

SENATOR JEFF WENTWORTH

SENATE DISTRICT 25

AUSTIN

Capitol Building, Room 1E.9
P. O. Box 12068
Austin, Texas 78711
(512) 463-0125
Toll-Free (888) 824-6984
FAX (512) 463-7794
TDD 1-800-735-2989

INTERNET E-MAIL

jeff.wentworth@senate.state.tx.us

SAN ANGELO

2121-B Knickerbocker Road
San Angelo, Texas 76904
(915) 942-8522
FAX (915) 942-8621

SAN ANTONIO

1250 N. E. Loop 410, Suite 720
San Antonio, Texas 78209
(210) 826-7800
FAX (210) 826-0571



**The Senate of
The State of Texas**

August 14, 2000

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AUG 15 2000

OPINION COMMITTEE

Honorable John Cornyn
Attorney General - State of Texas
P. O. Box 12548
Austin, Texas 78711-2548

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State Affairs

**COUNTIES IN
SENATE DISTRICT 25**

Bandera	Llano (part)
Bexar (part)	Mason
Blanco	Medina (part)
Comal (part)	Schleicher
Gillespie	Sutton (part)
Guadalupe (part)	Tom Green (part)
Kendall	Travis (part)
Kerr	Williamson (part)
Kimble	

RQ-0268-JC
FILE # ML-41567-00
I.D. # 41567

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AUG 15 2000

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

1587 S. Husky

Re: Serious Irregularities Associated with the
City of San Antonio's Award of Its Advertising Contract

Dear General Cornyn:

It has come to my attention that the City of San Antonio, acting through its City Council (the "City") staff and the San Antonio Convention and Visitors Bureau ("SACVB"), has engaged in serious irregularities associated with its Request for Proposal ("RFP") process.

It is my opinion that the irregularities probably violated the Texas Government Code, San Antonio's City Code, San Antonio Ordinances, the City Ethics Code, rules governing a fair RFP process and the equal protection and due process protection of our Constitution.

These irregularities, unless immediately ceased, will cause the City to enter into an invalid and possibly illegal contract.

I call to your attention that the City Council presently intends to award the advertising contract on Thursday, August 17, 2000. Thus, the critical and emergency nature of this request cannot be understated, and I urge you to give this request an expedited review.



Honorable John Cornyn
August 14, 2000
Page Two

The salient facts and the irregularities are as follows:

A. **Bromley and Inventiva are not qualified proposers.**

1. On February 17, 2000, the City approved the SACVB 2000 Advertising Agency RFP process, schedule, selection criteria and Review Committee.
2. On February 29, 2000, SACVB, by letter, solicited proposals from advertising and marketing agencies. The deadline for proposers to complete and file their "Submittal Criteria" (contained in Attachments A and B) was 4:00 p.m., Friday, April 21, 2000.
3. The SACVB's notice provided:
 - a) That "failure to submit your proposal and all required attachments by the deadline above will cause the proposal to be deemed non-responsive AND WILL NOT BE CONSIDERED UNDER ANY CIRCUMSTANCES."
 - b) The same letter set out contracting goals required by the City for minorities and stated that proposals "shall" include a Good Faith Effort Plan. The City further required that that Plan "shall include specific documentation as outlined in SBEDA form 117C, **Good Faith Effort Plan for Subcontractors and Professional Services** that demonstrates a commitment by the proposer to utilize minority and women business enterprises in a percentage which equals or exceeds the above goals."

- c) The City requirement was very clear that: **"Any proposal that does not include a completed form shall be declared non-responsive."**
 - d) Finally, bidders were told that if their SBEDA Form was not completed correctly that: "No Proposer . . . will be allowed to change information that would relate to submitted teaming, subcontracting, etc. after the submittal deadline."
4. The SACVB Attachment B set forth the City's "Small Business Economic Development Advocacy ("SBEDA") policy REQUIREMENTS.

The City's goals established for these small businesses' share of the contract to be awarded were:

Minority-Owned Business Enterprise (MBE):	32.5%
Women-Owned Business Enterprise (WBE):	13.0%
African-American-Owned Business Enterprise (AABE):	2.3%
Small Business Enterprise (SBE):	45.0%

5. On March 10, 2000, proposers attended a meeting with the SACVB personnel who clearly told all proposers that:
- a) "Submitted proposals must have answers to all questions listed in the Submittal Criteria section of this RFP as well as completed forms required in Attachment B."
 - b) "Proposals, however, that do not include a completed "Good Faith Effort Plan" will be declared non-responsive."

c) **"QUESTION:**

"What if a SBEDA form is not completed correctly?"

"ANSWER:

"If there is an administrative error on a form, the submitted agency will be contacted for clarification. No Proposer, however, will be allowed to change information that would relate to submitted teaming, subcontracting, etc. after the submittal deadline."

6. By the April 21, 2000 deadline, SACVB received three (3) proposals as follows:¹

- a) The Center For The Persuasive Arts Joint Venture ("CPA") with qualified minorities and women;
- b) Bromley Communications ("Bromley") with no qualified minorities or women;
- c) Inventiva, Inc. ("Inventiva") with no qualified minorities or women.

BOTH BROMLEY AND INVENTIVA TOTALLY FAILED TO COMPLY WITH THE RFP REQUIREMENTS CONCERNING THE ABOVE SBE GOAL AND DID NOT IDENTIFY ANY SUBCONTRACTING FIRMS WITH ANY DOLLAR AMOUNT OF WORK ALLOCATED TO ANY SUCH NONEXISTENT SUBCONTRACTORS.

¹ A fourth proposal was apparently withdrawn.

The Honorable John Cornyn
August 14, 2000
Page Five

City Ordinance 85355 (attached) clearly requires that all contracts to be awarded by the City "shall" state these minority and women-owned business participation "in terms of a percentage of the total dollar value of" the contract. (See attachment to Ordinance 85355, Section II, Proposer Goals (A)).

Neither Bromley nor Inventiva complied with Ordinance 85355, because neither proposer submitted any information as required by reflecting a percentage of minority and women participation in dollar terms.

In fact, the City admits this failure.

Bromley and Inventiva's total failure to qualify by the April 21, 2000 deadline is undeniable as required by the RFP, and they should have been declared non-responsive and not considered for any proposal.

Accordingly, because neither Bromley nor Inventiva met the City's qualifications and ordinances, they are not qualified and cannot receive the City contract. Furthermore, neither Bromley nor Inventiva submitted the required compliances by the April 21, 2000 deadline.

B. The City's improper extension of the deadline.

Contrary to its own rules applicable to all proposers, the City on July 28, 2000, advised the three (3) proposers they could change their proposal and attempt to meet the RFP requirements relating to minority and women subcontractors as joint venture partners.

Under the Government Code, § 252.042, the City must treat all proposers "fairly and equally" with respect to any "revisions." Not only does this requirement apply only to qualified bidders, which

The Honorable John Cornyn
August 14, 2000
Page Six

Bromley and Inventiva are not, but furthermore, CPA was clearly discriminated against and not treated fairly, because CPA was the only proposer who met all qualifications and, thus, the City's unwarranted extension benefits only Bromley and Inventiva who, by the deadline, failed to qualify.

The City's Ethics Code also requires disclosure by Bromley and Inventiva of all subcontractors on discretionary contracts (Part D, Section 1, enclosed.)

There is no question that neither Bromley nor Inventiva complied with the City's Ethics Code due to their failing, by the deadline, to disclose any subcontractors.

I enclose three (3) letters from CPA's attorney, Seagal Wheatley, to the City Attorney outlining in some detail these serious problems. (See Wheatley's letters of August 1, 2000, August 2, 2000 and August 11, 2000 to the City Attorney.)

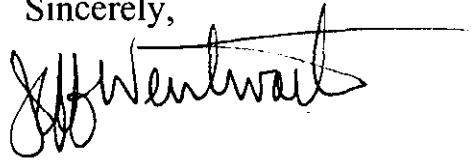
Based on the above irregularities, I respectfully request your opinion on the following questions:

1. Is a proposer who fails to comply with the City's Request for Proposal requirements and who fails to comply with the City ordinance requiring that minority and women participation be stated in a percentage of the total dollar value of the contract qualified to receive a contract award?
2. Does a city violate the Government Code requiring that all proposers be treated fairly when it discloses one proposer's minority and women's plan and grants an extension beyond the deadline to let two (2) other proposers change their proposals to add such a required plan?

The Honorable John Cornyn
August 14, 2000
Page Seven

3. Does a city violate its own Request for Proposal that prohibits "teaming of proposers" after the deadline or the fair treatment requirements of the Government Code by permitting two proposers to "team up" after the deadline?

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wentworth", with a horizontal line drawn through the top of the signature.

Jeff Wentworth

Enclosures

JW/dk