

FW: 26233: Public Comment regarding Agenda Item 8.2 - Request for Proposals PBCE RFP 24-02 – Eastside Alum Rock Urban Village Plan Consulting Services

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PUBLIC COMMENT FOR AGENDA ITEM 8.2 (26233).pdf;

From: Paul Breucop [REDACTED]
Sent: Tuesday, October 8, 2024 6:48 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: Michele Gamble [REDACTED]
Subject: 26233: Public Comment regarding Agenda Item 8.2 - Request for Proposals PBCE RFP 24-02 – Eastside Alum Rock Urban Village Plan Consulting Services

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Good morning,

Please see the attached letter providing public comment for Agenda Item 8.2 - Request for Proposals PBCE RFP 24-02 – Eastside Alum Rock Urban Village Plan Consulting Services.

Best,

Paul Breucop
Attorney at Law

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October 8, 2024

VIA E-MAIL

Toni Taber, City Clerk
city.clerk@sanjoseca.gov
Office of the City Clerk
200 E. Santa Clara Street
Tower 14th Floor
San José, California 95113

Re: *Public Comment regarding Agenda Item 8.2 - Request for Proposals PBCE RFP 24-02 – Eastside Alum Rock Urban Village Plan Consulting Services*
Our File Number: 26233

Dear Ms. Taber:

I am writing on behalf of my client, Arcadis U.S., Inc. (“Arcadis”), regarding Agenda Item 8.2 - Request for Proposals PBCE RFP 24-02 – Eastside Alum Rock Urban Village Plan Consulting Services. By way of background, Arcadis submitted a protest letter on May 7, 2024, the City of San José (the “City”) responded to the protest letter on July 2, 2024, and Arcadis submitted an appeal of the City’s response on July 12, 2024. This letter is intended to respond to the September 3, 2024 memorandum (“Sept. 3 Memo”) and the presentation associated with Agenda Item No. 8.2 (the “Presentation”). Additionally, this letter will highlight the reasons why the City: (i) should *not* award Skidmore, Owings & Merrill (“SOM”) with the contract for the Eastside Alum Rock Urban Village Plan Consulting Services (RFP 23-01); (ii) instead should award the contract to Arcadis; or (iii) permit Arcadis to resubmit a proposal.

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Response to Sept. 3 Memo and Presentation

According to the September 3, 2024, Memorandum (the “Sept. 3 Memo”), the City decided to withdraw its initial RFP because the Arcadis and SOM submitted proposal that were missing information. But this ignores a key fact—the information Arcadis did not submit was *optional* while SOM failed to submit *required* information.

The City’s own criteria requires a complete response. More specifically , the City’s criteria state:

Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.

See p. 133 of the Attachment to the Sept. 3 Memo. ***In other words, SOM’s proposal should not have been considered at all.*** Rather than disqualify SOM, the City gave SOM another chance to submit a complete proposal.

The Sept. 3 Memo claims that the City withdrew the first RFP and issued a second RFP in the “interest of maintaining the fairness and integrity of the process.” Instead, the City has undermined the integrity of the process. Arcadis submitted a fully compliant proposal that scored better than SOM’s proposal, which should have been disqualified, but SOM was afforded another chance to submit a proposal.

The scoring disparities should also cause the City concern. The Sept. 3 Memo does not contend that substantial changes were made to the RFP in its second iteration. Rather, the second RFP was purportedly clearer about the required criteria. Nor does it identify what specific changes were made in the second RFP. Yet the evaluation results were *substantially* different. Indeed, the second RFP evaluation resulted in a nearly *50-point* difference between SOM’s proposal and Arcadis’s proposal—despite the fact that: (i) their proposals for the first RFP were a point apart and (ii) their submissions did not substantially change. If the process had been fair, one would expect the evaluations to have been much closer than they were.

On its face, the City’s process has been arbitrary and capricious. Rather than award the contract to Arcadis—which *actually* complied with the City’s RFP—the City gave SOM another chance to submit a proposal and then gave it a more favorable evaluation for substantially the same submission.

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Requested Path Forward

The City must maintain integrity in its RFP process. Arcadis should have been awarded the initial RFP. Even if the City believes that it could withdraw its RFP and issue a new one, it is clear that the second RFP *did not result in a fair process* given the disparity . Therefore, if the City does not believe that it should reinstate its initial intent to award the RFP to Arcadis, it should withdraw its intent to award SOM the contract and restart the RFP process for this project to restore trust in the process.

Very truly yours,

COLLINS + COLLINS LLP



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Enclosure