

Date: June 9, 2009

Item No. 3
File No. 09026

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Hanna Leung & Lydia Fong v Human Services
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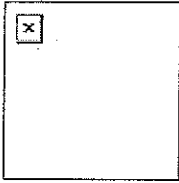
Completed by: Chris Rustom

Date: June 4, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

June 2, 2009

Nick Goldman, Chair
Members of the Complaint Committee

Re: Hanna Leung and Lydia Fong v. Department of Human Services (09026)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Hanna Leung and Lydia Fong against the San Francisco Department of Human Services ("DHS").

BACKGROUND

During the early part of 2009, Complainant Hanna Leung and Lydia Fong operating as Prime Realty and Investment Inc. submitted their qualifications in response to the Department of Human Services' Request for Qualifications #402. On March 3, 2009, David Curto, the Director of Contracts for DHS advised Leung and Fong that their qualifications did not make them eligible for funding.

Prime Realty and Investment Inc. requested the viewing of all the applications submitted in response to RFQ #402 and the written entries made by the selection committee. To their requests, Prime Realty and Investments Inc. claim that they have not received a reply.

COMPLAINT

On May 18, 2009 Hanna Leung and Lydia Fong filed a complaint against the Department of Human Services alleging violations of the Sunshine Ordinance and the Public Records Act.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.21, 67.24 and 67.25) of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by

Letter to the Complaint Committee

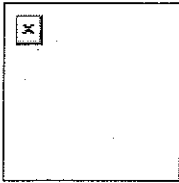
Page 2

June 2, 2009

Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, Section 67.24 which deals with the requests for proposals is in some ways similar to requests for qualifications. DHS has the records and the Task Force will determine whether the DHS violated the Ordinance and/or the Public Records Act.



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June 2, 2009

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SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Human Services Agency
Department of Human Services

Name of individual contacted at Department or Commission Director of Contracts, David Curto

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting Declined to schedule meeting

Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

Prime Realty and Investment, inc. requested viewing of all the Applications submitted in response to RFQ 402 (Real Estate Services for Human Services Agency) and the written entries made by the selection committee. Several attempts were made to obtain such records. So far the Director of Contracts, Mr. David Curto has not made those public records available for viewing.

- Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
- Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹ Hanna Leung²
Name Lydia Fong Address 1600 Lombard Street, SF, CA 94123
Hanna Leung (415) 990-1888 Hannaleung@sbcglobal.net
Telephone No. Lydia Fong (415) 350-1818 E-Mail Address Lydia.L.Fong@yahoo.com
Date 5/18/09 [Signature] Lydia Fong
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

City and County of San Francisco

Human Services Agency

Department of Human Services
Department of Aging and Adult Services



Gavin Newsom, Mayor

Trent Rhorer, Executive Director

March 3, 2009

Sent via fax: 415-776-8828

Lydia Fong
Hanna Leung
Prime Realty and Investment, Inc.
1600 Lombard Street
San Francisco, CA 94123

Re: Notification of Results, Request for Qualifications (RFQ) #402

Dear Ms. Fong and Ms. Leung:

This letter is to inform you that your organization's proposal submitted in response to RFQ 402 for the provision of Real Estate services for the DAAS PA/PG was not selected for funding.

After a thorough review of the proposals submitted, the Department finds that the Keynote Properties proposal better suits the needs and interests of the Department. The Department thanks you for your interest in providing services. If you have any questions, please contact me at 557-5581.

Sincerely,

David M. Curto
Director of Contracts

**PRIME REALTY**

March 12, 2009

David M. Curto
Human Services Agency
City and County of San Francisco
P. O. Box 7988
San Francisco, CA 94120-7988

Dear Mr. Curto:

This is to acknowledge receipt of your Notification of Receipts, Request for Qualifications (RFQ 402) dated March 3, 2009.

As I have indicated in my telephone messages on 3/08/09 and 3/10/09, we are interested in inspecting the public file so as to understand the rationale for your decision. Furthermore, we would appreciate an opportunity to meet with you to better understand the objective standard utilized in the assessment process.

I look forward to speaking with you. Thank you for your kind consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hanna C. Leung'. The signature is stylized and cursive, with a long horizontal stroke at the end.

HANNA C. LEUNG

Attorney at Law

HCL / adc



March 18, 2009

David M. Curto
Director of Contracts
CCSF-Human Resources Services
P. O. Box 7988
San Francisco, CA 94120-7988

RE: *Request for Qualifications (RFO) #402*

Dear Mr. Curto:

This is to follow up with our conversation last week regarding the qualification of Prime Realty & Investment, Inc. to provide real estate services for the City of San Francisco's DAAS PA/PG.

It is my understanding that you have spoken to Mr. Ed Campos from the Human Rights Commission. I would like to supplement additional information for the review committee's consideration. Our office is currently certified by the Human Rights Commission as a women owned company. I first obtained my real estate agent license in 1989. I let the agent license lapse since I was able to handle a lot of the real estate transactions as an attorney.

Throughout my 23 years of practice as an attorney, I have appeared in civil court countless times, including the probate court. My partner and I are very well-versed in the business of real estate sales. Our company has the added advantage of having extensive legal experience. Given the perfect combination, I am sure we will undertake the transition process seamlessly.

In the interest of promoting minority and women owned business in San Francisco, I really appreciate to be given a chance to serve the City of San Francisco with our skills. I would like to invite you to visit our office at 1600 Lombard Street, San Francisco. As a matter of fact, my partner and I purchased this property at probate sale and subsequently renovated the entire building. We transformed it from a dilapidated building into one with pride of ownership.

I would like to make an appointment with you to further discuss this matter. Furthermore, we are very interested in viewing the committee comments. If the committee is pre-disposed to retaining the incumbent, it would frustrate the purpose of the bidding process and the public interest of opening up city contracts to eligible small minority owned businesses.



PRIME REALTY

I am available to meet with you in the mornings all of next week, except Monday, 3/23/09. You may contact me at (415) 990-1888. Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hanna C. Leung'. The signature is fluid and cursive, with a large loop at the end.

HANNA C. LEUNG

Attorney at Law

HCL / adc

City and County of San Francisco

Human Services Agency

Department of Human Services
Department of Aging and Adult Services



Gavin Newsom, Mayor

Trent Rorer, Executive Director

Hanna Leung
Lydia Fong
Prime Realty
1600 Lombard Street
San Francisco, CA 94123

April 7, 2009

RE: RFQ 402- Minimum Qualifications

Dear Ms. Leung and Ms. Fong,

This letter is in response to your inquiry calls and letters regarding RFQ 402. We met with the selection committee on Friday April 3, 2009 and went over your response in detail again. We concluded that your proposal failed to meet the minimum requirements as listed in the RFQ. As stated on page 4 of the RFQ, Section IV Evaluation and Selection Criteria, Minimum Qualifications:

"Qualified broker must:

- 1. Be a licensed real estate broker and operate within the guidelines set forth by State regulations regarding property management and real estate practices.*
- 2. Have a minimum of 5 years of professional experience of the same or similar services to what is requested in this RFQ...."*

With this in mind, your proposal indicates that both Ms. Leung and Ms. Fong both became real estate brokers in 2007, not meeting the 5-year minimum. Directly following this section, on page 5, the Selection Criteria specifically states:

...A selection committee comprised of experienced DAAS PA/PG staff will evaluate qualifications. The City intends to evaluate the Qualifications generally in accordance with the criteria itemized below...

- a. Expertise and years of experience as a real estate broker; and...*

The review panel determined that Prime Realty possessed the least amount of experience among the four respondents and failed to meet the required minimum qualifications as stated above. As a result, the Department was unable to include Prime Realty in the qualified pool of providers for the PA/PG real estate services. Thank you for your interest in providing these services and we hope you will apply when these come up for renewal.

Sincerely,

David M. Curto
Director of Contracts



Gavin Newsom, Mayor

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

Hanna Leung
Lydia Fong
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1600 Lombard Street
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Sincerely,

A handwritten signature in black ink, appearing to read "David M. Curto".

David M. Curto
Director of Contracts



April 10, 2009

Human Services Agency
Department of Human Services
Department of Aging and Adult Services
P.O. Box 7988
San Francisco, CA 94120-7988

Attn: David Curto, Director of Contracts

Re: RFQ 402 – Minimum Qualifications
BID PROTEST

Dear Mr. Curto,

This is in response to your letter dated April 7, 2009, received by fax at our office on April 8, 2009.

It appears that you are alleging that our office is disqualified from this bidding process for lack of minimum qualifications. You along with the selection committee reached this conclusion based on page 4 of the RFQ which states:

“Qualified broker must:

1. Be a licensed real estate broker and operate within the guidelines set forth by State regulations regarding property management and real estate practices.
2. Have a minimum of 5 years of professional experience of the same of similar services to what is requested in this RFQ...”

The Minimum Qualifications as stated on page 4 of the RFQ Section IV Evaluation and Selection Criteria listed two distinct and separate requirements. The first requirement sets forth the threshold licensing qualification. The requirement of a real estate broker’s license is to ensure the selected vendor possesses the legal capacity to conduct real estate sales transactions on behalf of the City. There is no language in that section requires the vendor to have held the license for five years.

The second qualification sets forth the minimum requirement of five years of professional experience of the same or similar services to what is requested in this RFQ. The experience requirement is made intentionally broad to included similar services, recognizing that there are many valuable experiences that maybe complementary to the

position. I would suggest that the license to practice law is definitely similar experience as contemplated by the RFQ. The Department of Real Estate recognizes this experience by allowing attorneys fast track in obtaining the real estate broker's license.

Our office far exceeds the minimum requirements as stated on page 4 of the RFQ, Section IV Evaluation and Selection Criteria.

Ms. Fong has extensive experience in all facets of real estate transactions including sales (regular and probate properties), development and management. The size and value of the projects that she had handled far exceed the amount most real estate brokers encounter in their entire career.

Ms. Leung brings with her over 20 years of legal experience including work in real estate and civil litigation. In addition, she is also a real estate broker, active in sales and development work.

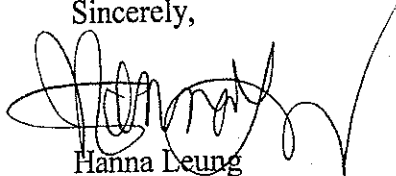
Disqualifying a company for not having the experience that can only be gained through that same bidding contract is unjust and inequitable. It becomes a circular argument that makes the incumbent the only qualifying company. It would also make this open bidding process a sham.

I believe this office offers a broad and multi-disciplinary aspect not found in other companies. We are interested to see how these various factors are weighed in your selection evaluation.

Pursuant to the Sunshine Ordinance, we are requesting to view all files and review the selection process. Please make the files available to this office immediately and provide us with the name, position and qualification of all the selection committee members. In addition, please forward the complete text of page 5, Selection Criteria to this office for review.

We intend to inspect the files in the next ten (10) business days. Please call or fax to us your availability so that we may make an appointment. Should you need to discuss this matter, please call (415) 990-1888. Thank you for your attention.

Sincerely,



Hanna Leung



Lydia Fong

cc: Trent Rhorer, Executive Director

City and County of San Francisco



Gavin Newsom, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

April 21, 2009

Hanna Leung
Lydia Fong
Prime Realty
1600 Lombard Street
San Francisco, CA 94123

RE: RFQ 402- Minimum Qualifications

Dear Ms. Leung and Ms. Fong,

This letter is in response to your letter dated April 10, 2009 regarding RFQ 402. The text below is the Section IV Evaluation and Selection Criteria, Minimum Qualifications: from the RFQ

IV. Evaluation and Selection Criteria**A. Minimum Qualifications**
Qualified brokers must:

- 1. Be a licensed real estate broker and operate within the guidelines set forth by State regulations regarding property management and real estate practices.*
- 2. Have a minimum of 5 years of professional experience of the same or similar services to what is requested in this RFQ.*
- 3. Be able to market a wide range of properties within San Francisco County and possibly bay area.*
- 4. Not represent both the Public Guardian (as seller) and the purchaser(s)*
- 5. Work on a rotation basis with other contractors*
- 6. Accept whatever property is offered, including mobile homes, trailers, undeveloped lots, and "distressed" properties.*
- 7. Provide a probate sales packet as outlined by the Public Guardian, to all prospective buyers*
- 8. Actively market beyond signs and MLS (flyers, ads, websites, etc.) and hold no fewer than two open houses and one broker tour per property.*

9. *Maintain confidentiality on all matters related to clients and deposits of the PA/PG.*
10. *Accept payment out of escrow according to local court-established commissions for sales*
11. *Not provide any real estate related services to any employee of Aging and Adult Services while under contract.*
12. *Be a current certified vendor with the City and County of San Francisco.*

The Department was clearly seeking qualified real estate brokers who possess qualifications listed 1-12. The 5 years of experience did refer to being a real estate broker. This was listed under Para A Minimum Qualifications of a qualified broker.

You have made it exceedingly clear that you both have law degrees, but those were not qualifications we were seeking. Certainly a person could be a real estate broker without a law degree. Your proposal did not state your legal specialty as real estate law nor list it as a substitute for the five years experience as a broker. Your proposal was disqualified for not demonstrating five years of real estate broker experience. We published the evaluation criteria as listed below.

B. Selection Criteria

A selection committee comprised of experienced DAAS PA/PG staff will evaluate qualifications. The City intends to evaluate the Qualifications generally in accordance with the criteria itemized below. Select firms with the highest scoring Qualifications may be interviewed by the committee to make the final selection.

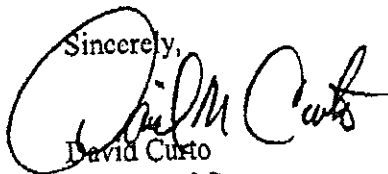
1. ***Experience of Firm (40 points)***
 - a. *Expertise and years of experience as a real estate broker; and*
 - b. *Quality of recently completed projects, including adherence to schedules, deadlines and budgets; and*
 - c. *Results of reference checks.*
2. ***Organizational Staffing Capacity and Assigned Project Staff (35 points)***
 - a. *Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person; and*
 - b. *Professional qualifications and education; and*

- c. *Workload, staff availability and accessibility.*
- 3. **Project Approach (25 points)**
 - a. *Understanding of the project and the tasks to be performed, etc.*
 - b. *Reasonableness of work schedule.*

Attached are the rankings established by the selection committee. There are no other documents for you to review. The Department has chosen the two most qualified respondents to participate in this pool of providers.

Again we find no reasons in your letter than would persuade us to abandon the selection criteria established in the RFQ in favor of your firm. You welcome to apply for this service when it comes up again for re-procurement.

Sincerely,



David Curto
Director of Contracts

Scoring Analyses for RFQ #402

	Keynote (A)	Zephyr (B)	Prudential (C)	Prime (D)
Reader A	103	64	91	0
Reader B	99	67	80	48
Reader C	88	33	74	0
TOTAL	290	164	245	48
Total Average	97	55	82	16

	Question	Max. Score	AGENCY A	AGENCY B	AGENCY C	AGENCY D
Experience of the Firm	Meets the minimum qualifications	30	30	30	30	0
	Recent project information included	75	62	23	40	5
	Reference Check	30	30	0	20	6
Staffing Capacity & Assigned project Staff	Experienced staff	45	42	32	39	7
	Staffs' professional qualifications & education	30	28	30	30	8
	Workload, staff availability & access	30	27	15	22	10
Project Approach	Clear understanding of the project and tasks	45	45	23	39	7
	Reasonable work schedule	30	26	11	25	5
	Total scores	315	290	164	245	48

**PRIME REALTY**

April 29, 2009

David M. Curto
Director of Contracts
CCSF-Human Services Agency
P. O. Box 7988
San Francisco, CA 94120-7988

RE: **RFQ 402-Minimum Qualifications**

Dear Mr. Curto:

This is in response to your letter of April 21, 2009.

Firstly, your office has misinterpreted the selection criteria, thus rendered the entire selection process invalid. I invite you to consult with the City Attorney's office to have a better understanding of the minimum requirement as listed by the RFQ. Furthermore, we need to clarify that Ms. Lydia Fong is not a lawyer, she has been a realtor for close to 20 years.

Secondly, we request under the Sunshine Ordinance to specifically view the following:

- 1). All notes and score entries by the Selection Committee regarding the proposal submitted by Prime Realty and Investment, Inc.
- 2). Proposal submitted by Applicant Keynote Properties.
- 3). All notes and score entries by the Selection Committee regarding the proposal submitted by keynote properties.
- 4). Proposal submitted by Applicant Zephr.
- 5). All notes and score entries by the Selection Committee regarding the proposal submitted by Zephr.
- 6). Proposal submitted by Applicant Prudential.
- 7). All notes and score entries by the Selection Committee regarding the proposal submitted by Prudential.



PRIME REALTY

Page 2 of 4/29/09 letter re: RFQ 402-Minimum Qualifications

- 8). Name, position and qualification of Reader A.
- 9). Name, position and qualification of Reader B.
- 10). Name, position and qualification of Reader C.

Please make the file available for viewing in the next 10 business days. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hanna C. Leung', written over a circular stamp.

HANNA C. LEUNG
Attorney at Law
HCL / adc

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LYDIA FONG