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MEMORANDUM

To: Larry Patterson, Chair, Board of Directors of the SBWMA

From: Robert J. Lanzone, JPA Attorney

Date: September 29, 2008

Re: RFP Process - Bid Protest Issue

Issue: It is my understanding that someone has raised an issue relative to the Collection RFP as to whether there is a "bid protest" process, and if not why not.

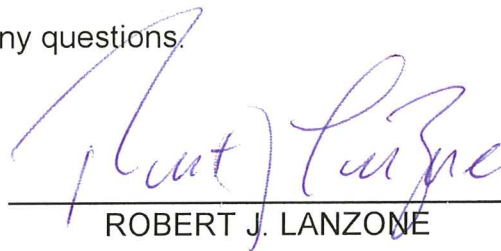
There is in public contracting a significant difference between contracts involving "public works" and contracts for goods or services. A public project is defined in the law for bidding purposes, pursuant to Public Contracts Code Sec. 20161, as the erection, painting, repair of a public building and works..work done on streams, sewers, streets, etc. Where a public works bid is involved caselaw has established a bid protest process for those rejected as no-responsive or nonresponsible bidders to provide them with an opportunity to submit rebuttal evidence. No hearing is required by law. Bidders who are not selected because they are not the lowest bidder sometimes file what they term as a "bid protest" but it is nothing more than a notice that they believe something was incorrect abt the process or bids. There is no procedure set forth in the law to deal with such complaints.

Public entities such as the SBWMA have authority to enter into contracts for goods or services unrelated to a public works project, including professional services, and administrative services. Govt Code Sec 53060, and Carruth V. City of Madera 223 CA2d 688. In the absence of statutory or code requirements for competitive bidding, there is no competitive bidding for goods or services.

In this case, SBWMA established an RFP for the Collection Contract for solid waste and recyclable materials to obtain a service provider to recommend to the

member entities of the JPA. The member entities will respectively make the final decision. The RFP set forth the terms and conditions of submitting proposals. It did not include any provision for "protests" of the bids or the process. None is required by law, nor is it common practice to include in a procurement of this nature. Attached hereto is a list of 42 similar RFPs done by other jurisdictions and only two had a form of bid protest. We assume they did so as the procurement appears to have been done at the staff level. If a Proposer was dissatisfied with some aspect of the process then the avenue for making that known would have been to submit information to the SBWMA Board prior to its action on August 28, 2008. Also, there is nothing to prevent that Proposer from making such concerns or complaints known at this time to the SBWMA staff or to the member entities who will make the ultimate decision as to which service provider it wishes to enter into a contract with for its Collection Franchise.

Please let me know if there are any questions.



ROBERT J. LANZONE

cc: SBWMA Staff

No Protest Provisions in RFP	Protest Provisions in RFP
1. Castro Valley Sanitation District, CA	1. San Jose, CA Yes (RFP issued by City Procurement Department)
2. Burbank Sanitary District, CA	2. Tucson, AZ Yes (RFP issued by City Procurement Department)
3. Piedmont, CA	
4. Pleasanton, CA	
5. San Ramon, CA	
6. Dublin, CA	
7. Santa Rosa, CA	
8. Windsor, CA	
9. San Bernardino, CA	
10. Rolling Hills Estates, CA	
11. Rancho Palos Verdes, CA	
12. Lomita, CA	
13. Duarte, CA	
14. Bradbury, CA	
15. Irwindale, CA	
16. Montebello, CA	
17. Citrus Heights, CA	
18. Rancho Cordova, CA	
19. Elk Grove, CA	
20. Colton, CA	
21. Livermore, CA	
22. San Diego, CA	
23. Salinas, CA	

No Protest Provisions in RFP	Protest Provisions in RFP
24. Winters, CA	
25. Union City, CA	
26. Upland, CA	
27. Merced County, CA	
28. Sacramento County, CA	
29. San Bernardino County, CA	
30. Santa Barbara County, CA	
31. Cooper City, FL	
32. Dania Beach FL	
33. Deerfield Beach, FL	
34. Lake County, FL	
35. Martin County, FL	
36. Palm Beach County, FL	
37. Polk County, FL	
38. Seminole County, FL	
39. Kansas City, MO	
40. Lubbock, TX	
41. Central Virginia Waste Management Authority, VA	
42. Phoenix, AZ	