

**NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP**  
ATTORNEYS AT LAW  
2350 KERNER BOULEVARD, SUITE 250  
SAN RAFAEL, CALIFORNIA 94901  
TELEPHONE (415) 389-6800 FAX (415) 388-6874

April 23, 2013

VIA EMAIL & U.S. MAIL

Mayor Bob Foster and City Council Members  
City of Long Beach  
333 West Ocean Blvd., 14<sup>th</sup> Floor  
Long Beach, CA 90802

Re: Third Supplement to Notice of Protest In Connection With Request for  
Proposal No. PW12-2008

Dear Mayor Foster and City Council Members:

As I believe you are aware, we are counsel for Lyon Capital Ventures, LLC ("Lyon") and previously wrote to you on July 16, 2012, August 2, 2012, and March 7, 2013, to provide notice of, and grounds for, Lyon's protest in connection with Request for Proposal No. PW12-2008 ("RFP").

My prior letters, which are incorporated herein by reference, identified numerous irregularities in the RFP and award process that jeopardize the fairness and integrity of the entire process. These legal irregularities include, but are not limited to, City staff's issuance of two conflicting versions of the RFP to bidders, staff's failure to enforce clear requirements of the RFP, the improper disqualification of Lyon (the documents that had been withheld for months and produced to us just 10 days ago show Lyon was improperly disqualified because its proposal had no ground floor retail, when in fact Lyon's proposal did include ground floor retail), and violations of the Ralph M. Brown Act, Gov. Code section 54950 *et seq.*

We have also just late last week received the proposed PSA, and it provides further grounds for protest, including:

- The purchaser is "100 LBB Real Estate, LLC" but there is no identification of which entities comprise that purchaser; this raises the question of whether the purchaser is in fact Ratkovich and Oliver McMillan, the joint venture identified in bid proposal. In an article

Mayor Bob Foster and City Council Members  
City of Long Beach  
April 23, 2013  
Page 2

in today's Long Beach Business Journal, Mr. Ratkovich is quoted as saying his company and Oliver McMillan "are in the process of finalizing our partnership entity."

- The RFP states "The property is being sold 'as is' (i.e., no warranties), and the selected bidder shall rely solely upon its own inspection and investigation of the Property as to its suitability for development." Yet, the PSA includes warranties by the City. Article VIII H states the City has delivered to buyer complete legible copies of the items listed on Ex B, and that those documents "are all the material documents concerning the Property in Seller's possession or under its control." The following section, I, warrants that the City has not received written notice from any governmental authority that the Property or use or operation thereof are in violation of any environmental laws, and to City's knowledge no such written notice has been issued and to City's knowledge no violation of any environmental law has occurred; and finally that except as disclosed on Ex B, to City's knowledge no part of the Property has ever been used to refine, produce, store, etc., any hazardous substances. These warranties in the PSA are in direct conflict with the RFP's requirement that the property "is being sold 'as is' (i.e., no warranties)..."

In addition, my prior letters requested that the City Council set aside at least 30 minutes of hearing time for Lyon to present its bid protest in a proper manner. The City never responded to this very reasonable request and in fact has refused it. The Agenda for tonight's City Council meeting does not even mention, let alone agendaize Lyon's protest for hearing, and fails to provide any opportunity for Lyon to present its protest to the Council, despite a legal requirement to do so. (See, e.g., *Advanced Real Estate Services, Inc. v. Sup. Court of Orange County* (2011) 196 Cal.App.4<sup>th</sup> 338, 350 [striking down sale of surplus property on the grounds that "there was no opportunity at all to present such a [protest] claim administratively, and there should have been"]; *City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court* (1972) 7 Cal.3d 861, 871.)

Mayor Bob Foster and City Council Members  
City of Long Beach  
April 23, 2013  
Page 3

As the California Court of Appeal recently noted:

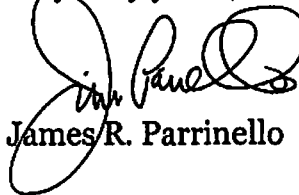
The overarching idea behind bid protest systems is, of course, to keep the public bidding process free of favoritism. As one essay on public contract law states: Overall, the bid protest process is a critical tool in ensuring public contracting is done in a fair and reasonable manner, as the agency has to keep in mind that contractors are keeping a close eye on the process and will not tolerate behavior that does not ensure all bidders are treated fairly and in strict accordance with the rules that apply to each specific acquisition.

(*Id.* [emphasis added; internal quotations omitted].)

The RFP's total absence of a bid protest procedure, and the failure to agendize and afford any meaningful hearing for Lyon to present its grounds of protest, are additional, independent grounds to invalidate any award. Thus, in accord with basic principles of fairness and due process, Lyon hereby further objects to the RFP—and protests the City's decision to award the contract to the selected bidder—on these additional grounds.

Thank you for your consideration of this letter.

Very truly yours,



James R. Parrinello

JRP/pas

cc: Robert E. Shannon, City Attorney  
Richard F. Anthony, Deputy City Attorney