

APPROVED
AUG 20 2008

REPORT OF GENERAL MANAGER

NO. 08-233

DATE August 20, 2008

**BOARD OF RECREATION
and PARK COMMISSIONERS**

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: POLICY FOR CONCESSION CONTRACTS AWARDED BY A REQUEST FOR PROPOSAL PROCESS

R. Adams	_____	J. Kolb	_____
J. Combs	_____	*F. Mok	<u>2.m.</u>
H. Fujita	_____	K. Regan	_____
S. Huntley	_____	M. Shull	_____



General Manager

Approved

Disapproved

Withdrawn

RECOMMENDATION:

That the Board:

1. Find that in all concession contracts to be awarded by a Request for Proposal (RFP) process that, pursuant to Charter section 371 (e) (10), the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter for the reasons stated in this report; and
2. Direct staff to include the finding contained in the Summary of this report in future RFPs for the award of the Department's concessions, and in all concession contracts resulting from an RFP process that were previously approved but have not yet been executed.

SUMMARY:

As a result of a recent trial court ruling in *The Wackenhut Corporation vs. City of Los Angeles, et al Case No. BS 109810*, the City Attorney has requested that the Board adopt a policy for the award of the Department's concessions. The court held in *Wackenhut* that the exceptions to competitive bidding enumerated in Charter section 371 may not be implied, but must be expressly found by the awarding authority to exist prior to awarding a contract not subject to competitive bidding based strictly on price as the only criterion. The Department's concession contracts are awarded by a standard RFP process using many important and necessary criteria to evaluate the best proposal received, and price has rarely, if ever, been the only criterion used by the Department in selecting a concessionaire. Recent RFPs have also considered the background and experience of the proposer, the proposer's financial capabilities, the amount and type of

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capital improvements and the proposer's marketing abilities and business plan as well as the rent to be paid to the City.

Charter section 371 states, in part, that "Contracts shall be let to the lowest responsive and responsible bidder furnishing satisfactory security for performance." As an exception to the rule requiring contracts to be awarded by competitive bidding, Charter Section 371 (e) (10) exempts: ". . . contracts (including without limitation those, as determined by the contracting authority, for the performance of professional, scientific, expert, technical or other special services), where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements."

In order to comply with the *Wackenhut* ruling, the City Attorney has requested that the following language be placed in all future RFPs for concessions and all concession contracts previously awarded by the Board but not yet executed:

"In approving this Request for Proposal (RFP), the Board, in its capacity as the contract awarding authority for the Department, finds, pursuant to Charter section 371 (e) (10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the Department for the improvement, operation and maintenance of the Department's concession. To select the best proposer for this concession, the Board finds it is necessary to utilize a standard request for proposals process and to evaluate proposals received based upon the criteria included in this RFP. The Board specifically finds that the narrower and more specialized competitive sealed proposal process authorized but not required by Charter section 371, subsection (b), would not meet the Department's needs and therefore opts to utilize the standard request for proposals process."

FISCAL IMPACT STATEMENT:

Implementation of this policy has no impact on the General Fund.

Report prepared by Robert N. Morales, Senior Management Analyst II, Contracts and Procurement Section, Finance Division