

Date: July 28, 2009

Item No. 3
File No. 09026

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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

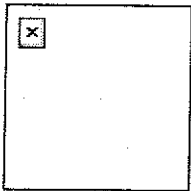
Date: July 16, 2009

***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.

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DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

June 15, 2009

HANNA LEUNG & LYDIA FONG v THE DEPARTMENT OF HUMAN SERVICES (09026)

COMPLAINT

THE COMPLAINANTS ALLEGE THE FOLLOWING:

During the early part of 2009, Complainant Hanna Leung and Lydia Fong operating as Prime Realty and Investment Inc. ("Prime Realty") 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.

THE DEPARTMENT OF HUMAN SERVICES RESPONDS:

In a series of letters from Prime Realty to DHS and letters from David Curto to Prime Realty, the Department provided its reasons why Prime Realty was not chosen from the list of applicants. Prime Realty wanted records from the organization that was chosen and the reasons why it was chosen. The Department provided its selection criteria and its scoring analysis.

COMPLAINANT FILES COMPLAINT:

On May 14, 2009, Hanna Leung and Lydia Fong on behalf of Prime Realty filed a complaint against the Department alleging violations of the Sunshine Ordinance.

APPLICABLE STATUTORY SECTION;

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.1 addresses Findings and Purpose.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents.

Memorandum

3. Sunshine Ordinance, San Francisco Administrative Code Section 67.24 public information that must be disclosed. Section 67.24(e) deals with contracts bids and proposals.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. California Constitution, Article I, Section 3 addresses Assembly, petition, open meetings.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

- Prime Realty made a public records request for information about the successful applicant who received the award.

B. Contested facts/ Facts in dispute:

- Whether the department properly responded to the public records requests.

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the Department responded to the public records request
- Whether the Department provided the requested records.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Whether the Request for Qualifications is similar in procedure to the Request for Proposals?

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?

Memorandum

- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.21 addresses general requests for public documents.

This section provides:

(a) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) 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.

Section 67.25(e)(1) provides:

1. Contracts, contractors' bids, responses to request for proposal and all other records of communication 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 or responses to a Request for Proposal (RFP) has been completed, evaluation forms and score sheets and any other documents used by person 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 the RFP has been completed.

Section 67.25 provides:

a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day

Memorandum

following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

b.) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.

c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request

Section 67.26 provides:

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.

Section 67.27 provides:

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.

Memorandum

- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of 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.



SOTF/SOTF/SFGOV
06/17/2009 09:46 AM

To HannaLeung@sbcglobal.net, LydiaLFong@yahoo.com,
David Curto/DHS/CCSF@CCSF
cc Pamela Tebo/DHS/CCSF@CCSF
bcc Ernest.Llorente@sfgov.org; Kristin@Chu.com
Subject Hearing Scheduled: Complaint #09026_Hanna Leung &
Lydia Fong vs DHS

Dear Ms. Leung, Ms. Fong and Mr. Curto,

Since both parties do not agree to a continuance, as per the SOTF procedures, the above titled complaint is scheduled for the June 23, 2009, meeting of the SOTF, at 4:00 PM in room 408.

Should the Department still wishes to continue the matter a request can be made before the full Task Force at the hearing. The Task Force will then decide whether to grant the continuance or to hear the matter.

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307
--- Forwarded by SOTF/SOTF/SFGOV on 06/17/2009 09:43 AM ---



Hanna Leung
<hannaleung@sbcglobal.net>

06/16/2009 08:12 PM

To SOTF <sotf@sfgov.org>
cc lydia fong <lydialfong@yahoo.com>
Subject Re: Continuance Requested: #09026_Hanna Leung & Lydia
Fong vs DHS

Dear Mr. Darby,

I have discussed the request for continuance of the hearing from the Department of Human Services with my business partner Ms. Lydia Fong. We have been requesting for production of the document since our notification of the contract award in March of 2009. The dates of the hearings have been set for well over one month. Both myself and my partner gave due respect to the scheduled hearings and have re-arranged our appointments to accommodate the schedule set by SOTF. We are entitled to a merit hearing at this time and we do not consent to a continuance. It is unclear to the complainant the reasons for the request for continuance by the Department of Human Services. From the last correspondence we received from Mr. Curto, it appears to be the DHS's position that the document is not subject to production at this time. It is precisely the purpose of the hearing to determine if the position of DHS is valid and whether they have violated the requirement for timely production under the Sunshine Ordinance. A continuance at this time would in effect frustrate the purpose of the hearing and allow

DHS to withhold information without the scrutiny of the Sunshine Ordinance Task Force. I would like to explain our position to SOTF for objecting to the requested continuance. Our objection is not due to a lack of professional courtesy, rather it is our opinion that a continuance would in effect constitute the merit outcome of this matter.

Thank you very much for your attention in this matter. I look forward to meeting you at the hearing on June 23, 2009.

Sincerely,
Hanna Leung
Lydia Fong

From: SOTF <sotf@sfgov.org>
To: HannaLeung@sbcglobal.net; LydiaLFong@yahoo.com
Cc: David Curto <David.Curto@sfgov.org>; Pamela Tebo <Pamela.Tebo@sfgov.org>
Sent: Tuesday, June 16, 2009 9:16:42 AM
Subject: Continuance Requested: #09026_Hanna Leung & Lydia Fong vs DHS

Dear Ms. Leung & Fong

The Department of Human Services has requested a continuance of the above titled complaint to the July 28, 2009, meeting of the full Task Force.

Do you agree to a continuance?

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

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----- Forwarded by SOTF/SOTF/SFGOV on 06/16/2009 08:54 AM -----

David
Curto/DHS/CCSF@CC
SF
06/16/2009 08:33 AM
To
Frank Darby/BOS/SFGOV@SFGOV
cc
pamela.tebo@sfgov.org
Subject
Sunshine Task force meeting June
23rd

Hi Frank,

I am requesting a continuance of items # 09024 Paul Westin
09026 Hanna Leung
Continuing Charles Pitts

I am out of the state on that week and I am the most appropriate person to appear on these items from the Human Services Agency. We could sent someone to the meeting but without first hand knowledge of the complaints and remedies implemented to date. A continuance is the most effective way to resolve these complaints. when I can appear personally.

Thank-you

Dave Curto
Director of Contracts
Human Services Agency
415-557-5581

----- Forwarded by SOTF/SOTF/SFGOV on 06/17/2009 09:43 AM -----



Hanna Leung
<hannaleung@sbcglobal.net
>

06/16/2009 08:32 PM

To SOTF <sotf@sfgov.org>

cc lydia fong <lydiafong@yahoo.com>

Subject Re: Continuance Requested: #09026_Hanna Leung & Lydia Fong vs DHS

Dear Mr. Darby,

This is to supplement my last email correspondence. I believe Ms. Pamela Tebo appeared at the Jurisdictional hearing on June 9, 2009 and requested a continuance based on the same reason raised by Mr. Curto now (i.e. his absence from the State at the time of the scheduled hearing). Her request was denied and the date of the merit hearing was affirmed by the Sunshine Ordinance Task Force members. There is absolutely no ground for DHS to bring up the same issue that has been ruled on at the last hearing. Thank you.

Sincerely,
Hanna Leung
Lydia fong

From: SOTF <sotf@sfgov.org>

To: HannaLeung@sbcglobal.net; LydiaLFong@yahoo.com

Cc: David Curto <David.Curto@sfgov.org>; Pamela Tebo <Pamela.Tebo@sfgov.org>

Sent: Tuesday, June 16, 2009 9:16:42 AM

Subject: Continuance Requested: #09026_Hanna Leung & Lydia Fong vs DHS

Dear Ms. Leung & Fong

The Department of Human Services has requested a continuance of the above titled complaint to the July 28, 2009, meeting of the full Task Force.

Do you agree to a continuance?

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
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----- Forwarded by SOTF/SOTF/SFGOV on 06/16/2009 08:54 AM -----

David
Curto/DHS/CCSF@CC
SF
06/16/2009 08:33 AM
To
Frank Darby/BOS/SFGOV@SFGOV
cc
pamela.tebo@sfgov.org
Subject
Sunshine Task force meeting June
23rd

Hi Frank,

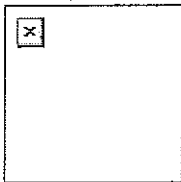
I am requesting a continuance of items # 09024 Paul Westin
09026 Hanna Leung
Continuing Charles Pitts

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Thank-you

Dave Curto
Director of Contracts

Human Services Agency
415-557-5581



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.



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 RF#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 Leung &
Name Lydia Fong Address 1600 Lombard Street, SF, CA 94123
Hanna Leung (415) _____ @sbcglobal.net
Telephone No. Lydia Fong (415) _____ E-Mail Address _____ @ Yahoo.com
Date 5/18/09 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



Gavin Newsom, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

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', written over a horizontal line.

HANNA C. LEUNG
Attorney at Law
HCL / adc



PRIME REALTY

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.



PR 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 Rhorer, 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,

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

David M. Curto
Director of Contracts



Gavin Newsom, Mayor

Trent Rhorer, 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,

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.

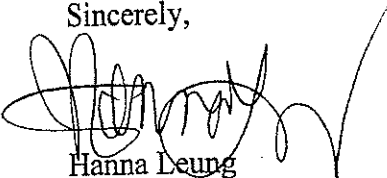
Disqualifying a company for not having the experience that can only be gained through that same bidding contract is unjust and inequitable. It becomes a circular argument that makes the incumbent the only qualifying company. It would also make this open bidding process a sham.

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 AgencyDepartment 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)*

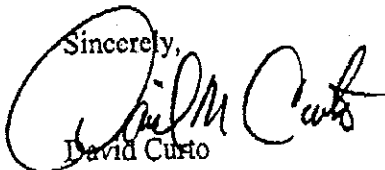
a. *Understanding of the project and the tasks to be performed, etc.*

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.



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 the typed name.

HANNA C. LEUNG
Attorney at Law
HCL / adc

A handwritten signature in black ink, appearing to read 'Lydia Fong', written over the typed name.

LYDIA FONG



PRIME REALTY

June 28, 2009.

To: SOTF

Chris Rustom, committee member

FAX: (415) 554-7854

Fr: Hanna Leung & Lydia Fong
Prime Realty

FAX: (415) 776-8828

Dear Mr. Rustom,

Per your request, attached is a copy of the timeline. In addition, I am enclosing copies of letters and email not contained in our initial filing as they are received subsequent to the complaint. Thank you for your attention.

RFQ 402 Real Estate Services for the Office of the Public Administrator/Public Guardian

- RFQ402 was first issued at the end of 2007, or beginning of 2008
- Prime Realty submitted their application pursuant to the initial RFQ
- Prime Realty was later notified that the standard for RFQ 402 will be revised and we would be advised of the new submission date
- Prime Realty was never notified of the issuance of the new RFQ
- New standard for RFQ 402 came out at the end of 2008
- Prime Realty submitted their application pursuant to the new revised standard
- Prime Realty was notified in March 2009 that the contract has been awarded to Keynote Properties
- Hanna Leung and Lydia Fong from Prime Realty telephoned Mr. Curto for the Department's rationale of their decision
- Subsequent telephone calls were placed to request meeting with the Department and viewing of documents. Department of Human Services failed to schedule meeting.
- Prime Realty issued written requests for meeting with the Department and discussion of the selection. Department of Human Services issued written response stating that the Department has selected two vendors for the position. The Department for the first time alleged that Prime Realty does not meet the minimum standard outlined for the RFQ
- Prime Realty requests production of the entire file for RFQ 402 pursuant to Sunshine Ordinance. Department of Human Services failed to respond.
- Complaint with the Sunshine Ordinance Task Force was filed in late April, 2009.
- A few days after the Complaint was filed, Mr. Curto called and said that he had consulted with the City Attorney and that the Department would produce their file.
- The production sent by the Department of Human Service consisted of a letter explaining their selection and the scores given by the selection committee
- Detail itemized Request for production of the Department file was issued again. Several pages of score sheets were produced in response. Christine Chiong from

The Department notified Prime Realty via email that they have produced the entire file.

- Hanna Leung and Lydia Fong expressed doubts that the score sheets were the entire file from the Department and sent the itemized request list again
- Christine Chiong notified Hanna Leung and Lydia Fong at Prime Realty that the Department cannot produce the requested information since an award has not been made.
- Upon further enquiry, Mr. Curto sent a written response stating that an award would not be made until the selection committee meeting on July 1, 2009
- At the Jurisdictional hearing in June, 2009, the Department requests delay of the hearing due to Mr. Curto's anticipated absence from the State on that day.
- The Sunshine Ordinance Task Force decided at the Jurisdictional hearing that the Merit hearing should be affirmed despite opposition from the Department
- Subsequent to the decision at the Jurisdictional hearing, Mr. Curto again requested the Merit hearing to be postponed alleging the same reason .

Conclusion

Complainant Prime Realty requests that the Department of Human Services be ordered to produce all documents relating to RFQ 402, including document containing in the file from the initial opening of that position in 2007. The production shall include but not limited to telephone messages, electronic mail, facsimile, routing slips, hand written notes or memorandum, letters, written clerical instructions, calendar entries and any other forms of communications (including verbal) for all persons involved. It shall cover communications among Department members and/or between the Department and the various Applicants.

From: Christina Chiong ()
To: harmaleung@sbcglobal.net
Date: Friday, May 29, 2009 3:16:52 PM
Cc: David Curto; Mary Ann Warren
Subject: RFQ 402 Requested Documents

Good Afternoon,

In response to your letter dated and faxed on April 29, 2009, attached is the 24-page Scoring sheet document for RFQ 402 (requested items 1-7).

Additionally, information on the Readers are as follows (requested items 8-10):

Reader A: Mary Ann Warren-Manager, Public Guardian, Public Conservator, Public Administrator

Reader B: James (Jim) Abbedutto- Public Guardian, Public Conservator, Public Administrator

Reader C: Shireen McSpadden-Deputy Director, SF Department of Aging and Adult Services

(See attached file: RFQ 402 Scored Sheets.pdf)

From: Christina Chiong ()
To: hannaleung@sbcglobal.net
Date: Monday, June 1, 2009 1:25:01 PM
Cc: lydia fong
Subject: Re: RFQ 402 Requested Documents

We are unable to release any of the proposals as the Commission has not yet awarded the PA/PG Real Estate Services contract(s).

In addition, no routing slips exist as the proposals were picked up for review. From my understanding, the scoring was done individually. The results were then hand delivered or inter-office mailed for return.

Hanna Leung
 <hannaleung@sbcglobal.net>
 To
 Christina Chiong
 <Christina_Chiong@ci.sf.ca.us>
 05/31/2009 09:13 PM
 cc
 lydia fong <lydialfong@yahoo.com>
 Subject
 Re: RFQ 402 Requested Documents

Dear Ms. Chiong, the information attached does not fulfill our request for production of document. Our request is for the COMPLETE file containing ALL FOUR PROPOSALS SUBMITTED and ALL communication associated with RFQ402. We would like to review the actual proposals submitted so that we may better understand each reader's scores and comments. In addition, if the files were routed to each reader, then there must be routing slips with dates in the file. If the scoring was done in a meeting then there should be notification for date and time of meeting. Please forward the documents immediately. Thank you. Hanna Leung

From: Christina Chiong <Christina_Chiong@ci.sf.ca.us>
To: hannaleung@sbcglobal.net
Cc: David Curto <David.Curto@sfgov.org>; Mary Ann Warren <MaryAnn.Warren@sfgov.org>
Sent: Friday, May 29, 2009 3:16:52 PM



PRIME REALTY

May 26, 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:

Thank you for your telephone message of 5/19/2009. In addition to the documents we requested in our last correspondence as attached. We are further requesting production of the following for viewing:

- All correspondence and communication between Applicants of RFQ 402 and the PC/PA's office including but not limited to letters, memorandum, electronic mail, facsimiles and telephone messages.

We appreciate the production of the aforementioned documents in the next 10 business days. Please give me a call when the documents are ready for viewing. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hanna C. Leung', written in a cursive style.

HANNA C. LEUNG
Attorney at Law
HCL / adc

Attachments



PRIME REALTY

June 5, 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 office has not yet received all the material requested for production in our previous correspondence.

If it is the Human Resources Agency's position that the document is not subject to production at this time, please state your reasons in support of that decision. Also, please advise when you would expect those document to be eligible for production.

Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hanna C. Leung', written in a cursive style.

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 Rhoter, Executive Director

June 8, 2009

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

RE: RFQ 402- Minimum Qualifications

Dear Ms. Leung,

Please be advised that I have received your fax letter dated June 5, 2009. Also please be advised, we have provided you all of the information that is required under the Sunshine Ordinance prior to the award of the new contract(s). Your request for the proposals of the other respondents will not be provided until an actual award of the contracts is made before the Department of Adult and Aging Services Commission.

We anticipate making these awards at the July DAAS Commission meeting scheduled for July 1, 2009.

Please call me directly with any questions or concerns at 415-557-5581.

Sincerely,

David M. Curio
Director of Contracts