

Date: Jan. 25, 2011

Item No. 16 & 17

File No. 10072

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Bruce McLlellan v Recreation and Park Dept.**
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Completed by: Chris Rustom

Date: Jan. 21, 2011

**\*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

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

**MEMORANDUM  
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: January 18, 2011  
RE: *10072 Bruce McLellan v. Recreation and Parks Department*

**COMPLAINT**

Complainant Bruce McLellan alleges that the Recreation and Parks Department ("the Department") violated the Ordinance by failing to provide a prospective lessee's response to an RFQ for the Stow Lake Concession in response to his December 6, 2010 public records request. This is essentially the same complaint made by Cal Tilden in Complaint 10042, concluded by the Task Force on January 4, 2011.

**COMPLAINANT FILES COMPLAINT:**

On December 15, 2010, Complainant filed a complaint against the Department.

**JURISDICTION**

The Recreation and Parks Department is a charter department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Department.

**APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:**

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.24(e)(1) governs public information that must be disclosed regarding the bidding process for public contracts, bids, and proposals.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.
- Section 67.5 governs public access to meetings of policy bodies.
- Section 67.15 governs public testimony at meetings of policy bodies.

**Section 6250 et seq. of the Cal. Gov't Code**

- Section 6253 governs the release of public records and the timing of responses.

**APPLICABLE CASE LAW:**

None

**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
DATE: January 18, 2011  
PAGE: 2  
RE: *10072 Bruce McLellan v. Recreation and Parks Department*

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**ISSUES TO BE DETERMINED**

**Contested/Uncontested Facts:** It appears that the relevant facts are not in dispute. Mr. McLellan stated that the Department awarded a contract under this RFQ on December 2, 2010 to Ortega Family Enterprises DBA Cloudless Skies Park Company. He alleged further that the company's RFQ responses therefore should be provided to him, as required by Sunshine Ordinance Section 67.24(e).

At the time of this memorandum, the Department has not provided a response to the Complaint. Nevertheless, the supporting documentation provided by Complainant includes a December 8, 2010 email response to his public records request from Olive Gong of the Department. In this email, the Department states that the contract award for the Stow Lake concession will not be final until after the Board of Supervisors finally approves it. The Department therefore is not required by the Ordinance to provide the requested documents until the Board of Supervisors approves the contract award.

On January 4, 2011, the Task Force heard a very similar complaint filed by Cal Tilden as Complaint 10042. The Task Force failed to take action, as a motion to find "no violation" and a motion to dismiss both failed 4-3, and no other motion was made.

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Does section 67.24(e)(1) allow the Department to withhold the prospective lessee Ortega Family Enterprises' response to the RFQ?
- If the facts alleged by complainants are true, was there a violation of the state and/or local public records or meetings law?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
DATE: January 18, 2011  
PAGE: 3  
RE: *10072 Bruce McLellan v. Recreation and Parks Department*

---

**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004  
PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
- 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
- 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
- 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
- 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
 DATE: January 18, 2011  
 PAGE: 4  
 RE: *10072 Bruce McLellan v. Recreation and Parks Department*

---

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED**

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

...

**SEC . 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED**

**Contracts, Bids and Proposals.**

(e)  
(1)

Contracts, contractors' bids, responses to requests for proposals *and all other records of communications between the department and persons or firms seeking contracts* shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

...

(3)

During the course of negotiations for:

(i)

personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii)

leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii)

any franchise agreements,

**MEMORANDUM  
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TO: Sunshine Ordinance Task Force  
DATE: January 18, 2011  
PAGE: 5  
RE: *10072 Bruce McLellan v. Recreation and Parks Department*

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all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

**SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**MEMORANDUM  
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TO: Sunshine Ordinance Task Force  
DATE: January 18, 2011  
PAGE: 6  
RE: *10072 Bruce McLellan v. Recreation and Parks Department*

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**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)  
SECTION 6253**

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 DEC 15 PM 2:58

BY PC

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 RECREATION AND PARK DEPARTMENT

Name of individual contacted at Department or Commission OLIVE GONG (SEE ATTACHED EMAIL)

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section 67.24(e)  
(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.

PLEASE REFER TO COMPLAINT #10042. THE LEASE WAS APPROVED BY THE RECREATION AND PARK COMMISSION ON 12/2/2010 AND IS NOW PENDING ADOPTION BY THE BOARD OF SUPERVISORS. WE NEED THIS DOCUMENT TO PROCEED WITH OUR PROTEST BEFORE THE LEASE IS SIGNED. PLEASE ADD THIS COMPLAINT TO #10042 AND (PER ATTACHED EMAIL) DO NOT DEFER HEARING #10042 AS TIME IS OF THE ESSENCE

- 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)<sup>1</sup> Name BRUCE McLELLAN, PRESIDENT  
STOW LAKE CORPORATION Address PO box 29565, SAN FRANCISCO, CA 94129

Telephone No. (415) 393-9920 E-Mail Address stowlake@pacbell.net

Date 12/14/2010 Bruce McLellan  
Signature

I request confidentiality of my personal information.  yes  no

<sup>1</sup> 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).



**Bruce McLellan**

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**From:** Olive.Gong@sfgov.org  
**Sent:** Wednesday, December 08, 2010 8:21 PM  
**To:** Bruce McLellan  
**Subject:** Re: Emergency Sunshine Request

Dear Mr. McLellan,

Pursuant to Section 67.24(e)1 of the San Francisco Administration Code (the Sunshine Ordinance) the requested documents are not public documents until after the final contract award has been made. In this case, that will be when the Board of Supervisors approves the lease with Ortega Family Enterprises.

At such point, the Department will send the requested documents to you.

Thank you for your interest in SF Recreation and Parks, Olive Gong

.....  
Olive Gong  
San Francisco Recreation and Park Department McLaren Lodge  
501 Stanyan St., SF CA 94117  
415.831-2708 direct  
415.831-2096 fax  
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

From: "Bruce McLellan" <stowlake@pacbell.net>  
To: <olive.gong@sfgov.org>  
Cc: <sotf@sfgov.org>  
Date: 12/06/2010 04:48 PM  
Subject: Emergency Sunshine Request

Please accept this email as my emergency request under the San Francisco Administrative Code, Chapter 67 (Sunshine Ordinance) to receive a copy of the Ortega Family Enterprises response to the Stow Lake Boathouse RFQ that was submitted on April 5, 2010 within 48 hours.

Without this release of information, my ability to protest the lease award for the Stow Lake Concession that was made on December 2, 2010 by the Recreation and Park Commission is seriously hampered.

Please email it to me at stowlake@pacbell.net.

Sincerely,

Bruce McLellan  
President, Stow Lake Corporation

**Bruce McLellan**

---

**From:** Cal T.. [cbtmail@earthlink.net]  
**Sent:** Monday, December 13, 2010 9:06 PM  
**To:** Bruce McLellan  
**Subject:** Fw: COMPLAINT # 10042

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

**From:** Cal T..  
**To:** [sotf@sfgov.org](mailto:sotf@sfgov.org)  
**Sent:** Sunday, December 05, 2010 4:39 PM  
**Subject:** COMPLAINT # 10042

### **TO THE SUNSHINE ORDINANCE TASK FORCE**

At the recent Recreation and Park Commission meeting, Nick Kinsey told me he had asked for another postponement of Complaint # 10042. At your November meeting, you had indicated it would next be heard on January 4, 2011.

As I will explain below, it is essential you do not postpone this matter. The Recreation and Park Department has a big staff and can send someone else if Nick is in fact traveling. Could even get Phil Ginsburg but his answers might not be any more forthright than Nick's. Quite possibly Nick is trying to get this postponed so the lease can get signed without having to release the information I am seeking. Timing is critical.

At the Park Commission meeting last week, they approved a terrible concession lease for Stow Lake. I am attaching an analysis if you want some details. We have had to piece together from meetings and briefs to the Commission what appears to be in the Ortega's RFQ. A very imperfect way to proceed. Nick has only released what he wants us to see!

The problem is without access to the RFQ, we have a real handicap in protesting this lease before the Board of Supervisors.

Thank you for considering this request to hear Complaint #10042 on January 4, 2011

Cal Tilden  
[cbtmail@earthlink.net](mailto:cbtmail@earthlink.net)

# STOW LAKE CORPORATION

Post Office Box 29565  
San Francisco, CA 94129-0565  
(415) 393-9920

**SEE PAGE 5**

December 8, 2010

Recreation and Park Commission  
c/o Virginia Dario Elizondo, City Attorney  
#1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Protest of Contract Award for the Stow Lake Concession

To Whom It May Concern:

As per the terms and conditions contained in section N (Protests) on pages 23 and 24 of the RFQ issued by the Recreation and Park Department dated December 7, 2009, we hereby file this official protest of the award for a new contract to operate the concession at the Stow Lake Boathouse to Stow Lake Boathouse, LLC. Following are the RFP provisions which protest is based and the facts and evidence sufficient to determine validity of the protest.

**Section IV (RFQ Schedule and Selection Process) C (Submittal Contents) 1 (Cover Letter) of the RFQ states, "A cover letter should be provided describing the respondent, the name and address of the entity submitting the proposal, the date the entity was established, and the name, address, and telephone number of the person or persons who will serve as the entity's principal contact...". Furthermore, Staff's original write up to the Recreation and Park Commission indicated that Ortega Family Enterprises had 22 years of management experience managing Carlsbad Cruise Lines. This was exposed as a gross misrepresentation and four days later the "Friendly" Balzano Family who had actually owned and been managing Carlsbad Cruise Lines became a "legal" partner in Cloudless Skies Park Company LLC.**

**SUBSTITUTION OF ENTITY THAT SUBMITTED BID:** The response to the Stow Lake RFQ was from Ortega Family Enterprises, (does not appear to be a legal entity) DBA Cloudless Skies Park Company-LLC. (which appears to be a stand alone LLC, not a DBA). Now a new entity which was not part of the response to the RFQ or evaluated by the evaluation committee named Stow Lake Boathouse, LLC has become the lessee. The Commission approval on August 19, 2010 was for Cloudless Skies Park Company LLC. No authority was given to negotiate with Stow Lake Boathouse, LLC. In fact, Stow Lake Boathouse LLC did not exist when the proposals were due in April, when the

responses to the RFQ were submitted. Therefore, how could the evaluators evaluate an entity that did not exist? There was no indication in the evaluation sheets that the evaluators ever checked on the boating experience of Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC which was a key prerequisite of the RFQ specifications.

The RFQ required as part of the response to the RFQ due April 5, 2010 proof of experience, the date responding entity was established, financial capacity, identification of potential partners together with various other requirements. It went on to say that no revisions are allowed after the deadline for submission. Stow Lake Boathouse LLC, the new proposed lessee, does not meet any of these requirements. They were not a respondent to the RFQ in April.

**Section V (Evaluation of Proposals and Award) B (Selection Criteria) states, each respondent must have “Adequate experience in fully managing a business of the nature of this opportunity, with a background in food and beverage management, and operation of boating facilities, either directly or through a partnership with a qualified operator” and it goes on to state, “Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract”.**

Cloudless Skies Park Company LLC is a California Corporation formed on 4/3/08 so it could not have had the experience listed in their response to the RFQ and relied on by the evaluation committee. Ortega/Cloudless Skies also claimed to have...”22 years of accident and incident free experience managing Carlsbad Cruise Lines, a boat rental and charter operation”. When it was pointed out that this was false information and neither Ortega nor Cloudless had any boat rental experience, Ortega then said the Balzano Family (who did in fact operate Carlsbad Cruise Lines) would manage the Stow Lake boats and be a “legal” partner in Cloudless Skies Park Company, LLC. Ortega Family Enterprises DBA Cloudless Skies Park Company LLC, Carlsbad Cruise Lines and/or the Balzano Family are not part of this lease.

**The rent proposed is less than the minimum as called for at the pre-bid conference. Section IV (RFQ Schedule and Selection Process) B (Pre-Submittal Conference and Questions) addresses the handling of any new information that comes up at the pre-submittal conference. It states “...Only written responses will be deemed final”. In Staffs undated written response(s) to questions submitted at the pre-submittal conference as well as submitted in writing, a question was asked, “Can you provide any rental rate or minimum rental guidelines for bidders to follow?” The written answer from the Recreation and Park Department was “As we are not requesting financial proposals at this point, bidders need not submit proposed rents. In general**

**the Department does not want the rent received pursuant to this contract to decrease from the \$192,000 received last year”.**

These were the instructions that bidders received. The bidders were expected to put cash projections together based on a rental rate. The lease that the Recreation and Park Commission has approved includes guaranteed annual minimum rent of \$140,000. Therefore, this lease is non-responsive to the terms and conditions as outlined in the RFQ as modified in writing by the Recreation and Park Department. The lease and economic terms do not meet the minimum terms as called for in the RFQ as officially modified and are cause for and part of this protest.

**Section III (Key Lease Terms) of the RFQ describes “key lease terms required by the Recreation and Park Department. In the submittal, Respondents will be required to indicate acceptance of these key lease terms, and to make a lease proposal that is consistent with these terms”. In Paragraph A (Term) of this section the RFQ states, “The City will agree to a lease term appropriate to the proposed capital improvement investment, rental schedule and structure, not to exceed 10 years in length. The City will also consider two option periods of five (5) years.”**

**TERM OF LEASE EXCEEDS APPROVED LEASE TERM:** The lease before you is for 15 years with a 5 year option, thus deviating from the specific provision as stipulated in the RFQ. If bidders knew that the Recreation and Park Department would consider a 15-year lease rather than a 10-year term the bids would have been different.

**Throughout the RFQ the stated objective of the Recreation and Park Department was to find a concessionaire with experience dealing with the historical preservation of historical buildings such as the Stow Lake Boathouse. Bidders were instructed that the intent was to preserve this heritage. Now, it appears this original intent has been changed after the bids were submitted.**

The change in the main function of the boathouse from a boat repair facility to a café/gift shop is clearly a departure from the historical character that the RFQ and Recreation and Park Department said was critical to the bid. As the Stow Lake Boathouse LLC Plan deviates from the historic preservation of the boathouse, the Historic Preservation Commission is reviewing this matter. The Commission requested in writing that the Recreation and Park Commission delay its vote on the lease to allow time for their review of the issues relating to the boathouse. In defiance of this request, the Recreation and Park Commission ignored their wishes and voted to approve the lease.

Section V (RFQ Evaluation of Proposals and Award) C (Selection Committee) states that "A selection committee consisting of City staff and other appropriate parties will evaluate the submittals of each respondent based on the minimum qualifications and selection criteria outlined above". This was later modified and clarified by the Staff of the Recreation and Park Department at numerous public forums that there would be "a community representative" on the panel. At the Recreation and Park Commission meeting on December 17, 2009 Phil Ginsburg made comments regarding the selection panel "and there will be lots of community input. We volunteer to actually have community participation on the selection panel..."

Despite these assurances, all of the evaluators had direct ties to the Recreation and Park Department. There was no independence and all evaluators had conflicts. This was not an independent body as called for and promised by RPD. This perpetuated the flawed process. Many of the evaluators had questions and the bidders were not called to clarify these questions. How could final decisions be made when there was a lack of information available? This is being protested at this time because (as you will see below) new information has just come to our attention regarding the biased (and lack of community representation) make-up of this panel.

Following is the evaluation panel:

Jim Wheeler: Jim is described as "the boating expert" due to his experience at Lake Merritt. He has been on the staff of RPD since December 24, 2008, was recently promoted into a new position heading RPD's new Leisure Program, so is not community based. **He cannot be considered objective because his income/job security is directly based on his employment with RPD.**

Tara Sullivan: Tara is a member of the planning staff & Historic Planning Commission liason. As a city employee, she works with RPD on a variety of projects. **She cannot be considered objective because her income/job security is directly based on her relationship to RPD and other city agencies/government officials and staff.**

Commissioner Levitan: The Save the Stow Lake Boathouse Coalition expressly called for her removal from the panel due to conflict of interest. She is not considered a representative of the community, due to her 5-years of commission work, working closely with RPD management on this issue and many others, and has too much influence approving the selection at the commission level. **At the time she became an evaluator she and the commission decided that she would be conflicted out from casting a vote on the selection of the next concession operator. When it came time for the vote, she cast her vote anyway in direct conflict with the earlier commission discussion.**

Andrea Jadwin: She is a founder of SFGRO, an organization managing community gardens in conjunction with RPD. She was picked by RPD management, not by the Stow Lake Community to be an evaluator. **She was present at the December 2, 2010 RPD**

Commission meeting in which the Stow Lake Concession was to be voted on and was wearing an Ortega support badge on her coat. When this lack of impartiality was pointed out, she immediately conferred with members of RPD Staff and quickly left the meeting.

Gary Rulli: Gary is a current RPD tenant with a current restaurant contract with RPD at Union Square. He cannot be objective when his business and income are directly based upon his relationship with RPD.

**Failure of the Recreation and Park Department to produce and distribute a copy of the response to the RFQ by Ortega Family Enterprises DBA Cloudless Skies Park Company within 48 hours per emergency request under Sunshine Ordinance. Section VI (Terms and Conditions for Receipt of RFQ) Section J (Sunshine Ordinance) the RFQ states, "In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded".**

As the lease was awarded by the Recreation and Park Commission on December 2, 2010, the Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC response to the RFQ is needed for background information regarding this protest. This protest cannot be complete without an ability to review the original bid as submitted April 5, 2010. Therefore, until we have had a chance to fully review the original bid, we reserve the right to expand upon the items identified in this bid protest. We are also protesting this bid on the grounds that the Recreation and Park Department is in violation of its own rules and the rules covering governmental agencies in the City.

**Section IV (RFQ Schedule and Selection Process) D (Submittal Deadline) states that all submittals must be submitted electronically to [nicholas.kinsey@sfgov.org](mailto:nicholas.kinsey@sfgov.org).**

Under a Sunshine Ordinance Request, we have been provided with a schedule of all emails related to the Stow Lake Concession Lease. A review of this schedule indicates that no response to the RFQ was submitted by Stow Lake Boathouse LLC. Therefore, they did not submit a bid and cannot become the lessee.

**Section IV (RFQ Schedule and Selection Process) E (Lease Negotiations) states, the exclusive negotiation period will be 60 days and further states after the Commission authorizes negotiations, the selected bidder was to submit a \$10,000 bond.**

It needs to be determined if the \$10,000 bond was posted in a timely manner. If not, this is a violation of the RFQ terms. If the bond was not in place prior to the commencement of negotiations, we protest this award.

**Protest based on general terms and conditions in the lease that are at odds with instructions given at pre-bid conference. Section IV (RFQ Schedule and Selection Process) B (Pre-Submittal Conference and Questions) of the RFQ states "...only written responses will be deemed final".**

Staff indicated that there was no additional ADA bathroom needed in the boathouse. Paragraph II B on page 10 of the RFQ lists several capital projects at Stow Lake. One of these recent capital projects at Stow Lake was "Building a new restroom facility". At the pre-bid conference, Staff indicated that these new facilities would be sufficient for this venue and Staff would work with the concessionaire to gain the necessary approvals to forgo an additional ADA bathroom requirement. Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC was given credit by the evaluators in the capital improvement portion of the bid for adding a new ADA restroom which we were all told was unnecessary.

Bidders were also told that no funds were available from Recreation and Park Department for improvements and in this lease has now obligated the Recreation and Park Department to pay for an ADA bathroom in the boathouse and other ADA related requirements triggered by the extensive conversion of the boathouse by Stow Lake Boathouse LLC. Paragraph I on page 8 of the RFQ states, "...Secure a Lessee with sufficient resources, capital, and operating experience to implement and operate a self-sustaining program (including building upgrades and maintenance) **without any City investment**". Paragraph II C on page 11 of the RFQ states, "The Recreation and Park Department has no capital funds available for this facility. The City is only seeking respondents that are able to fully fund the capital improvements, as well as the operating costs of the proposed project". If the bidders knew all of these references were not applicable and the City actually had money to invest, that would have impacted the bids. We are protesting this change.

It was absolutely clear that this was not to be a restaurant. Nick Kinsey used the word restaurant two times in his testimony before the Recreation and Park Commission on December 2, 2010. Bidders were not told that this could be a restaurant which might have influenced the bid process.

**Staff has made misrepresentations to the Park Commission regarding the comparisons between the proposals as submitted by the respondents to the RFQ to solicit a specific outcome. Competing bids must be presented in a fair/unbiased manner.**

Staff's power-point presentation compared pictures of incumbent's work boat (it was identified as part of the current rental fleet) with a new boat offered by Stow Lake Boathouse LLC to create the perception that Stow Lake Boathouse LLC would be offering far superior equipment than the other bidder(s). Staff had pictures of the new



fleet being offered by all respondents and made the decision not to include these. This did not portray an accurate side by side comparison of the bids. We would like to verify that this was not the case when the evaluators looked at the proposals.

Rather than comparing/evaluating the competing bids in their presentation, Staff compared the 20-year-old Stow Lake lease terms (rather than new terms proposed by Stow Lake Corporation) with new terms as proposed by Stow Lake Boathouse LLC. We are protesting that the members of the Recreation and Park Commission (the ultimate decision-makers) were not presented with all of the terms and conditions included in our response to the RFQ. Therefore, they were not able to make an informed decision regarding the award.

In view of this protest, the lease award to Stow Lake Boathouse LLC needs to be vacated.

Respectfully submitted,

Bruce McLellan  
President Stow Lake Corporation

C: San Francisco Board of Supervisors (File # 101416)  
Budget & Legislative Analyst

San Francisco Board of Supervisors  
File #101416  
Stow Lake Concession Lease

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File # 101416  
Stow Lake Concession Lease

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

**BRIEF # 10072 {Page 1 of 2}**

RE: Complaint # 10072  
Stow Lake Corporation vs. Recreation and Park Department and  
Commission  
HEARING DATE: January 25, 2011  
DATE: January 14, 2011  
TO: Sunshine Ordinance Task Force

BY \_\_\_\_\_

2010 JAN 14 PM 2:01

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

**COMPLAINT:** The Recreation and Park Department and Commission, after numerous requests [Attachment #1 ], have refused to release the Ortega Family Enterprise [dba Cloudless Skies Park Company LLC] response to the RFQ (Request for Qualification) submitted by them relating to the Stow Lake Concession Lease. This refusal violates the Sunshine Ordinance that requires City operations to be open to people's review.

The refusals were based on Section 67.24(e) of the SF Admin Code. As you will note in my December 6, 2010 email to Olive Gong, I pointed out that now that the Recreation and Park Commission had approved the lease for Ortega Family Enterprises this information should be made public.

**REQUEST:** Now that the lease has been approved by the Recreation and Park Department Commission, release immediately the Ortega Family Enterprises response to the RFQ for the Stow Lake Concession Lease. Release to be electronic as was the submission.

**BACKGROUND:** After rejecting over a 5 year period four responses to Requests for Proposals [RFP] stating only that the submissions were "non-responsive" and giving no additional detail, the Recreation and Park Department issued a Request of Qualification [RFQ], a procedure giving the department far more subjective latitude than a RFP. You recently heard Sunshine Ordinance complaint # 10042... *Calvin B. Tilden vs. Recreation and Parks Department* related to the same document and the same parties. **This new complaint is completely different.** Sunshine Ordinance complaint # 10042... *Calvin B. Tilden vs. Recreation and Parks Department* was filed **prior** to The Recreation and Park Commission approving the Ortega Family Enterprises Lease. This complaint has been filed against the Recreation and Park Department **after** they approved the lease.

{Page 2 of 2}

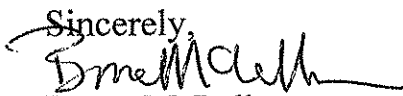
**REASON FOR DOCUMENT REQUEST:** From the selective information released to date on an internet blog, posting of a notice at the boathouse, and at the Commission meeting, it appears the Ortega's have proposed a full floor Cafe. This is a dramatic change from the historic design and use of the Stow Lake Boathouse and is in violation of the Golden Gate Park Master Plan. So dramatic a change, that public access to their proposal is essential. There has been a tremendous amount of spin, selected information releases and outright lies connected with this matter. The Ortegas hired **GROUND FLOOR** to represent them and conduct a public relations campaign. **GROUND FLOOR** calls themselves "A Public Interest Strategy Firm" and states "We open doors that are closed to many people" Founder of **GROUND FLOOR** is Alex Tourk, Ex Deputy Chief of Staff and Campaign Manager for Mayor Newsom.

The Stow Lake Corporation has provided 67 years of continuous boat rentals to the citizens of San Francisco and its visitors. Always paid its rent and has never been involved in a law suit. They offered 85 new boats, a 70% increase over the Ortega's 50. Also, offered to fully refurbish the building and keep it maintained in first class shape.

**DISCLOSURES:** We have negotiated every lease for the Stow Lake Concession for over the past 53 years and have never experienced such lack of transparency as is now taking place. All past lease bids were sealed and opened in front of all bidders and passed around for everyone to read. No opportunity for back room deals and post-submission adjustments for a favored bidder. No spin! No secrecy! Honest evaluation of bids! Full transparency! The opposite of what is going on currently.

Thank you for taking the time to review all of this information.

Sincerely,



Bruce McLellan

President, Stow Lake Corporation

**Bruce McLellan**

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**From:** Olive.Gong@sfgov.org  
**Sent:** Wednesday, December 08, 2010 8:21 PM  
**To:** Bruce McLellan  
**Subject:** Re: Emergency Sunshine Request

Dear Mr. McLellan,

Pursuant to Section 67.24(e)1 of the San Francisco Administration Code (the Sunshine Ordinance) the requested documents are not public documents until after the final contract award has been made. In this case, that will be when the Board of Supervisors approves the lease with Ortega Family Enterprises.

At such point, the Department will send the requested documents to you.

Thank you for your interest in SF Recreation and Parks, Olive Gong

.....  
Olive Gong  
San Francisco Recreation and Park Department McLaren Lodge  
501 Stanyan St., SF CA 94117  
415.831-2708 direct  
415.831-2096 fax  
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

From: "Bruce McLellan" <stowlake@pacbell.net>  
To: <olive.gong@sfgov.org>  
Cc: <sotf@sfgov.org>  
Date: 12/06/2010 04:48 PM  
Subject: Emergency Sunshine Request

Please accept this email as my emergency request under the San Francisco Administrative Code, Chapter 67 (Sunshine Ordinance) to receive a copy of the Ortega Family Enterprises response to the Stow Lake Boathouse RFQ that was submitted on April 5, 2010 within 48 hours.

Without this release of information, my ability to protest the lease award for the Stow Lake Concession that was made on December 2, 2010 by the Recreation and Park Commission is seriously hampered.

Please email it to me at stowlake@pacbell.net.

Sincerely,

Bruce McLellan  
President, Stow Lake Corporation