complete the appeal process and we would return to your Board on January 27, 2009, with our final response regarding this matter. This memorandum serves as our final response with respect to this issue.

<u>County Review Panel Process</u>

As we previously reported to your Board, our Office convened the Panel and provided the Panel members with the relevant documentation for their review and consideration in preparation for the meetings. On January 5, 2009, DPW received requests for panels at the request of Valley Vista Services, Inc. (Valley Vista), and Burrtec Waste Industries, Inc. (Burrtec), respectively.

Valley Vista

On January 12, 2009, the County Review Panel meeting was held at 9:00 a.m. at DPW Headquarters. In accordance with the Ralph M. Brown Act (California Government Code section 54950, et seq.), an agenda for the meeting was noticed to the public 72 hours prior to the meeting being held. Valley Vista's assertions presented in the Transmittal Form to Request a County Review Panel were as follows:

Assertion/Reason #1: Valley Vista asserted that DPW used inaccurate source data and that the process used to score the pricing component of the referenced RFP is flawed, allocating points incorrectly by taking into account disposal and transfer costs based on inaccurate, unverifiable, and inconsistent numbers.

- ***Panel Finding #1: DPW did not make identifiable mathematical or other errors in evaluating proposals; Valley Vista had prior opportunities to protest; no changes recommended.***

Assertion/Reason #2: Valley Vista asserted that the collection would occur two "service days" or less prior to street sweeping, and that Sunday is not a "service date" lacks merit. In addition, Valley Vista asserted that the clear intent of the RFP was to keep the streets and storm drains clear of debris that may or may not be associated with the process of trash and commodities collection.

- ***Panel Finding #2: DPW informed the Panel that the RFP clearly stated that "service day" included Saturday but not Sunday, and that if Valley Vista took issue with that definition, it should have made a request for a Solicitations Requirements Review. Valley Vista did not demonstrate that DPW made identifiable mathematical or other errors in evaluating proposals; no changes recommended.***

Assertion/Reason #3: Valley Vista asserted that the Evaluation Committee failed to accurately review the proposal Work Plans and paid little or no attention to environmental issues, practices, and policies. Also, Valley Vista asserted that their proposal contained proposed alternative programs that were not required in the RFP which should have been considered for additional points in the evaluation process.

- ***Panel Finding #3: DPW indicated the RFP contained 18 points available for Work Plan requirements and the environmental point was not a stand-alone scoring category. If Valley Vista had a concern about the additional points for the environmental programs, that concern should have been raised in a request for a Solicitations Requirements Review. One Panel member noted that while it was commendable that Valley Vista proposed innovative/alternative programs, DPW scored the proposal as described in the RFP. Valley Vista did not demonstrate that DPW made identifiable mathematical or other errors in evaluating proposals; no changes recommended.***

In conclusion, the Panel found that Valley Vista did not demonstrate that DPW made mathematical or other errors in evaluating proposals. The Panel made the overall recommendation that DPW take no remedial actions with regard to Valley Vista's proposal.

Burrtec

On January 12, 2009, the County Review Panel meeting was held at 3:30 p.m. at DPW Headquarters. As previously noted, Panel meetings are subject to the Brown Act and, as required, an agenda for the meeting was noticed to the public 72 hours prior to the meeting being held.

Assertions/Issues #1 and #4 (Manure Collection): Burrtec asserted that the recommended proposer (Athens Services) was non-responsive on required programs as stated in the RFP and that there were Work Plan scoring errors pursuant to the evaluation criteria instructions.

- ***Panel Finding #1 and #4 (Manure Collection): The Panel's recommendation is that DPW re-evaluate Athens Services' Work Plan to determine whether manure collection was adequately addressed and whether this merits re-scoring the proposal.***

Assertions/Issues #2 and #3: Burrtec asserted that the recommended proposer did not provide prices for required services as stated in the RFP and recommended proposer did not provide information requested in the addendums and attachments.

- ***Panel Finding #2 and #3: DPW indicated that the basis for price comparison was uniform. Specifically, other RFP forms, which were provided by Athens Services, called for a proposed cost to provide basic services, which by definition included manure collection, and that it was this proposed cost that was evaluated and compared. The Panel found that Burrtec did not show that: 1) DPW materially failed to follow procedures specified in the solicitation document, or 2) DPW made identifiable errors in evaluating proposals; therefore, no change recommended.***

Assertion/Issue #4 (Additional Services): Burrtec asserted there were errors in the Work Plan scoring pursuant to the evaluation criteria instruction.

- ***Panel Finding #4 (Additional Services): Burrtec did not show that: 1) DPW materially failed to follow procedures specified in the solicitation document, or 2) DPW made identifiable errors in evaluating proposals; therefore, no change recommended.***

Assertion/Issue #5: Burrtec asserted errors in proposed price evaluation of distinctly different programs including the RFP request for a discount.

- ***Panel Finding #5: The Panel found that this was a non-issue for the Panel as the Addendum No. 2 to the RFP deleted the request for a discount.***

Please note that Assertion #4 had two distinct claims regarding manure collection and additional services and each claim was addressed separately by the Panel. The Panel recommended, with respect to Assertions #1 and #4, that DPW re-evaluate Athens Services' Work Plan to determine whether manure collection was adequately addressed and whether this merits the proposal be re-scored. DPW will take action to address this recommendation.

In conclusion, the Panel made the overall finding that Burrtec did not demonstrate they should have been the highest ranked bidder.

Please note the official Panel summary reports for both meetings are available upon your request.

DPW's original recommendation to award an exclusive franchise agreement to Athens Services for residential solid waste handling services for the unincorporated area of Hacienda Heights was scheduled to be on the January 27, 2009 Board Agenda. However, on motion of Supervisor Knabe, your Board continued the item on that date for two weeks until February 10, 2009.

With respect to your Board's instruction to review and recommend any appropriate changes to the Protest Policy, as previously reported, we will return to your Board on March 3, 2009, with our revised Protest Policy consistent with your directive. Please let me know if you have any questions regarding this matter, or your staff may contact Martin Zimmerman at (213) 974-1326 or mzimmerman@ceo.lacounty.gov.

WTF:ES
MKZ:VLA:pg

c: Executive Officer, Board of Supervisors
County Counsel
Director, Department of Public Works