

January 2, 2013

Chair Todd Gloria and Members of the Budget and Finance Committee
City Administration Building
202 C Street 10-A
San Diego, CA 92101

RE: QUALCOMM SECURITY SERVICES CONTRACT (RFP No. 10024458)

Dear Chair Gloria and Committee Members:

This letter is a follow up to the Budget and Finance Committee (“Committee”) meeting of November 28, 2012. I am the CEO for Staff Pro, Inc. (“Staff Pro”), one of two successful bidders in the City’s recent Request for Proposal (“RFP”) for security services at Qualcomm Stadium (RFP No. 10024458). I am writing to advise that significant misinformation was presented to the Committee at the November meeting about Staff Pro and to express our extreme disappointment that, as a successful bidder on this RFP, we were never notified of the Committee meeting. I want to correct the record regarding my Company and the inaccurate information you received. Finally, I want to call to your attention, information about Elite Show Services (“Elite”), the other successful bidder, that has come to light since the Committee meeting and which demand additional inquiry on the part of the Committee before taking up this matter again in January.

Let me say first how pleased and honored Staff Pro is to have been recommended through the City’s RFP process to receive a portion of the security work at Qualcomm Stadium. This is particularly true in light of our protest after the City’s first attempt to procure these services.

To provide just a little historical context, in 2006, Elite was awarded an oddly long 29-year “sole source no-bid deal” until 2035 without Council approval. Only after negative and critical news reports were published did the City of San Diego bid these services out. Even then, however, the process favored the City’s long time contractor. As the attached Appeal Panel Decision clearly states, that earlier process was tainted and evidence was presented suggesting City staff involved in that first attempt were biased. Staff Pro welcomed the second RFP process and the opportunity to compete on a level playing field. Unfortunately, as a result of what happened at the Committee meeting, we are concerned that staff’s bad behavior has not ended.

Briefly stated, the members of the Committee have been lead to believe that Staff Pro is an out of town company, a newcomer to the San Diego market, and that it does not intend to follow important laws and policies of the City of San Diego – in particular the Living Wage Ordinance. Nothing could be further from the truth. Had we been advised in response to our numerous requests of Purchasing Department Staff (see attached) that this matter would be heard at your November meeting, we would have been there and you could have heard that directly from me.

Instead, Elite, our competitor, had the opportunity to malign Staff Pro without our ability to respond. Given past behavior related to this particular procurement, we fear that the presentation was coordinated and that we were intentionally kept in the dark. Indeed, it was apparent in

making the presentation to the Committee that Mr. Nail 'teed up' the living wage issue for Mr. Kontopuls' false allegations regarding Staff Pro.

Although Staff Pro is headquartered in Orange County, contrary to assertions made during the November meeting, we are not newcomers "trying to get a foot hold" in this region. We have in fact been providing event-based security services in San Diego County and elsewhere since 1987. Indeed, Staff Pro has been in existence longer than Elite, a company formed by several former Staff Pro employees. Until Qualcomm staff unilaterally and inexplicably began advising tenants in 2007 that they were required to use Elite, we provided security for numerous events at Qualcomm.

City staff presenting the matter to you at the Committee meeting seemed unaware that a City Appeal Panel had determined that the prior bid process was improperly conducted. The Appeal Panel also acknowledged receiving evidence suggesting that Qualcomm Stadium staff were biased. Indeed, Mr. McSweeney and Mr. Nail were excluded from the current Bid Evaluation Panel; presumably because of the bias allegations raised in the earlier appeal. So it is particularly troublesome that these individuals made the presentation at the Committee meeting. Why, if Mr. McSweeney and Mr. Nail were ineligible to participate on the evaluation panel, is it appropriate for them to present this matter to the Committee or City Council? If there is evidence of bias on the part of departmental staff, should they be participating at any level?

Though Qualcomm Stadium staff testified to the Committee members that they were not involved in the selection process and did not have the information to answer any of your questions, our interactions with Purchasing Department staff indicates that Qualcomm Stadium staff were in charge of preparing docket materials and coordinating the timing of the Committee's consideration.

Finally, after the Committee meeting, we contacted Roy Nail to ask why Staff Pro had not been advised of the meeting and he stated that it is not their practice to invite vendors to attend Committee meetings. How odd that when asked by the Committee, Mr. Nail responded that they had notified Staff Pro.

To directly address the issue of the City's Living Wage Ordinance, which Elite and, to a lesser extent, Qualcomm Stadium staff implied Staff Pro does not intend to comply with, let me be clear. Staff Pro has signed an agreement, as part of its contract with the City, which obligates us to abide by the Living Wage Ordinance. It is one of numerous compliance documents we are understandably required to sign ensuring that Staff Pro will comply with City policies and code provisions as we do business with the City. Purchasing Department staff pointed out that the Living Wage Ordinance is not applicable in every conceivable situation that may arise under the work awarded to Staff Pro. Unlike the work Elite was awarded, which will be paid directly by the City for services provided directly to the City, Staff Pro will be providing security to tenant events at the Stadium. The City has acknowledged that some of those events do not trigger the City's Living Wage Ordinance, but where it does, we will fully comply.

It is noteworthy that Elite, which has been under contract to the City since the inception of the Living Wage Ordinance, has recently been accused of very serious child-labor law violations related to its work at the Stadium. In particular, they are under investigation by the U.S.

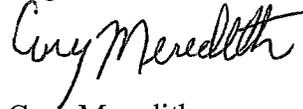
Department of Labor (“DOL”) of engaging in predatory practices in which children at local high schools were forced to work for free at Charger games in exchange for gifts of donations by Elite to schools and other non-profit organizations. Upon learning of the DOL investigation, the San Diego Unified School District (“SDUSD”) initiated its own investigation and advised Elite that no contract of this kind would be honored by the SDUSD. Clearly, these are very serious allegations. If borne out, it will mean that far from having paid a ‘living wage,’ Elite would have paid far less than even minimum wage to children. News of the DOL and SDUSD investigations were published in the San Diego Union Tribune on December 6, 2012, just one week after Elite asked you not to approve the portion of the contract recommended for Staff Pro.

As I said at the beginning of my letter, Staff Pro is proud and honored to have been recommended to provide security at Qualcomm Stadium. We are a well established company which has done business in this area for many years. We are proud of the services we provide and look forward to bringing that excellent service to a City facility once again. At the same time, and particularly in this instance where the City has already been criticized for favoritism in this area, we are troubled by what appears to have been a conscious effort to keep us in the dark creating an opportunity for Elite to criticize us without the opportunity to respond.

I welcome the opportunity to meet with you and to answer any questions you may have. In an effort not to overwhelm you with voluminous information, I have attached only a few documents that relate to the issues in this letter. I would of course be happy to share additional back up materials at your request.

I look forward to the opportunity to attend the January 16, 2013 Budget and Finance Committee meeting and share our enthusiasm to begin working for the City at this important facility.

Regards,



Cory Meredith
President and CEO, Staff Pro

cc: Councilmembers Tony Young, Lorie Zapf, Scott Sherman, and Marti Emerald
Mayor Bob Filner
Committee Consultant to the Budget and Finance Committee
Office of the Independent Budget Analyst

Attachments: Staff Pro Protest Panel Brief
Protest Panel Decision
Emails from Staff Pro to Purchasing Staff Re: Committee and Council
Consideration of Qualcomm Security RFP.
December 6, 2012, Union-Tribune article regarding Elite’s child labor law
violations (including linked letters from DOL and SDUSD)
2009 Union Tribune articles regarding City favoritism toward Elite

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November 23, 2011

VIA HAND DELIVERY

Appeal Panelists: Brian Fennessey,
Donna Faller, and Stephen Grealey
via William Gersten
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Re: Panel Brief
Hearing on Notice of Intent to Protest RFB No. 1006782-10-P

Members of the Appeal Panel:

We present this Panel Brief on behalf of protesting bidder Staff Pro, Inc. ("Staff Pro") pursuant to the ground rules of the appeal process spelled out in the City's Municipal Code relative to the unfair and inappropriate award to the existing security company, Elite Show Services, Inc. ("Elite"). Staff Pro appeals the City's award based on two grounds: 1) Bias against Staff Pro and for Elite, and 2) Failure to follow the procedures of RFB No. 1006782-10-P ("RFB").

In addition to this brief, enclosed please find attached, a list of the witnesses we intend to call as well as the documentary evidence we will use to support our position. The references to particular exhibits contained in this letter refer to those attached exhibits.

Introduction

Briefly stated, we ask this Appeal Panel to grant the appeal and, to cure the flaws that occurred in the initial selection process, create a new and unbiased selection panel to review the bids anew. We respectfully request that the City not re-bid this RFB because to do so would be yet another tactic to keep the current contractor, Elite, to continue doing this work at rates that are far above what should be paid – far above what even Elite bid to do the work.

The existing and favored company currently providing security services at Qualcomm Stadium is Elite. In 1994, Elite branched off from Staff Pro. Over the past several years, by entering into unnecessary temporary contracts and steering all business to Elite the City has unfairly given

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Elite the status of “the only show in town” when they clearly are not the only qualified provider (Ex. 1). Elite has provided security and related services at Qualcomm for many years (Ex. 2). After Elite’s contract expired in 2005 and without either a contract or bid, Qualcomm management allocated hundreds of thousands of dollars to Elite by way of purchase orders (Ex. 3). In 2006, Elite was awarded an oddly long 29-year “sole source no-bid deal” until 2035 (Ex. 4). There were clearly more qualified companies providing the same services at other stadium type venues. But, Qualcomm management favored Elite (Ex. 5), and Elite clearly wanted to stay in that position without being compared to other companies. That 29-year deal would have been worth about \$24 million!

Only after negative and critical news reports were published did the City of San Diego bid these services out (Ex. 6).

The contract for security services at Qualcomm is huge! It is worth much more than the few 24 hour security personnel called for on the face of the RFB. To the party awarded this contract, which appears on its face to be only about \$300,000 per year, it really represents income of at least \$2 million a year. The winning bidder is rewarded with exclusive rights to provide security and ushering services at 200 or more events a year in and outside of the stadium (Ex. 1, 5, 7).

The contract for security services at Qualcomm has not been put out to bid since the late 1990s.

It is our contention, that Qualcomm management strongly resisted sending these services out to RFB because they were biased towards Elite. When Staff Pro questioned the City about the need to go out to RFB so it could prove to the City that it could provide better and cheaper services, the City shut down all communications with, and became biased against, Staff Pro and Mr. Meredith (Ex. 8). In two instances, once in 2008-2009 and again in 2011, the City effectively stonewalled Staff Pro by refusing even to provide properly requested public documents (Ex. 9, 10). On both occasions, but perhaps most egregiously, it wasn’t until Staff Pro retained legal counsel that the City fully responded to public records requests related to the bid process.

Since at least the time that Elite was formed as an offshoot from Staff Pro, there have been a number of companies capable of responding to, and providing services for, Qualcomm. Competitive bidding should never be put together by, written to favor, or interpreted to favor the existing company simply because they are currently doing the work and, are more familiar with day to day operations. If that were allowed to occur, the competitive bid process would be nothing more than a sham. No public entity can or should legally allow RFPs to be written in that manner.

Founded in 1987, Staff Pro has offices in Huntington Beach, CA, Long Beach, CA, Universal City, CA, Denver, CO, Tacoma, WA, Seattle WA, Spokane WA, San Antonio TX, Orlando FL and here in San Diego. They now have over 3,500 active and 2,100 seasonal employees. Staff Pro has the largest pool of experienced crowd management personnel available in Southern California.

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Staff Pro was, and is, a responsible bidder that knows and understands the demands of the security services business (Ex. 11). Staff Pro has provided services to, included but not limited to, the SD Convention Center, San Diego Sports Arena, Cricket Amphitheatre, Cox Arena, Qualcomm Stadium, Los Angeles Forum/NBA Lakers/NHL Kings, Universal Amphitheatre/Gibson Amphitheatre, Honda Center/NHL Ducks, Anaheim Convention Center, Los Angeles Convention Center, Long Beach Convention Center and Arena, Oakland Coliseum/NFL Raiders/MLB A's/MLS Quakes, San Jose Arena/NHL Sharks, California Berkley/NCAA football and basketball, Stanford/NCAA football, SafeCo Field/MLB Seattle Mariners, Quest Field/NFL Seahawks, MLS Sounders, NCAA University of Washington, Microsoft Campus, Key Arena, Tacoma Dome, Mile High Stadium/NFL Denver Broncos, McNichols Arena/NBA Nuggets/NHL Avalanche, Colorado Convention Center, Orlando Convention Center, New York's National Tennis Center/U.S. Open of Tennis. In addition, Staff Pro has made security available for special events such as: the Republican National Convention, Democratic National Convention, Long Beach Grand Prix, Coachella Music Festival, Stagecoach Music Festival, Academy Awards, Grammy Awards, Emmy Awards, MTV Movie Awards, MTV Music Awards, Golden Globe Awards, and the American Music Awards.

The Appeal

Staff Pro understands this was NOT simply a low bid contract and understands that factors other than price were in play. However, when the RFB specifically calls out cost as one of the factors to be graded, and the lowest cost bidder does not receive the highest score in that category, but actually receives one of the lowest scores, it puts into question the entire process relative to bias and failure to follow procedures.

1. Bias

The dictionary defines "bias" as an inclination of temperament or outlook; highly personal and unreasoned distortion of judgment; to give a settled and often prejudiced outlook.

While we cannot actually get into the minds of the selection panel members to see their temperament, outlook or judgment criteria, we will nevertheless show that the panel lead by Qualcomm management favored Elite and disfavored Staff Pro.

As shown on exhibits 12 and 13, 75% of the RBF grading criteria was for non-economic, or a subjective criteria. In that environment, it is critically important to avoid the appearance of bias in order to ensure that the process is clean and fair.

The City has failed to avoid the appearance of bias because Mike McSweeney, who was on the selection panel, was also listed as a reference for Elite (Ex. 14). We have provided to you an e-mail from Mr. Bob Stern, President of the Center for Governmental Studies, which concludes that Mr. McSweeney should not have been on the selection panel when he was listed as a reference for Elite as it gives the appearance of bias (Ex. 15). In addition, Mr.

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McSweeney's subordinate, Roy Nail, also on the selection panel, should not been on that panel with Mr. McSweeney. As McSweeney's direct report, Nail is beholden to McSweeney. And as we will show, McSweeney is biased toward Elite.

Other proof of bias, as well as failure to follow procedure, is evident in how the City conducted reference checks and how they were graded (Ex. 16 and 14). All three (3) of the selection panelists awarded Elite the highest points in the category of references. This is in spite of the fact that Elite listed only two references - one of whom was McSweeney. Selection panel member Nail, who was tasked with following up on references, contacted only one (1) of Elite's references - not McSweeney. Nail noted, via single word reporting, that Elite's sole reference rated Elite's work as "excellent" but indicated that Staff Pro's references only rated Staff Pro's work as "good." Yet, declarations submitted by Staff Pro's references clearly show that they characterized Staff Pro's work far better than the "good" that Nail indicated (Ex. 17, 18, 19 and 20).

Cost was the only non-substantive evaluation criteria in this bid yet, remarkably, Staff Pro - the lowest price bidder (Ex. 21 and 22), did not receive the best score even in this category. One evaluation panelist gave Staff Pro the same score as a higher priced bidder. Panelist McSweeney gave a higher priced bidder a **better** score than Staff Pro. Finally, in January 2011, when the City sent its rejection letter to Staff Pro, and in comments to the media after selecting Elite as the awardee, the City specifically identified Staff Pro's price as a **negative** (Ex. 23 and 24).

Finally, the rating sheets that were eventually provided by the City, via the Public Records Act request, demonstrate that the panel's ratings of the bidders were finished in September, 2010, but that oral interviews did not occur until October, 2010 (Ex. 25). There is no evidence that the evaluation panel took into account anything that it learned at those oral interviews - it is as if the decision had already been made.

Qualcomm management, to this day, strives to ensure that Elite monopolizes all work at the stadium. Even though SDSU was specifically excluded from the RFB, earlier this year, at the behest of Qualcomm management, the City Attorney's Office wrote to SDSU to advise them that SDSU was now required to use Elite causing SDSU to withdraw the competitive bid it had issued after its own contract with Elite expired (Ex. 26 and 27).

Most recently, even though this RFB process has not been finalized, the City of San Diego gave Elite a raise on its existing higher priced interim contract, and pays for those services at rates that are far above the price that Elite quoted in its RFB. This obvious bias toward Elite represents a gross waste of taxpayer money and perhaps even a gift of public funds. In 2010, based upon what the City paid Elite, Staff Pro's rate would have saved the City \$300,000 for that year alone! (Ex. 28)

2. Failure to Follow Procedures:

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As described above in the discussion related to bias, the City did not follow its procedures because: 1) the panel did not grade cost appropriately, 2) it didn't conduct its reference check appropriately or fairly, and 3) from documents finally provided via the Public Records Act, it appears that the bidders were rated before the interviews had taken place and no further ratings can be found after the interviews, and 4) there were two contradictory grading sheets utilized (Ex. 12 and 29); one of which gives grading guidelines that are inconsistent with the RFB (Ex. 29).

Conclusion

There were substantial deviations from the procedures set out in the RFB that are sufficient for this Appeal Panel to find, on that basis alone, that the appeal should be granted. Perhaps more troubling, these irregularities point to a pattern of behavior by selection panel members and City staff to favor Elite, the City's current contractor, which resulted in Staff Pro's bid being improperly downgraded. In fact, this bias toward Elite and against Staff Pro meant that it was never possible for Staff Pro to have fairly competed for this contract. Qualcomm Management has been allowed to do what it wants relative to security services currently and in the past without proper oversight by the City.

We respectfully ask this panel to grant the appeal and reconstitute a fair and impartial panel to re-evaluate all of the bids and not to re-bid this RFB.

Respectfully submitted,

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation



Leslie E. Devaney

Enclosures

LED

**DECISION OF PROTEST PANEL ON THE PROTEST BY STAFF PRO, INC OF THE
AWARD OF RFB NO. 10006782-10-P ("RFB") TO ELITE SHOW SERVICES**

INTRODUCTION

The matter before this Protest Panel, duly appointed pursuant to City Council Policy 000-029, is the Formal Protest by Staff Pro, Inc. of the City of San Diego's award of RFB No. 10006782-10-P [RFB] to Elite Show Services. The Formal Protest was heard by the Protest Panel on November 30, 2011. The Protesting Party Staff Pro, Inc. appeared through its CEO and President Cory Meredith and was represented by Leslie Devaney of the law firm of Stutz, Artiano, Shinoff, and Holtz. The City of San Diego was represented by Deputy City Attorney Debra Bevier. The Protest Panel consisted of Chair Brian Fennessy, Donna Faller and Stephen Grealy. Witness statements, documents and argument were received. After due consideration of the evidence and argument presented, the Protest Panel makes the following findings and determination.

FACTUAL HISTORY

The City of San Diego issued RFB No. 10006782-10-P to Furnish the City of San Diego with Event and 24/7 Security Guard Service at Qualcomm Stadium as may be required for a period of three (3) years from date of award, with options to renew for two (2) additional one (1) year periods, in accordance with the specifications within the bid request. The bid closing date was July 13, 2010, at 3:00 pm P.S.T. (See Staff Pro Exhibit 7).

Addendums A and B were issued on or about July 22, 2010. Addendum A defined changes to the specifications to include the replacement of the original cover sheet, the addition of Addendum B page 14a (Subcontractors List), and the addition of twelve (12) pages of Questions and Answers from vendor inquiries. Addendum B included a revised closing date from July 24, 2010, to July 28, 2010, at 3:00 pm P.S.T. (See Staff Pro Exhibit 32).

The Vendor Lot Summary for this bid indicates that notifications of the Request for Bid (RFB) were mailed to twenty-nine (29) prospective vendors. Nine (9) bids were received as well as four (4) alternate bids. The summary lists eleven (11) bids with the respective final bid price. One (1) vendor was identified as nonresponsive. There is no explanation for the missing 13th submittal. Bids were received from the following entities in order as shown on the Vendor Lot Summary: (See Staff Pro Exhibit 22).

Staff Pro
All N One Security Services, Inc.
Presidential Security Services, Inc.
US Security Associates
Contemporary Services Corp.
Elite Show Services, Inc.
Securitas Security Services USA, Inc.
Heritage Security Services

ABC Security Services, Inc.
G4S Secure Solutions
JDS Exclusive Security Systems, Inc.
Guard Services International, Inc.

On August 13, 2010, Patrick Kelleher, Principal Procurement Specialist for the City of San Diego's Purchasing and Contracting Department, sent a memorandum to Mike McSweeney, Qualcomm Stadium Manager and Bid Evaluation Committee (Committee) member, with the approved bids received for evaluation, advising of three (3) bids that were rejected as non-responsive due to failure to attend the mandatory pre-bid conference or failure to submit their bid on City documents, and to request the committee's written recommendation to award by September 10, 2010. The firms that were found non-responsive were All N One Security Service, Inc., Guard Services International, Inc., and JDS Exclusive Security Systems, Inc. (See Staff Pro Exhibit 34).

The Committee was assigned by Mike McSweeney, General Manager of Qualcomm Stadium, and was comprised of himself, Robert Kanaski, Assistant Chief of Police, and Roy Nail, Program Manager at Qualcomm Stadium.

Vendor reference checks were conducted by Committee member Mr. Nail between August 30, 2010, and September 2, 2010. On September 2, 2010, Mr. Nail sent an email to Mr. Kelleher to advise that five (5) firms met the criteria as detailed in Section D Award on page 5 of the RFB. Those firms were G4S, Securitas Security Services USA, Inc., Contemporary Services Corp., Staff Pro, and Elite Show Services, Inc. That email also advised the other Committee members that they would receive a rating matrix on or before September 7, 2010, to rate the five (5) proposers. The rating sheets were due to Mr. Kelleher on or before September 15, 2010. Based on the dates from the individual rating sheets by the Committee members, the scoring sheets were completed between September 24, 2010, and September 30, 2010. (See Staff Pro Exhibit 14 and 16).

On October 21, 2010, the Committee held interviews for the three (3) top finalists. The purpose was defined as an opportunity for the members to confirm the information in the Bid packages. There were pre-determined questions that were posed to each of the finalists. The firms invited to the interviews were Staff Pro, Contemporary Services Corp., and Elite Show Services, Inc. (See Staff Pro Exhibit 25).

On December 7, 2010, Mr. McSweeney submitted a memorandum to Mr. Kelleher with the Committee's scores and recommendation. (See Staff Pro Exhibit 13).

On or about January 4, 2011, letters were sent to the vendors not selected for the award advising that Elite Show Services, Inc. was recommended as the low, responsive, and responsible bidder meeting specifications. Any questions or concerns regarding the award were to be addressed in writing to Mr. Hildred Pepper, Jr., Purchasing Agent, no later than 5:00 p.m. Pacific Time on January 14, 2011. (See Staff Pro Exhibit 23).

On January 14, 2011, Mr. Cory Meredith, CEO/President, of Staff Pro, Inc. submitted a letter to Mr. Pepper notifying him of Staff Pro's intent to protest the award and citing grounds for the protest. (See Staff Pro Exhibit 10).

On May 6, 2011, Karen Wolff, Principal Procurement Specialist, Purchasing and Contracting, responded to Mr. Meredith's letter addressing the five (5) issues cited in his letter and referring any additional questions to a Procurement Specialist. (See Staff Pro Exhibit 10).

On May 13, 2011, Mr. Meredith submitted a formal protest letter to Mr. Pepper concerning the award of RFB No. 10006782-10-P ("RFB") to Elite Show Services. (See Staff Pro Exhibit 10).

EVIDENTIARY OBJECTIONS

The City of San Diego formally objected to the Protest Panel's consideration of Staff Pro's marked exhibits 14-16, 18-20, 24-29, 34-35, 38-39, 42, portion of 44, and 45-53 on the ground that they were not submitted at the time of Staff Pro's submission of its Intent to Protest and Formal Written Protest.¹

While Council Policy 000-29 provides generally that all documentary evidence should be exchanged no later than three working days prior to the hearing, it also provides that the failure to do so "may" result in their exclusion by the Protest Panel. This provides the Protest Panel with the discretion to consider late-submitted documents in the interests of justice and due to extenuating circumstances. The Protest Panel finds that consideration of any late submitted documents is necessary for consideration in full of the merits of the Protest and further that the late submission was caused by the City of San Diego's failure to provide the subject documents in a timely fashion in response to Staff Pro's multiple requests. The Protest Panel was assigned to render a full and impartial decision based on the evidence. It cannot do so if all relevant documents are not considered.

In addition, the Protest Panel finds no prejudice inured to the City of San Diego by the consideration of these documents as best evidenced by the City of San Diego's failure to request a continuance or other period of time necessary to adequately rebut or respond to said documents. Additionally, based on the City of San Diego's argument and presentation of evidence at the time of the hearing, it in fact demonstrated knowledge of the subject documents and in fact, asserted its factual and legal positions relating thereto.

The Parties during the hearing made other oral objections at the time of hearing. While the Panel did not specifically rule on said objections at the time of hearing, it considered the objections in gauging the credibility of the witnesses and weight afforded to their statements.

DECISION

Staff Pro, Inc protests the award of the RFB to Elite Show Services on the grounds that: (1) the Bid Evaluation Committee failed to follow the procedures outlined in the RFB; and (2) City staff and the Committee were biased against it in favor of Elite Show Services.

¹ The City of San Diego also formally objected to Staff Pro's exhibit 43 on the ground that said document was a sensitive and confidential document not subject to disclosure in the absence of consent by the National Football League. In response, Staff Pro agreed and withdrew said exhibit with all copies destroyed, rendering the objection moot.

In asserting its protest, Staff Pro, Inc. does not request that the RFB be rebid, but rather only seeks the remedy of a reconstitution of the Committee to re-score the previously submitted bids.

1. **Staff Pro's assertion that the City of San Diego failed to follow the procedures outlined in RFB No. 10006782-10-P.**

A protesting bidder may present evidence at a Protest Hearing to establish that: the City failed to follow procedures or requirements specified in the Request for Bids or Request for Proposals or equivalent, including any amendments (San Diego Municipal Code section 22.3029(d); Council Policy 000-29, Section 3a). The protesting bidder bears the burden of proof by a preponderance of the evidence (Council Policy 000-29, Section 13).

In evaluating correct procedures and comparing those with the procedures followed during the course of the award of this bid, the following documents were deemed by the Panel to be most pertinent: the scoring matrices used by the Bid Evaluation Committee, and the background reference checks conducted by the Committee.

With respect to the scoring matrices, the Protest Panel makes the following findings:

- The Committee had considerable discretion on how to interpret the bid responses in establishing their scores with specific guidance only being given for the cost factor. On page 6 of the RFB, it says the award of the contract for the cost factor shall be "based on the cost of service as detailed on the pricing page." (See Staff Pro Exhibit 7).
- It is understood that it is integral in the process that each evaluator on the Committee will bring a different perspective and background, which would result in variations in the scores between the evaluators. It was noted that not only did the Committee members have significant variation between each other in their scoring, but there was also some internal inconsistencies within the scoring regime adopted by the Committee members in each factor.
- With respect to the cost factor, the pricing page listed the total bid cost as well as the breakdown of the rate per hour charged for each of the various types of service provided under the bid. Staff Pro's pricing page showed the lowest proposed cost, and, in addition, proposed a revenue sharing for the City that would have reduced the cost to the City by an additional amount of approximately \$73,000 annually. That revenue sharing proposal was described as the rate difference between the Staff Pro Bill Rate and the Staff Pro Client Billing Rate with the higher the Client Billing Rate, the larger the share of revenue for the City (See Staff Pro Exhibit 11).

- It was noted by the Panel through testimony by the one Committee member that did testify (Robert Kanaski) that he took this revenue sharing component as a negative, in that he determined this to represent a "kick back" as opposed to a alternative revenue sharing partnership that is used in many such contracts as was presented in testimony from Staff Pro. Although this \$73,000 further reduced the low bid tendered by Staff Pro, it resulted in a lower score for Staff Pro by this member. This sole Committee member also testified that he downgraded Elite's score because he felt their proposed costs were slightly higher than he thought they should be for the scope of work. Both bids received a score of 24 out of 25 by this member. Of the other two Committee members, one gave Staff Pro the highest score of 25 (Nail) and one the lowest score of 20 (McSweeney). Both also gave Elite lower scores than Staff Pro (22 and 18 respectively).
- Information regarding the living wage in San Diego was provided on page 10 of Bid No. 10006782-10-P under Section O that referred bidders to both the City website and to the Living Wage Program telephone number. It was also addressed by the City in question/answer number 26 dated July 22, 2010. The City response was that the full cash per hour was \$13.20 with a statement to contact the City of San Diego Living Wage Program at (619) 236-6682 for additional information. (See Staff Pro Exhibit 32).
- As documented in an email from Cory Meredith dated July 27, 2010, to Patrick Kelleher of City Purchasing & Contracting, Mr. Meredith inquired on information to clarify the City's response to vendor questions submitted to the City for Bid 10006782-10-P. Specifically, he requested a direct response on how the community billing rates should be fairly adjusted as the City's response to the initial question was to "See Page 49". He stated that for a bidder to provide the City with the lowest possible rates for the 24/7 security, bidders must have the proper information to accurately calculate the potential profit the agreement would generate from event staffing. Mr. Meredith stated in that email that to meet the Living Wage requirement, the cost to the security company would be approximately \$17.14/hour. Staff Pro indicated in testimony and provided an email as evidence with a handwritten notation that no further response was ever received by anyone from Purchasing & Contracting concerning this question/issue. (See Staff Pro Exhibit 33).
- Staff Pro's bid proposal defined their minimum billing rates as based upon paying all employees the required San Diego living wage, including Health Benefits and Compensated days off (See Staff Pro Exhibit 11).
- Mr. Meredith further stated during his testimony that Staff Pro's subsidized rate to the City of \$16.91/hour would be offset by the higher rates the RFB allows the contractor to charge other users of the stadium for security and other services.
- As documented in an email dated January 13, 2011, submitted in response to a question from the Union Tribune on why the lowest bid was rejected over Elite's

higher bid, Patrick Kelleher, a senior buyer in City Purchasing & Contracting, stated that the bid was not responsive because the low rate Staff Pro bid for the 24/7 Guard service on their pricing page did not meet the Living Wage as required. (See Staff Pro Exhibit 24).

- The assertion that the Staff Pro bid was non-responsive was contradicted by Hildred Pepper, Director of Purchasing & Contracting, in a subsequent email dated May 14, 2011, who stated that he did not find anything in his review to indicate Staff Pro's bid was non-responsive (See Staff Pro Exhibit 37).
- Further documentation to demonstrate that Staff Pro was considered a responsive bid is provided in a City memo from Mike McSweeney to Patrick Kelleher dated December 7, 2010, that defined the five firms to include Staff Pro who met all the requirements as outlined in the Award section of the RFB. (See Staff Pro Exhibit 13).
- During the interview process of the top three finalists, a series of questions were asked of the bidders, including one which asked if they could provide all the services defined by the scope of work at the costs detailed in the pricing page of the RFB. Mr. Meredith stated in his testimony to the Panel that his response to the interview question covered the revenue sharing proposal and he used a graph to show the Committee how it would work. He further added that there were no questions from the Committee. While the Panel was not provided any notes from the Committee's interview responses, it would appear that the bidders were given an opportunity to provide a response to their pricing structure that the Committee members could have used in adjusting their scores if needed. The one Committee member who did testify stated that he did not see a need to adjust his score after the interview. Judging by the date on the combined score charts of September 30, 2010, which was prior to the interviews held on October 21, 2010, it also appears that no changes were made by the other members of the panel either. However, not having access to those employees for questions, this could not be verified.
- Variations within the scoring by each of the Committee members on the cost factor include:
 - Committee member Nail's scores were in line with the overall consolidated ranking based on lowest to highest bid. His scores ranged from 25 points for the lowest bid to 18 points for the highest bid. There was a 2 point spread between the lowest bid (Staff Pro) and the next lowest (CSC). He deducted an additional point for Elite as the 3rd lowest bid, which was 0.5% more than CSC. There was also a 2 point differential between the 3rd and 4th and the 4th and 5th ranked bids.
 - Committee member Kanaski scored the three lowest bids the same – 24 points. As detailed previously, he stated that he downgraded Staff Pro because he was uncomfortable with the revenue sharing proposal. He also

scored both CSC and Elite, who were only 0.5% apart on bids and over 17.5% more than Staff Pro, the same. The 4th lowest bid which was \$13,521 or 3.9% more than the 3rd lowest bid (Elite) was scored a 20, while the highest bid which was \$61,484 or 17.5% more than Elite, was given a score of 15.

- Committee member McSweeney's scoring for the cost factor did not bear a relationship to the prices quoted by the responsive bidders. His scores ranged from 25 points for the 2nd lowest bid to an N/A for the highest bid. Although CSC was 17.58% higher than Staff Pro, he gave them the highest score of 25, while Staff Pro was given a score of 20, the same as Securitas that had the 4th lowest bid and was 22.54% more than Staff Pro. No evidence or information was made available to the Panel to explain why CSC was given a higher score than Staff Pro. Elite was given a score of 18 although they were only 0.5% higher than CSC, and 17.98% higher than Staff Pro. He scored "N/A" for the fifth lowest bidder; even though there was clearly a price provided by this bidder, the bidder received no points. This did not appear to the Panel to be an appropriate entry based on the information it had and the instructions for scoring.
- Based on testimony provided by Mr. Meredith at the Protest Hearing, there were no questions or concerns expressed by the Committee during the vendor interviews. Yet the letter sent to Staff Pro by the City's Purchasing & Contracting Department stated that there were a "number of concerns regarding the bid submitted" by Staff Pro "not the least of which was your bill rate of \$16.91 per hour when you are required to pay \$13.20 per hour plus paid time off based on the Living Wage Ordinance." (See Staff Pro Exhibit 23). While the City response to the living wage question from vendors as defined previously did state the full cash per hour was \$13.20, it failed to include "plus paid time off" instead referring bidders to a phone number for more information. It is unknown what additional information would have been provided to potential bidders who called for more details. However, the basic information is currently available as defined in the RFB on the City's website. That site includes the Living Wage Rates through June 30, 2012, Health Premium Hourly Cost Calculation, and Proportional Compensated Leave Calculation to assist bidders in determining the base living wage required.
- Variations within the scoring by each of the Committee members on the bidders reference factor include:
 - The combined scores for the five bidders on their references ranged from a high of 75 for Elite to a low of 51 for Securitas.
 - Committee member Nail gave the top score of 25 to Elite, a 24 to CSC, and 23 to the remaining bidders. No further information or documentation

was provided to the Panel on what documentation was used to ascertain these scores.

- Committee member McSweeney gave the top score of 25 for Elite, a score of 24 for both CSC and Staff Pro, with the lowest score of 15 and 13 respectively to G4S and Securitas. No further information or documentation was provided to the Panel on what documentation was used to determine these scores.
- Committee member Kanaski rated Elite, Staff Pro, and CSC the same with a 25, and both Securitas and G4S received a score of 15. Mr. Kanaski did testify that he reviewed all the references provided in each of the bid packages along with having received the reference checks from Nail to arrive at his scores.
- As detailed in the next section on background checks, there was inconsistency in the number of reference checks conducted by Mr. Nail as well as incomplete information on at least one of the check forms and possible errors in recording performance evaluation ratings.

With respect to the background checks, the Panel finds the following:

- It was evident that the Committee did not follow specific directions issued with Addendum B to the RFB which required that the Committee “consider/review all references.” (See Staff Pro Exhibit 32).
- It did not appear that the Committee conducted its reference checks appropriately or fairly. The number of references checked by Nail for each of the bidders was inconsistent:
 - Only one (1) reference was checked on behalf of Elite. It was noted that the contact on the reference check sheet for Elite was not one of the three references listed on the reference sheet provided by Nail for his checks. It is unknown whether Elite provided more references in addition to the three on the single sheet provided. (See Staff Pro Exhibit 14).
 - Three (3) reference checks were made on behalf of Staff Pro; even though sixteen (16) were submitted in Staff Pro’s bid.
 - One (1) reference was done for Securitas with no additional evidence available to the Panel on the number of reference contacts submitted.
 - One (1) reference check was conducted for CSC. The form was not completely filled out and was missing the scope of work.

- Two (2) references checks were made for G4S. It is unknown how many were submitted by G4S as there was no further information provided to the Panel.
- On the three (3) Staff Pro reference checks conducted by Committee member Nail he noted under the comments section the term “good” in relation to evaluation of performance. Staff Pro contacted these references after the notice of award and all provided declarations indicating their evaluations were much higher than the information recorded on the reference check forms. (See Staff Pro Exhibits 18 thru 20)

2. Staff Pro’s assertion that the Bid Evaluation Committee and City staff were biased against it in favor of Elite Show Services

The San Diego Municipal Code and Council Policy provide that:

“A protesting bidder may present evidence at a Protest Hearing to establish either that City employees or evaluation team members engaged in misconduct or impropriety (San Diego Municipal Code section 22.3029(d); Council Policy 000-29, Section 3a).”

The Protest Panel understands misconduct to mean improper conduct motivated by premeditated or intentional purpose, and impropriety to mean improper action or improper behavior.

Pursuant to City Council Policy No. 000-29, Section 9, “the *Protest Body* will hear evidence and arguments from the *evaluation team* and *interested parties*, their witnesses or authorized representatives.” Although several days in advance of the Bid Protest Hearing Staff Pro’s legal representation made clear their interest in interviewing all members of the Committee, two of the three Committee members (McSweeney and Nail) were not made available to appear before the Bid Protest Hearing Board. While the City was not required to make the members available, the Panel would have benefitted by their participation to help better understand the methodology behind the scoring of the bids and to answer questions and clarify key points.

The Background section on page 1 of City Council Policy No. 000-29 states that “the City’s primary objective when awarding *Contracts* is to use fair and unbiased selection procedures”. Although no direct factual evidence was provided that could definitively and conclusively establish actual misconduct, testimony provided at the Bid Protest Hearing and the documents provided by both parties led the Panel to believe that there was at a minimum, evidence to support a conclusion of a perception of improper bias in the evaluation process to award the RFB to Elite.

Specifically, the Protest Panel makes the following findings which support a perception of bias:

- The makeup of the Committee led to a perception of bias towards the status quo. While understanding the need to have Subject Matter Experts (SME) participate in the bid evaluation process, it was not prudent to include both Qualcomm

Stadium General Manager Mike McSweeney and Qualcomm Stadium Program Manager Roy Nail on the Committee. Having either one on the panel would have sufficiently met the SME requirement.

- The fact that Mike McSweeney was listed as a reference on the Elite bid should have caused him to excuse himself from participation on the Committee so that there would not be an opportunity for anyone to make the assertion of a bias towards Elite. Since there was another senior staff member from the stadium on the panel, there would have been no impact on subject matter expertise.
- In responding to vendor questions submitted as part of the RFB process, an answer was given that appears to detract from the fairness of the evaluation. The answer to question number 7 was that *"based on the overall experience and qualifications of the vendor, the experience may be considered at the sole discretion of the Stadium Manager."* The Panel found this to be overly broad and to provide the Stadium Manager too much latitude in determining *"sufficient experience to meet this RFB."* Purchasing & Contracting staff should have recognized this answer to the question may cause bidders to assert there would be an opportunity for bias. (See Staff Pro Exhibit 32).
- The notations from the interviews written by Nail for Staff Pro were found to be significantly moderated when compared with the declarations from the interviewees that were provided in Staff Pro's submission to the Panel. Nail represented the reference as stating the quality of the work performed was "good" whereas the declarations from the references clearly stated that they had responded to Nail very enthusiastically when asked about their experience with Staff Pro and had rated their experience as much higher. This discrepancy further aggravates the perception of bias by City staff. (See Staff Pro Exhibits 18 and 20).
- In establishing the factors for weighting the scoring of the bid, only 25% was given to an objective factor: cost. However, the bid sheet that was originally purportedly given to the panel, showed the rated cost at 35%. By using a subjective evaluation for 75% of the scoring enhances the perception of bias. (See Staff Pro Exhibit 29).
- With the lack of timely and/or thorough responses by some City employees to inquiries from Staff Pro and the absence of additional information at the Hearing that could have substantiated technical processes related to the evaluation, the perception of bias is further magnified.

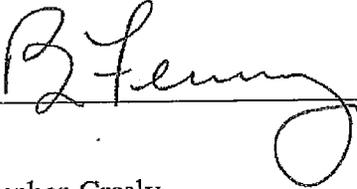
CONCLUSION

Staff Pro has met its burden of proof in establishing by a preponderance of the evidence that the City, through its Bid Evaluation Committee, failed to follow the procedures and requirements as specified in the Request for Bids.

While the above renders it unnecessary for the Protest Panel to reach the ground for protest of improper bias, it nonetheless notes that the evidence presented raises question as to whether some members of the Bid Evaluation Committee were in fact improperly biased. While Staff Pro has not met its burden to establish actual bias by a preponderance of the evidence, a perception of improper bias is raised by the evidentiary record.

Accordingly, the Formal Protest of Staff Pro is granted with the relief as requested that the submitted bids be reevaluated and scored by a new bid evaluation committee comprised of three new members.

Brian Fennessy, Chair
Assistant Fire Chief
San Diego Fire-Rescue Department
1010 Second Ave., Suite 400
San Diego, CA 92101



Dated 12/28/11

Stephen Grealy
Deputy Director
Waste Reduction and Disposal Division
Environmental Services Department
City of San Diego
9601 Ridgehaven Court, Suite 320
San Diego, CA 92123

Dated _____

Donna Faller
Program Manager
Office of Homeland Security
1010 Second Avenue, Suite 1500
San Diego, CA 92101



Dated December 28, 2011

CONCLUSION

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While the above renders it unnecessary for the Protest Panel to reach the ground for protest of improper bias, it nonetheless notes that the evidence presented raises question as to whether some members of the Bid Evaluation Committee were in fact improperly biased. While Staff Pro has not met its burden to establish actual bias by a preponderance of the evidence, a perception of improper bias is raised by the evidentiary record.

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_____ Dated 12/30/11

Donna Faller
Program Manager
Office of Homeland Security
1010 Second Avenue, Suite 1500
San Diego, CA 92101

_____ Dated _____

Bob Schmitt

From: Nail, Roy [RNail@sandiego.gov]
Sent: Monday, December 03, 2012 2:30 PM
To: Valdez, Leslie
Cc: Bob Schmitt
Subject: RE: From kpbs.org: 'Council Committee Delays Decision On Qualcomm Security Contract'

ⓧ Bob:

It is not typical for a vendor to attend a Committee meeting. It is for a Council meeting. Elite must have been tracking this meeting on the City website as they were not invited by City staff.

We will make sure you are invited to the next Budget meeting as well as the City Council meeting.

Roy Nail

-----Original Message-----

From: Valdez, Leslie
Sent: Monday, December 03, 2012 11:55 AM
To: Nail, Roy
ⓧ Subject: FW: From kpbs.org: 'Council Committee Delays Decision On Qualcomm Security Contract'

Hi Roy,

I received the below email from Staff Pro. Please assist them.

Thanks!

Leslie Valdez, CPPB
Procurement Specialist
Purchasing & Contracting Department
Tele: (619) 236-7090 / Fax: (619) 533-3238
Hours: 7:00 a.m. to 4:00 p.m. (Monday through Friday)

-----Original Message-----

From: bschmitt@staffpro.com [<mailto:bschmitt@staffpro.com>]
Sent: Thursday, November 29, 2012 9:09 AM
ⓧ To: Valdez, Leslie
Subject: From kpbs.org: 'Council Committee Delays Decision On Qualcomm Security Contract'

Bob Schmitt sent you this:

Council Committee Delays Decision On Qualcomm Security Contract

http://www.kpbs.org/news/2012/nov/28/council-committee-delays-decision-qualcomm-securit/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share

ⓧ Bob Schmitt attached this additional message:

Leslie - Can you shed light on how this could happen? Our contracts go before a City committee, Elite is allowed to attend and speak, the stadium manager attends and speaks and Staff Pro isn't even notified about this or given the opportunity to attend or speak?

kpbs.org top e-mailed stories:

Four Commonly Used Antipsychotic Drugs Don't Work
http://www.kpbs.org/news/2012/nov/27/four-commonly-used-antipsychotic-drugs-dont-work/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share&utm_term=top-emailed

San Diego County Begins Behavioral Health Court http://www.kpbs.org/news/2010/feb/23/san-diego-county-begins-behavioral-health-court/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share&utm_term=top-emailed

Desalinated Water's San Diego Future Decided Thursday
http://www.kpbs.org/news/2012/nov/28/desalinated-waters-san-diego-future-decided-thursd/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share&utm_term=top-emailed

Autism-Friendly Dining Offered In Del Mar http://www.kpbs.org/news/2011/feb/11/autism-friendly-dinning-offered-del-mar/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share&utm_term=top-emailed

Anthem Blue Cross Announces Another Rate Hike http://www.kpbs.org/news/2012/nov/28/anthem-blue-cross-announces-another-rate-hike/?utm_source=kpbs.org&utm_medium=email&utm_campaign=user-share&utm_term=top-emailed

Bob Schmitt

From: Valdez, Leslie [LValdez@sandiego.gov]
Sent: Friday, October 05, 2012 1:32 PM
To: Bob Schmitt
Subject: RE: RFP Time Frame

Importance: High

Hi Bob,

I haven't forgotten about your questions. I'm awaiting answers from my Qualcomm contact. Qualcomm is responsible for setting up the dates with Committee and Council.

I'll let you know as soon as I get the info.

Have a great weekend!

Leslie Valdez, CPPB
Procurement Specialist
Purchasing & Contracting Department
Tele: (619) 236-7090 / Fax: (619) 533-3238
Hours: 7:00 a.m. to 4:00 p.m. (Monday through Friday)

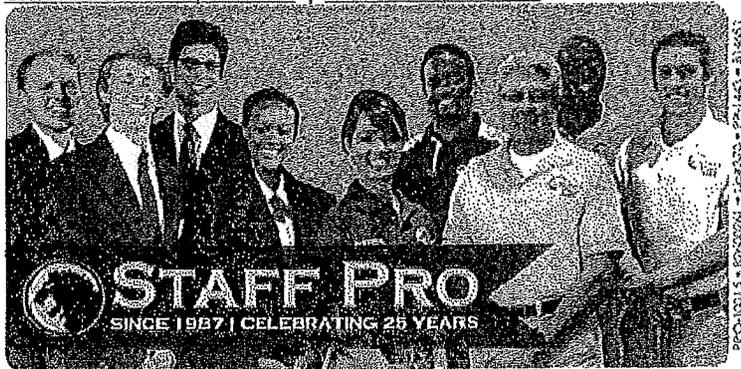
From: Bob Schmitt [mailto:bschmitt@staffpro.com]
Sent: Tuesday, October 02, 2012 12:13 PM
To: Valdez, Leslie
Subject: RFP Time Frame

Leslie – Can you give me an idea of a time frame moving forward? I know it has to go before the committee, City Council and the Mayor, but didn't know if you had a time frame for those milestones. Thanks.

Bob Schmitt
General Manager, San Diego Branch Office
Staff Pro
675 Convention Way
San Diego, CA 92101
Tel 619.544.1774 ext. 6
Fax 619.544.1748
Cell 619.454.7937
bschmitt@staffpro.com / www.staffpro.com



cmeredith@staffpro.com | www.staffpro.com



Customer - Service - People

From: Valdez, Leslie [mailto:L.Valdez@sandiego.gov]
Sent: Tuesday, October 09, 2012 7:17 AM
To: Bob Schmitt; Cory Meredith
Subject: RE: RFP Time Frame
Importance: High

Good morning.

The next step in the process is to move forward with Committee (if required) and Council approval. Qualcomm Stadium staff is required to complete the documentation for this action. Qualcomm will notify me when dates and times have been scheduled. The documentation is currently being routed for various approvals to permit the scheduling of a date and time to go before Committee and Council.

I will be handling the contract document requirements. As part of the contract process, four (4) copies of the attached Section A - Signature Page must be completed and executed in the original by Staff Pro Inc.

Please execute the attached document, completing Item 6 and Item 8, and return all four (4) originals to me at the address below no later than Wednesday, October 17.

Special Note: I will direct our Insurance Coordinator, Kandace Soto to contact you, Bob to advise you of any needs regarding the required proof of insurance to begin the contract.

Feel free to contact me if you have any questions.

Thanks!

Leslie Valdez, CPPB
Procurement Specialist
Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, CA 92101-4195
Tele: (619) 236-7090 / Fax: (619) 533-3238
Hours: 7:00 a.m. to 4:00 p.m. (Monday through Friday)

From: Bob Schmitt [mailto:bschmitt@staffpro.com]
Sent: Tuesday, October 02, 2012 12:13 PM

To: Valdez, Leslie
Subject: RFP Time Frame

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Bob Schmitt
General Manager, San Diego Branch Office
Staff Pro
675 Convention Way
San Diego, CA 92101
Tel 619.544.1774 ext. 6
Fax 619.544.1748
Cell 619.454.7937
bschmitt@staffpro.com / www.staffpro.com



Bob Schmitt

From: Valdez, Leslie [LValdez@sandiego.gov]
Sent: Tuesday, October 09, 2012 7:17 AM
To: Bob Schmitt; Cory Meredith
Subject: RE: RFP Time Frame
Attachments: 10024458-13-V - Section A - Signature Page.pdf

Importance: High

Good morning.

The next step in the process is to move forward with Committee (if required) and Council approval. Qualcomm Stadium staff is required to complete the documentation for this action. Qualcomm will notify me when dates and times have been scheduled. The documentation is currently being routed for various approvals to permit the scheduling of a date and time to go before Committee and Council.

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Please execute the attached document, completing Item 6 and Item 8, and return all four (4) originals to me at the address below no later than Wednesday, October 17.

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Feel free to contact me if you have any questions.

Thanks!

Leslie Valdez, CPPB
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San Diego, CA 92101-4195
Tele: (619) 236-7090 / Fax: (619) 533-3238
Hours: 7:00 a.m. to 4:00 p.m. (Monday through Friday)

From: Bob Schmitt [<mailto:bschmitt@staffpro.com>]
Sent: Tuesday, October 02, 2012 12:13 PM
To: Valdez, Leslie
Subject: RFP Time Frame

Leslie – Can you give me an idea of a time frame moving forward? I know it has to go before the committee, City Council and the Mayor, but didn't know if you had a time frame for those milestones. Thanks.

Bob Schmitt
General Manager, San Diego Branch Office
Staff Pro
675 Convention Way
San Diego, CA 92101
Tel 619,544,1774 ext. 6
Fax 619,544,1748

Bob Schmitt

From: Valdez, Leslie [LValdez@sandiego.gov]
Sent: Wednesday, November 07, 2012 10:58 AM
To: Bob Schmitt; Cory Meredith
Subject: RFP 10024458-13-V - Security Guard Services for Qualcomm Stadium - Extension of Offer Agreement
Attachments: 10024458-13-V - Extension of Offer Letter Agreement - Staff Pro Inc.pdf
Importance: High

Attached is a letter requesting your agreement to extend your offer to the City pending award of the contract by City Council.

Per my Qualcomm Stadium contact, the item will not go before City Council until possibly January 2013.

Please contact me if you have any questions.

Thanks!

Leslie Valdez, CPPB
Procurement Specialist
Purchasing & Contracting Department
Tele: (619) 236-7090 / Fax: (619) 533-3238
Hours: 7:00 a.m. to 4:00 p.m. (Monday through Friday)



AdChoices

Child labor violations at Chargers games?

Feds are investigating whether student volunteers were exploited

By Jeff McDonald

Thursday, December 6, 2012



Federal regulators are investigating whether student groups volunteering at San Diego Chargers games to usher fans or perform other tasks may have run afoul of child-labor laws.

The San Diego Unified School District students work for no pay, in exchange for contributions to their organization. In some cases, students were required to volunteer to stay eligible for extracurricular activities.

Under one arrangement, a student group was to receive \$40 per shift for volunteers working up to nine hours — as little as \$4.50 an hour.

The U.S. Department of Labor requested records and information from the district about the program that for years sent high school students to Qualcomm Stadium to check tickets, show fans to their seats and perform other low-level jobs.

Investigators appear to be zeroing in on a group-labor contract between the San Diego High School Associated Student Body and Elite Show Services, the staffing company that has provided security and ushering at the stadium since the

1990s. They also requested information about similar programs at Clairemont, Mission Bay, Serra and University City high schools.

“We are fully cooperating and working with the Department of Labor to provide the information they have asked for,” said Bernie Rhinerson, chief of staff for San Diego schools.

Federal labor investigators want the district to check with all of its high schools to see how many other coaches and teachers signed group-labor agreements like the one at San Diego High School.

“Given the possible violation of federal child labor provisions, as we discussed during our meeting, it is of the utmost importance that the district make every effort to make the determination as quickly as possible,” investigator Heather Skidmore wrote to a district lawyer in October.

The investigation covers a two-year period ending in October 2012, Skidmore’s letter states.

The U.S. Fair Labor Standards Act restricts conditions under which minors may be employed or used as volunteers or unpaid interns. Among other provisions, the law forbids children from working specific jobs, working during school hours, working more than eight hours a day and dictates that they must be paid at least minimum wage.

According to a survey of principals by district staff, seven schools formalized agreements with Elite Show Services. Two others have unsigned deals with Ace Parking and one has an agreement with the San Diego Padres.

School district lawyer Patrick Frost told Elite in October that the San Diego High School ASB is not a legal entity and has no authority to sign contracts.

“We are actively investigating whether additional ‘contracts’ exist at other district schools,” Frost wrote. “If more are discovered, this letter serves as your notice that no (contracts) will be honored, sponsored, endorsed, implemented or authorized by the district and all participation by district staff or students in such illegal activity will immediately cease.”

Elite president John Kontopuls issued a statement saying his company takes pride in helping San Diego charities meet their fundraising goals.

“We are currently working with the Department of Labor as it relates to an inquiry and while we anticipate an expeditious and positive outcome, we hope that any information published will fairly and accurately reflect that no determination to date has been made,” the statement said.

Elite’s group-labor agreement with San Diego High School called for the ASB to commit 30 volunteers to work at least five of the Chargers’ first six home games this year and three of the final four.

It also called on Elite to donate \$40 to the organization for shifts up to nine hours. The contribution climbed to \$75 for shifts exceeding nine hours.

The U.S. Fair Labor Standards Act requires employers to pay interns at least minimum wage, which is \$8 an hour in California.

U.S. Department of Labor spokeswoman Deanne Amaden said she could not discuss details of the investigation because it remains active.

AdChoices

The concessions company Centerplate and Ace Parking, which also have contracts to work at Qualcomm Stadium, also offer local charities chances to raise money by volunteering their time at Chargers games.

Centerplate issued a statement saying the company is reviewing its policies and procedures regarding its nonprofit partners in light of the federal investigation.

“While we’re confident that our relationships fully comply with both the letter and intent of the law, this is an appropriate time for a thorough review. We thank all of our partners for their patience,” the statement said.

Keith Jones of Ace Parking said his company is proud of its group-labor program and said it has helped local clubs raise hundreds of thousands of dollars over the years.

“All of our youth volunteers must be at least 16 years old and they work in teams led by at least one adult from the group who provides supervision and assistance,” he said. “The contribution we make to organizations that provide volunteer service surpasses the minimum wage on a man-hour basis.”

Emails from booster groups supporting San Diego schools show students were expected — and sometimes required — to work weekends to raise money if they wanted to remain in various music or sports programs.

“We need your help with the following activities which support our athletes and the football program,” the University City High School website states. “Please note, football athletes will be required to participate in volunteer activities as a team requirement.”

The volunteer shifts for Ace Parking during the Chargers games stretch six to eight hours. A spokesman for the San Diego Chargers said the team had no comment on the group-labor practices during its games.

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U.S. Department of Labor

Wage and Hour Division
350 West C Street, Suite 990
San Diego, CA 92101
(619) 557-5143 (Direct)
(619) 557-5146 (TDD)



October 13, 2012

Re: Wage-Hour Investigation

PATRICK D. FROST
ASSISTANT GENERAL COUNSEL
SAN DIEGO UNIFIED SCHOOL DISTRICT
4100 NORMAL STREET, ROOM 2148
SAN DIEGO, CA 92103

VIA ELECTRONIC MAIL

Dear Mr. Frost:

It was a pleasure meeting with you, Deputy Superintendent of Academics Nellie Meyer, and Instructional Operations Administrator Marty Stultz earlier this week. Following up on our conversation, this will confirm that the San Diego Unified School District (the "District") will survey the high schools within the District in an effort to determine generally what, if any, volunteer programs have been established within the District, either through the Associated Student Body ("ASB") or any other academic, athletic, or extracurricular group affiliated with a particular high school within the District.

This will include, without limitation, a determination of whether students are providing services, either on a "volunteer" basis or as a "fundraising" effort, to for-profit commercial employers, and whether any contracts, agreements, or other documents exist related to these services. Please keep in mind that this request applies to the entire investigation period, October 11, 2010 to October 10, 2012. Given the possible violation of Federal Child Labor provisions, as we discussed during our meeting, it is of the utmost importance that the District make every effort to make this determination as quickly as possible. We have agreed that the District will provide me with updates as information is obtained, and that all such information will be provided to me no later than November 16, 2012, the date of the District's next regularly scheduled Principals' Forum with the District Superintendent.

Additionally, with respect to San Diego High School and the "Group Contract For Non-Profit Groups 2012" (the "Group Contract") that we reviewed during our meeting, please provide me with the following information, or provide me with a point of contact with whom I may address the following:

1. Documents authenticating "San Diego High School ASB" as a not-for-profit, tax-exempt organization under IRS guidelines;
2. If the District does not maintain that "San Diego High School ASB" is a *bona fide* non-profit organization, a statement to that effect;
3. A copy of the IRS form W-9 agreement the San Diego High School ASB provided to Elite Show Services, Inc., as called for in the Group Contract; and

4. Identification of all students who have provided services pursuant to the Group Contract, including the following for each student identified:
- Name, address, telephone number and date of birth;
 - Any parental consent forms related to the student's participation;
 - Any "Individual Volunteer Agreement" (as called for in the Group Contract) or other similar documents indicating the student intended to provide volunteer services;
 - Identification of the date(s) and time(s) the student participated, including start-time and stop-time, if such records exist;
 - Records demonstrating any "contribution" received from Elite Show Services, Inc., related to the Group Contract, and a general description of where these funds went (i.e., ASB general account, used to purchase items for ASB, etc.);
 - Description of what services the student actually provided;
 - Determination of whether the student worked with staff of Elite Show Services, Inc., and whether the student was supervised or otherwise received instruction or direction related to the services provided from any employee of Elite Show Services, Inc.;
 - Determination of whether the student was supervised or otherwise received instruction or direction related to the services provided by any employee of the District, and, if so, identification of the District employee(s) involved; and
 - Determination of who provided the uniform to the student, as called for in the Group Contract, and who bore the cost of such uniform.

Further, my investigation has revealed that the following high schools within the District may potentially be parties to similar types of "volunteer" contracts with for-profit employers: Clairemont, Mission Bay, Serra, and University City. While I do not have copies of any contracts related to these schools, I trust that the District will inquire further, as part of the process outlined above, with these specific schools.

Once we have determined what types of volunteer/fundraising programs exist at the high schools in the District, it may be necessary to make site-visits to these schools in order to, among other things, conduct interviews of the District employees involved in the program(s) and potentially some of the students as well. The Department will make every effort to coordinate these site visits and employee interviews through your office, so that little or no disruption is caused to the schools' operations. Additionally, in the case of students under the age of 18 years, interviews will not take place without first obtaining parental consent.

Finally, I would like to schedule a conference with you to further discuss the basic organizational structure of the District and the high schools that fall within its jurisdiction. Please let me know if you are available on Tuesday, October 23, 2012 for this purpose. I am available to meet in person in the afternoon, or, in the alternative, we may schedule a conference call.

If there are any questions concerning these matters, please contact me at (619) 557-5143.

Thank you for your continued cooperation in this matter.

Heather Skidmore
Heather L. Skidmore, Wage & Hour Investigator



San Diego Unified
SCHOOL DISTRICT

LEGAL SERVICES
Patrick D. Frost
Assistant General Counsel
619.725.5630
Fax: 619.725.5639
pfrost@sandi.net

October 18, 2012

Mr. John Kontopuls
President/CEO
Elite Show Services, Inc.
2878 Camino del Rio South, Suite 260
San Diego, CA 92108

Via USPS and Facsimile: 619-574-1580

Subject: Group Contract for Non-Profit Groups 2012

Dear Mr. Kontopuls:

The San Diego Unified School District ("District") has recently been contacted by the U.S. Department of Labor ("DOL") regarding potential violations of child labor laws as it relates to District student volunteer programs. The DOL has provided the District with the attached document titled "Group Contract for Non-Profit Groups 2012" which was allegedly entered into with "San Diego High School ASB."

This letter is intended to address several concerns. First, please be advised that "San Diego High School ASB" is not a legal entity with authority to enter into contracts on behalf of the District. Moreover, the District does not endorse or respond to contracts entered into by non-legal entities with no authority to bind the District. Third, the District has no intent to implement or enforce this alleged contract that is facially biased and patently illegal. Fourth, the District is taking remedial measures to immediately halt any District sponsorship including participation of staff or students in this illegal and unenforceable contract.

At the moment, the District is only aware that this one "contract" exists with "San Diego High School ASB." We are actively investigating whether additional "contracts" exist at other District schools. If more are discovered, this letter serves as your notice that no "Group Contract for Non-Profit Group 2012" will be honored, sponsored, endorsed, implemented or authorized by the District and all participation by District staff or students in such illegal activity will immediately cease.

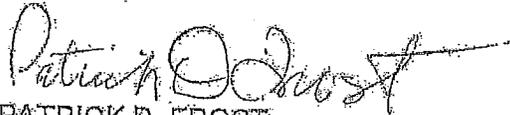
If you are aware of any similar contracts that exist between the District and Elite, please notify me immediately and provide copies of such. This request extends back to October 2010 and up to the present.

Finally, you are directed to cease attempts to enforce or enter into any contracts for volunteer services with any school or school-sponsored club, activity, or athletic team.

Subject: Group Contract for Non-Profit Groups 2012
October 18, 2012
Page 2 of 2

The District reserves all rights and remedies necessary to ensure that its students are protected from being forced to engage in illegal activity.

Sincerely,



PATRICK D. FROST
Assistant General Counsel

Enclosure

M:\Office Of General Counsel - 5515A\Legal\Frost\DO\10-18-12\DO\ - Group Contract for Non-Profit Groups 2012.doc

Does stadium security firm have lock on its gig?

Comments ()

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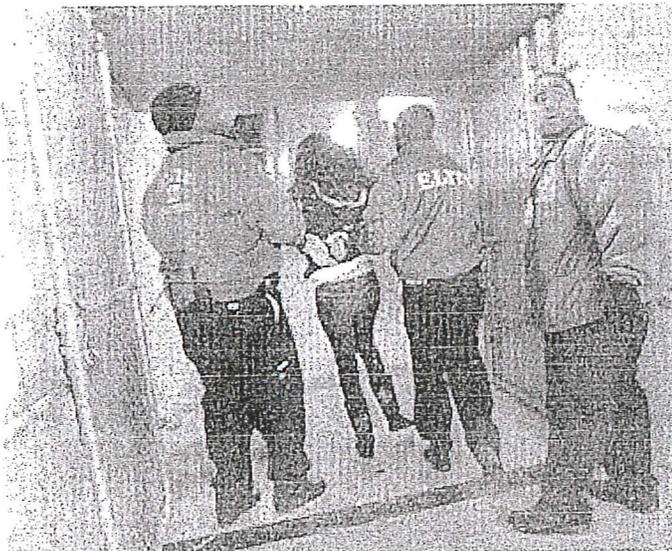
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Elite Show Services employees restrained an unruly Chargers fan at Qualcomm Stadium in December. (Peggy Peattic / U-T file)



Written by
Jeff
McDonald
/h5>

April 25, 2009

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Also of interest

Elite Show Services has been guarding the Chargers' home field since the place was known as Jack Murphy Stadium. The company's bright-red windbreakers are nearly as familiar to local sports fans as the team's powder-blue jerseys.

Online: Read documents including the city memo approving exclusive use of Elite Show Services through 2035 at uniontrib.com/more/documents

What people may not know, however, is that San Diego officials decided a little more than two years ago to have Elite provide 24-hour security at Qualcomm Stadium through 2035 without seeking competitive bids.

About the same time, the city began requiring short-term tenants such as dog shows to hire the firm for staffing – work that goes beyond crowd control to include ushering, ticket-taking and other services.

The long-term security arrangement, which would be worth at least \$24

approval of “a sole source request.”

“That means the City is authorized to award sole source contracts to Elite through December 31, 2035,” Goldsmith wrote. “It does not mean that the City has done so or must do so.”

Elite President John Kontopuls said he was unaware of the city's internal approval of a long-term arrangement – or the city policy requiring short-term tenants to hire his firm for event-day staffing.

At least twice, Kontopuls donated the maximum \$300 to Sanders' mayoral campaigns.

Apart from leases, procurement experts say city decisions to use one contractor without bids for decades are unheard of – unless the job is extremely skilled or can only be performed by a handful of companies.

Hugh Smith of the California Association of Public Purchasing Officers said most deals extend no more than five years, whether they are put out to bid or not.

“In general, government agencies want to be in the open market and have as much participation as possible,” Smith said.

City lawyers first disclosed they were re-examining the Elite arrangement in response to complaints from industry competitor StaffPro Inc., a Huntington Beach company that until 2006 had worked Qualcomm Stadium many times.

Meredith, StaffPro's president, began raising questions in 2007 after he was kept from bidding on jobs that went to Elite.

He said he couldn't get a straight answer from stadium officials and was told to contact the City Attorney's Office. When he did that, no one responded to his complaints.

Only after Meredith hired a lawyer and began requesting documents under the California Public Records Act did City Hall respond.

In January, city lawyers told Meredith's attorney that the city has had a change of policy, that “the City has decided that it will not continue to contract for this work on a sole source basis for nearly 30 years.”

Last month, with city officials slow in providing Meredith more documents, he filed a claim seeking more than \$100,000 in damages. If rejected, Meredith said, he will not take his case to court.

“I don't want to spend any more money on lawyers,” he said.

Staffing-industry officials say there is a big difference between event-day security and guarding a venue 24 hours a day.

Around-the-clock security involves a handful of guards to protect against graffiti, vandalism and loitering. Event crews can involve hundreds of

guards, ushers and others.

"I know a lot of buildings that separate the 24/7 security and the usher and T-shirt security," said Harold Hansen of the International Association of Assembly Managers, a Texas-based trade organization for event promoters.

Hansen said there is no standard for venue operators; some provide tenants a list of firms that meet preset conditions, and others rely on one firm.

"What becomes important is the training and the staffing levels," he said. "But in my 30 years of running venues, I can't say I've encountered a 30-year term."

Short-term tenants at Qualcomm Stadium, which regularly hosts events inside the park and across acres of parking, criticized the policy of requiring them to hire Elite.

Matthew Williams hosted a dog show for American pit bull terriers at the stadium in 2007.

"It's definitely unfair," said Williams, a former Spring Valley promoter who relocated to Riverside. "When I was up there, there wasn't even an option. It was Elite."

Shawn Walker is a longtime paintball promoter who has rented many venues, including Qualcomm Stadium in 2006. Landlords do not usually force tenants to hire one company over another, he said.

"The people in San Diego were good with us. They did a good job, but there was no negotiation," said Walker, who now runs a paintball center at Camp Pendleton.

Qualcomm Stadium manager Mike McSweeney said having just one security provider helps the city and fans.

"By having Elite Show Services in the building for all events, we create a consistency in service and emergency response," he said. "There is no drop-off in the provision of patron safety and crowd management from event to event."

Elite holds contracts with every major Qualcomm Stadium tenant, including the Chargers, Aztecs and the Holiday and Poinsettia bowls.

The company also provides staffing at Petco Park, Cox Arena, the Del Mar Fairgrounds, the San Diego Convention Center and Torrey Pines Golf Course, all of which are owned by the public.

Jeff McDonald: (619) 542-4585; jeff.mcdonald@uniontrib.com

11/17/11

Does stadium security firm have lock on its gig? | SignOnSanDiego.com

Find this article at:

<http://www.signonsandiego.com/news/2009/apr/25/1n25elite00152-does-stadium-security-firm-have-loc>

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San Diego seeks bids for stadium security

San Diego is seeking competitive bids for 24-hour security at Qualcomm Stadium.

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Security guards for Elite Show Services remove an unruly fan from a Chargers game at Qualcomm Stadium in 2008. -- Peggy Pearson/Union-Tribune



Written by
Jeff
McDonald
/h5>

7:25 a.m., July 7, 2019

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For the first time in more than 10 years, the city of San Diego is seeking competitive bids for the job of providing 24-hour security at Qualcomm Stadium.

City officials say the bidding process fulfills a commitment they made last year, when they were criticized for initially awarding a 30-year sole-source agreement to

OVERVIEW

Background: City officials previously approved a 30-year, sole-source agreement with Elite Show Services to provide 24-hour security at Qualcomm Stadium but promised to put the contract out to bid after receiving complaints from other companies.

What's changing: Stadium officials are now soliciting bids for 24-hour security at Qualcomm Stadium.

Facebook: sduwathdog

Elite Show Services.

The future: Bids are due Monday at City Hall. Stadium officials will review the bids and award a contract by October.

Also of interest

Critics say requirements written into the proposal appear to exclude most of Elite's business rivals.

ir competition a must

Only a handful of companies in the world can meet the city's terms, said several security and staffing professionals interested in bidding on the multimillion-dollar contract. Among other things, qualified bidders must have provided security at college and professional football games for three years, performed 24-hour stadium security for five years and can "show current employment status at another comparable stadium site," the city proposal states.

Stadium security is costing more than bid

Stadium security team gets nod without low bid

Does stadium security firm have lock on its gig?

Elite already holds separate agreements with the San Diego Chargers and San Diego State Aztecs to staff their football games.

PARKING GIANT ACES MARKET

The stakes are much higher than the \$800,000 a year or more the city will pay for 24-hour stadium security.

The winning bidder gets exclusive rights to provide security and ushering services at 200 or more events a year in and outside the stadium. The event-day agreements are expected to generate far more business for the successful bidder.

It is not known how many firms will submit bids by the Monday deadline. The three-year contract comes with two one-year options.

The Mayor's Office, which is responsible for approving city contracts, declined to discuss the request for bids or its terms.

Stadium officials say the requirements are necessary because Qualcomm Stadium is a high-profile facility and potential terrorist target that needs an experienced security contractor. They also say it is important that the same firm protecting the stadium around the clock provide event security and ushering services.

"Twenty-four-hour security always interfaces with event security on game days," stadium manager Michael McSweeney wrote in response to questions about the bidding. "The best practices and policies of the NFL and the NCAA inter mesh with structure operation and security."

Several potential bidders complained privately that the city is bending over backward to award the contract to Elite. They declined to speak on the record for fear of being blackballed from future city contracts.

Cory Meredith, who owns StaffPro Inc. of Huntington Beach, was not shy about criticizing the contract request. Meredith said very few companies can meet the NFL and NCAA requirement because only five venues play host to both levels of football and only Elite meets the added conditions.

"Qualcomm Stadium's bidding process is rigged," said Meredith, who filed

a restraint-of-trade claim against the city last year after learning about the 30-year agreement.

“The security company that is awarded the contract for 24/7 building security will also receive the extremely lucrative exclusive rights to supply all event security and nonsecurity personnel such as ticket-takers and ushers.”

Meredith’s claim was rejected by the City Attorney’s Office. Meredith said he decided against taking his case to court because of the legal fees involved.

McSweeney said all conditions in the request for bids are necessary. He said 27 companies attended a “walk-through” last month to tour the stadium grounds in advance of bidding on the contract.

“Several of them work in stadiums with NCAA and NFL tenants,” he wrote.

Securitas USA is the American arm of a global security company whose agents have guarded everything from Miami Dolphins games to petrochemical plants.

Diana Cuevas of the San Diego office said her firm plans to submit a bid, even though the city’s request provided almost no details about the hundreds of stadium events the bidder is being asked to staff.

“You don’t know how many people are going to show up” at the various events, Cuevas said. But “we’ve submitted questions that hopefully they can give us answers to.”

The city has not put the stadium’s 24/7 security contract out to competitive bid since the 1990s. When the last contract expired in 2005, the city quietly approved a series a sole-source agreements that gave the job to Elite through 2035.

In January 2009, after Meredith’s attorneys began questioning the arrangement, city officials reversed course and pledged to put the 24-hour security work out to competitive bid within 12 months.

When The San Diego Union-Tribune asked about the long-term agreements for a report published in April 2009, City Attorney Jan Goldsmith said the purchase agreements were not formal contracts.

“That means the City is authorized to award sole source contracts to Elite through December 31, 2035,” Goldsmith wrote. “It does not mean that the City has done so or must do so.”

A spokeswoman for the City Attorney’s Office last week said the parameters of the request for bids were developed by stadium officials — not city lawyers. In 2006, the city began requiring short-term tenants to hire Elite for staffing, security and ushering work during their events.

That rule angered some tenants because it prevented them from negotiating with multiple firms for the best price for security and staffing services, among the highest costs for event promoters.

Elite, which also holds security contracts at Petco Park, Torrey Pines Golf Course and the San Diego County Fair, did not respond to questions about its decade-plus security work at the stadium.

Elite company President John Kontopuls issued a statement saying the company plans to bid on the contract and that the city, teams and public have been served well by the long-standing arrangement. Kontopuls donated \$300 to Mayor Jerry Sanders' campaign in 2005, records show.

City officials would not say how much the city is paying Elite this year. Under the most recent purchase agreements approved without competitive bids, the company could collect \$835,000 a year to supply two guards, 24 hours a day.

The concept of linking event-day security and ushering services to the 24-hour security is tricky, experts say.

According to Harold Hansen of the International Association of Assembly Managers, a Texas trade group, said there is no industry standard but the practice can make good sense for a city interested in keeping the public safe during major sporting events.

"The bid process isn't always about money," Hansen said. "There are things you need to look at in security contracts that the cheapest or the bottom line doesn't always yield the best result."

Hansen said public officials who require tenants to hire a specific event-day security company should set the rates in advance.

"It's guarding against 'I like you/I don't like you,'" he said.

Find this article at:

<http://www.signonsandiego.com/news/2010/jul/07/city-seeks-bids-stadium-security>

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