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April 18, 2019

**VIA: ELECTRONIC MAIL (RHERNANDEZ@SAVANNAHGA.GOV)**  
**AND FIRST-CLASS MAIL**

Mr. Rob Hernandez, City Manager  
City of Savannah  
P.O. Box 1027  
Savannah, GA 31402

Subject: Appeal of Pending Decision Regarding the Award of a Contract for Phase I of Arena Operations and Management Design Assistance Services (City Purchasing Event #6488) (the "RFP").

Dear Mr. Hernandez:

Our firm represents SMG Venue Services Joint Venture, LLC ("SMG"), which submitted a proposal in response to the RFP. The city also received an RFP proposal from a joint venture between Oak View Group and Pat Mathis Construction Company ("the OVG Team"). The city published a Purchasing Summary for the RFP, in which it summarizes the scores for the RFP proposals (the "Purchasing Summary").<sup>1</sup> The Purchasing Summary awarded the OVG Team the highest score at 83.37 points and recommended awarding the RFP contract to the OVG Team. SMG received the second highest score at 79.40 points.

On April 8, 2019, SMG submitted a written request for you to explain how the RFP scoring was conducted, due to gross inconsistencies between the published scores and the submitted proposals.<sup>2</sup> SMG has not yet received any response from the city to its request.

The Savannah City Council held a workshop on April 11, 2019 to prepare for its regularly scheduled public meeting later that day. The agenda for the afternoon meeting included the following agenda item:

"Motion to Award a Design Assistance Contract to Oak View Group Facilities, LLC, as part of a Phased Contract to Include the Future Operations and Management of the New Savannah Arena (Event No. 6488)"

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<sup>1</sup> A copy of this Purchasing Summary is attached hereto and incorporated herein by reference.

<sup>2</sup> A copy of SMG's request for clarification is attached hereto and incorporated herein by reference.

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Immediately upon opening the meeting at 9 am, the City Council went into executive session to discuss this agenda item, among other things, claiming that the RFP was a real estate matter that the General Assembly had statutorily exempted from public scrutiny. This executive session was attended by all eight City Aldermen, the Mayor, the Clerk of Council, the City Manager, a Deputy City Attorney, and an Assistant City Attorney.

Approximately two hours after entering into executive session, the City Council invited several members of the OVG Team to join its unlawful closed meeting and make a detailed presentation of their proposal. At the same time, the City Council barred two SMG representatives and other interested parties from the room. The City Council subsequently deferred its decision on the RFP contract for two weeks without any explanation regarding the nature or content of its closed-door discussions with the OVG Team.

The city's exclusion of SMG from an 'executive session' that had been opened to other select members of the public violated Georgia statutory law requiring open meetings and deprives SMG of its constitutionally protected rights to due process of law and equal protection under the law. Therefore, SMG respectfully submits this appeal pursuant to Code of Ordinances, Savannah, Georgia § 2-4121, showing the following:

I. The City Council's Executive Session Violated the Open Meetings Act<sup>3</sup>

Subject to very limited exceptions, the Open Meetings Act law requires all official City Council meetings to be open to the public.<sup>4</sup> The Open Meetings Act was adopted to protect the public from 'closed door' politics and to protect against the abuse and misuse of government power, regardless of whether such transgressions were intentional or inadvertent.<sup>5</sup> The Open Meetings Act was also adopted for the additional purpose of maintaining the public's confidence in its officials by maximizing transparency in government proceedings.<sup>6</sup> Therefore, any exceptions to the requirement for open public meetings must be strictly construed in favor of requiring local government meetings to be open and transparent.<sup>7</sup>

The Open Meeting Act permits local governing bodies to lawfully close portions of official meetings to consider certain matters outside the presence of the public by going into executive session.<sup>8</sup> Under the current Open Meetings Act, the City Council may only go into

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<sup>3</sup> O.C.G.A. § 50-14-1 *et seq.*

<sup>4</sup> O.C.G.A. § 50-14-1(b).

<sup>5</sup> *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

<sup>6</sup> *Cardinale v. City of Atlanta*, 722 S.E.2d 732, 736 (2012) (quoting *Carringer v. Rodgers*, 276 Ga. 359, 363, 578 S.E.2d 841 (2003)); *Atlanta Journal v. Babush*, 257 Ga. 790, 364 S.E.2d 560 (1988) (quoting *McLarty v. Board of Regents*, 231 Ga. 22, 23, 200 S.E.2d 117 (1973)).

<sup>7</sup> *Moon v. Terrell County*, 249 Ga. App. 567, 548 S.E.2d 680 (Ga. App., 2001).

<sup>8</sup> *Id.* at § 50-14-1(a)(2) ("Executive session" means a portion of a meeting lawfully closed to the public.)

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executive sessions to consider confidential tax matters, receive advice from its legal counsel, and to take the following property related actions:

1. Authorize negotiations to purchase, dispose of, or lease property;
2. Authorize the ordering of appraisals related to the acquisition or disposal of real estate;
3. Enter into contracts to purchase, dispose of, or lease property; or
4. Enter into an option to purchase, dispose of, or lease real estate.<sup>9</sup>

The Open Meetings Act does not provide any parameters or guidance regarding who may lawfully participate in an otherwise lawful executive session, rendering the statute inherently ambiguous on this point.

When statutes set forth plain and unambiguous terms, the courts “presume that the General Assembly meant what it said and said what it meant.”<sup>10</sup> Under those circumstances, the statute must be read according to its express terms and any interpretation that deviates from the plain statutory text is legally forbidden.<sup>11</sup> However, when a statute contains ambiguous terms, the rules of statutory construction require those terms to be administered in a manner that effectuates the intent of the legislature.<sup>12</sup>

Turning back to the matter at hand, the questions presented in this appeal are:

1. Whether the RFP involved a real estate matter that was exempt from the requirements of the Open Meetings Act; and
2. Whether the City Council can selectively allow one RFP proposal team to present its proposal in an otherwise closed executive session during a competitive RFP process.

The Open Meetings Act is clear and unambiguous regarding the scope of real estate matters that legally justify the City Council’s decision to go into executive session. More specifically, the City Council was legally empowered to go into executive session to discuss the acquisition, disposal, and leasing of real estate. This matter clearly does not contemplate the acquisition or disposal of real estate, so the only potential legal basis for an executive session would be the discussion of a contemplated lease arrangement.

The nature of the relationship is plainly set forth in the RFP statements below:

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<sup>9</sup> *Id* at § 50-14-3(b)(1)

<sup>10</sup> *Mitchell v. State*, 343 Ga.App. 116, 117, 806 S.E.2d 226, 228 (Ga. App. 2017)

<sup>11</sup> *See Cardinale*, *supra*. (When statutory language is unambiguous, judicial construction is not only unnecessary but forbidden.)

<sup>12</sup> *Mannato v. SunTrust Banks Inc.*, 308 Ga.App. 691, 708 S.E.2d 611 (Ga. App. 2011)

“The scope of work for the Civic Center first includes taking over operations and management from the City, then at a later date providing design assist for a renovation project, followed by continuing operations and management of the renovated facility. The selected firm will also provide design assist services for the new arena and then become the operator of the completed facility as part of the contract. In addition, the City is planning on a renovation project for the Water Works. The selected firm will provide design assist services for the renovation and then become the operator of the renovated facility.”<sup>13</sup>

As evidenced by these express terms, the RFP clearly does not involve the acquisition or disposal of real estate, nor does it involve the creation of a landlord-tenant relationship. Instead, the RFP is a solicitation for a professional management firm to provide the city with design and property management services on property the city already owns. The discussion of contemplated design and property management contracts does not fall within an exception to the Open Meetings Act, so the City Council had no legal authority to discuss the RFP in a closed executive session.

Furthermore, even if the RFP did involve exempted lease negotiations, the City Council still violated the Open Meetings Act’s legislative intent by inviting multiple members of the OVG Team to participate in its executive session meeting. The Open Meetings Act is a remedial statute that was intended to: (1) protect the public from closed-door politics, (2) protect against the abuse and misuse of government power, and (3) protect the public’s trust in its government. Given this legislative intent, the requirements of the Open Meetings Act are to be read broadly and, conversely, any exceptions to these requirements are to be interpreted very narrowly. A closed-door discussion of an RFP between the mayor, a quorum of city aldermen, and a competitor for that RFP contract is indisputably contrary to the General Assembly’s legislative intent; especially when another RFP competitor is specifically barred from participating in that discussion.

For the foregoing reasons, the City Council’s discussion of the RFP in closed executive session violated the Open Meetings Act; and the City Council compounded this legal error by inviting the OVG Team to participate in its executive session, which constituted a second violation of the Open Meetings Act.

## II. Savannah’s City Code Cannot Validate an Unlawful Executive Session

As explained in detail above, the City Council has committed two separate violations of the Open Meetings Act, first by discussing the RFP in executive session and then by inviting several members of the OVG Team to make a presentation during that unlawful executive session. The City Council may be tempted to rely on the city’s code of ordinances in an attempt to validate its executive session discussion of the RFP. For the reasons presented below, such legal reliance would be misplaced.

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<sup>13</sup> RFP Section 2.0.

Section 2-4062 of the city's code of ordinances ("Section 2-4062"), which purports to regulate the city's discussions with responsible offerors and revisions to competitive sealed proposals, states the following:

"As provided in the request for proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors."

Ostensibly in accordance with Section 2-4062, the RFP includes provisions stating that the city "reserves the right, in its sole and absolute discretion" to:

1. Discuss a proposal or enter negotiations with any RFP respondent without notice to the other respondents;
2. Commence contract discussions or negotiations without first rejecting all proposals received in response to the RFP; and
3. Use the submitted proposals as a basis for negotiation and to negotiate with one or more RFP respondents on terms other than set forth in the RFP or in any proposal.<sup>14</sup>

Arguably based on the language in Section 2-4062 and the RFP, the City Council included the OVG Team in a closed-door executive session meeting. However, the above-described provisions of the city code and the RFP cannot be interpreted to authorize the City Council to meet with individual RFP respondents in executive session because the Open Meetings Act prohibits such an exercise of local government discretion.

When a state statute and a local ordinance govern the same subject matter, the statute generally trumps the local ordinance pursuant to the constitutional doctrine of preemption.<sup>15</sup> However, because the State can waive all or a portion of its authority to preempt local ordinances, the question of whether a particular local ordinance is preempted by State law is governed by the General Assembly's legislative intent.<sup>16</sup> The General Assembly's legislative intent can be ascertained from specific preemption language within a statute or, when the statute in question lacks preemption language, the legislative intent behind the statute. The Open Meetings Act does not set forth specific preemption language, so the question of whether it

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<sup>14</sup> RFP Attachment C § I.A.3.

<sup>15</sup> *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 507 S.E.2d 460 (Ga. 1998).

<sup>16</sup> *Id.*

prohibited the City Council from discussing the RFP with the OVG Team in executive session is governed by the General Assembly's legislative intent.

It is beyond dispute that the General Assembly intended the requirements of the Open Meetings Act to be broadly interpreted, and for the exemptions from the law's open meetings requirements to be narrowly construed. Furthermore, the courts have found that the legislative intent behind the Open Meetings Act is to prevent abuses of governmental power that jeopardize the public's trust in government. The broad scope and remedial nature of the Open Meetings Act leaves no room for local governments to adopt terms that conflict with its requirement for government meetings to be open to the public. Therefore, any authority conveyed by Section 2-4062 for the City Council to discuss contracts for design and property management services in executive session is preempted by the Open Meetings Act's plain language, which does not provide such an exemption.

Furthermore, the scope of discretion the City Council would have under Section 2-4062 and the RFP document squarely conflicts with the Open Meeting Act's legislative intent. The Georgia Supreme Court has warned that the exercise of absolute and uncontrolled discretion by local governments inherently invites abuses of government power.<sup>17</sup> Section 2-4062 and the RFP document purportedly grant the City Council the "sole and absolute discretion" to change the RFP's terms and standards after proposals have been submitted to favor a preferred RFP respondent. This "sole and absolute discretion" would also empower the City Council to discuss its RFP changes, and begin individual contract negotiations with its preferred RFP respondent, in closed executive sessions. Furthermore, the other RFP respondents might not learn about the individual contract negotiations until after their proposals have been rejected, if then. And even after learning about the city's closed-door negotiations, the other RFP Respondents would not have any way of reviewing the substance of the closed-door discussions, including any changes to the way their proposals were scored. This is exactly the kind of absolute and uncontrolled government discretion the Georgia Supreme Court warned against. Therefore, the Open Meetings Act's legislative intent preempts the use of Section 2-4062 to validate any discussion of the RFP by a quorum of aldermen in executive session, and it certainly preempts any authority to bring individual RFP respondent teams into such a meeting.

This preemption issue is more than an esoteric examination of the law. Based on SMG's information and belief, the OVG Team received the highest RFP score even though:

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<sup>17</sup> *Fulton County v. Bartenfeld*, 257 Ga. 766, 363 S.E.2d 555, 558 (Ga., 1988) (quoting *Arras v. Herrin*, 255 Ga. 11, 334 S.E.2d 677 (1985)) ("As stated in *Arras*, "[a]bsolute and uncontrolled discretion by governing authorities to issue licenses invites abuse, and exercise of discretion by states and local governments must be tempered with 'ascertainable standards...by which an applicant can intelligently seek to qualify for a license...'"").

1. It did not submit any audited financial statements, even though the RFP required three (3) years of audited financial statements; and
2. It did not comply with the RFP's requirements for DBE participation.

The OVG Team's failure to present any audited financial statements as part of its proposal renders that proposal non-responsive to the RFP. As a result, the OVG Team's proposal must be deemed non-responsive to this RFP standard.

Furthermore, in Attachment E, the RFP requires participating DBE firms to "have a current certification with the Georgia Department of Transportation (GDOT) or an approved certifying agency." The RFP warns prospective respondents that failing "to submit the required [DBE] documents shall result in the bid not being read or considered." The OVG Team's proposal lists includes several DBE firms, including its joint venture partner and several DBE subcontractors. Based on SMG's information and belief, many of the OVG Team's proposed DBE firms did not have the "current certifications" the RFP required. Because many of the DBE firms in the OVG Team's proposal were not properly certified, the OVG Team's proposal was non-responsive to the RFP's DBE requirements and it must be disregarded as non-responsive.

For the foregoing reasons, even if Section 2-4062 did empower the City Council to discuss the RFP in executive session, the OVG Team was not eligible to participate in such a meeting because its RFP proposal was not "reasonably susceptible of being selected for award".

To be clear, SMG is not accusing the City Council or any other city official of corruption or any intentional abuse of government power. SMG offers this appeal simply to place the city on notice of the inherent legal deficiencies involved in the City Council's mishandling of the RFP, and to seek an amicable resolution of these deficiencies.

### III. Constitutional Objections

The City Council's discussion of the RFP in executive session violated the Open Meetings Act; and its invitation of the OVG Team into that unlawful meeting constituted a second Open Meetings Act violation. These unlawful actions by the City Council were inherently arbitrary and they violated SMG's constitutionally protected rights to due process of law and equal protection under the law. Consequently, any action by the City Council to award an RFP contract to the OVG Team would also violate SMG's constitutionally protected rights to due process of law and equal protection under the law.

Pursuant to the requirements of O.C.G.A. § 36-33-5, SMG respectfully advise the City Council that it has expended substantial financial sums in support of its RFP proposal. Therefore, SMG stands ready to proceed with legal action against the City Council if the City Council awards the RFP contract to the OVG Team, or otherwise fails to rectify the legal deficiencies set forth in this appeal letter. In the event SMG is forced to pursue litigation, it intends to seek all damages and relief to which it is entitled under Georgia law, including but not limited to monetary damages and attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11

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**IV. Requested Remedies**


Due to the legal deficiencies in the City Council's handling of the RFP, SMG respectfully asks the city to sustain this appeal and to:

1. Schedule a public hearing for SMG's appeal before the Mayor and City Council before the RFP contract is awarded;
2. Disqualify the OVG Team's proposal because it is "non-responsive" because it did not include any audited financial statements and many of its DBE firms did not hold the required certifications;
3. Provide a written response to SMG's written request for RFP scoring clarification, dated April 8, 2019;
4. Provide SMG with a reasonable opportunity to meet with you to identify and discuss any deficiencies in its RFP proposal;
5. Provide SMG with a reasonable opportunity to revise its RFP proposal to address any deficiencies you identify.
6. Defer any action on the RFP contract award until the legal deficiencies set forth in this appeal are addressed and resolved with SMG;

Please do not hesitate to let me know if I may provide you with any additional information or clarify anything in this appeal.

Sincerely,

WILSON BROCK & IRBY, L.L.C.

  
Harold Buckley Jr., AICP, Esq.

  
Larry M. Dingle, Esq.

**Attachments.**

cc: Mr. Doug Thornton, SMG (via email at [doug.thornton@smgneworleans.com](mailto:doug.thornton@smgneworleans.com))  
Mr. Harry Cann, SMG (via email at [HCann@smgworld.com](mailto:HCann@smgworld.com))  
Mr. Miguel Camacho, Brownstone Group (via email at [mcamacho@bstonegroup.com](mailto:mcamacho@bstonegroup.com))  
Mr. Michael Vaquer, The Vaquer Firm (via email at [vaquerfirm@gmail.com](mailto:vaquerfirm@gmail.com))



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**SMG APPEAL OF RFP CONTRACT RECOMMENDATION**

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Cc: Hon. Eddie DeLoach, Mayor (via email at [edeloach@savannahga.gov](mailto:edeloach@savannahga.gov))  
Alderman Carolyn Bell, Post 1 At-Large (via email at [cbell@savannahga.gov](mailto:cbell@savannahga.gov))  
Alderman Brian Foster, Post 2 At-Large (via email at [bfoster@savannahga.gov](mailto:bfoster@savannahga.gov))  
Alderman Van. R. Johnson, District 1 (via email at [AldermanJohnson1@aol.com](mailto:AldermanJohnson1@aol.com))  
Alderman Bill Durrence, District 2 (via email at [bdurrence01@savannahga.gov](mailto:bdurrence01@savannahga.gov))  
Alderman John Hall, District 3 (via email at [jhall@savannahga.gov](mailto:jhall@savannahga.gov))  
Alderman Julian Miller, District 4 (via email at [jmiller03@savannahga.gov](mailto:jmiller03@savannahga.gov))  
Alderman Estella Edwards Shabazz, District 5 (via email at [eshabazz@savannahga.gov](mailto:eshabazz@savannahga.gov))  
Alderman Tony Thomas, District 6 (via email at [tthomas@savannahga.gov](mailto:tthomas@savannahga.gov))  
Mr. Bret Bell, Asst. City Manager (via email at [bbell@savannahga.gov](mailto:bbell@savannahga.gov))  
Jennifer N. Herman, Esq (via email at [Jherman@savannahga.gov](mailto:Jherman@savannahga.gov))



## Purchasing Summary

<b>EVENT #6488</b>	<b>TITLE:</b> Phase 1 of the Arena Operations and Management (Design Assist Services)	<b>ESTIMATED COST:</b> \$87,500.00
<b>TYPE OF PROCUREMENT:</b> RFP	<b>ANNUAL CONTRACT</b> <input type="checkbox"/> <b>ANNUAL MAINTENANCE AGREEMENT</b> <input type="checkbox"/>	<b>ONE TIME PURCHASE</b> <input type="checkbox"/>

**CONTRACT TERM (IF APPLICABLE)**  
April 11, 2019 through February 28, 2022

**S/DBE (IF APPLICABLE)**  
This project was assigned an open DBE goal for a maximum of 15 points. A maximum of six points was awarded to the proposer proposing the highest level of DBE participation at the prime level. A maximum of nine points was awarded to the proposer proposing the highest level of DBE participation at the subcontractor level. The recommended proposer earned the full 15 points for DBE participation. Oak View Group Facilities, LLC submitted its proposal as a joint venture with Pat Mathis Construction Co. (A). Oak View Group Facilities, LLC submitted DBE subcontractor participation in the amount of 75%.

**MATRIX (IF APPLICABLE)**

Proposer	Relevant firm experience and capabilities (25 points)	Team experience and qualifications (15 points)	Strategic Approach (25 points)	Fees (15 points)	DBE Participation (15 points)	Local Vendor Participation (5 points)	Total (100 points)
A Joint Venture between Oak View Group Facilities, and Pat Mathis Construction Company	23.8	12.8	20.6	11.17	15	0	83.37
SMG Venue Services Joint Venture, LLC	25	14.8	23	7.6	9	0	79.40
Global Spectrum LP dba Spectra Venue Management	23.6	13.2	20	15	5.5	0	77.30

### NOTES

The City issued a request for proposals (RFP) for highly qualified companies specializing in the comprehensive operational and management of several city-owned facilities. The facilities identified in the RFP were: the existing Savannah Civic Center, the New Savannah Arena ("Arena"), and the Water Works Pump House.

Upon further evaluation, staff recommends the award of design assistance services for the Arena to the joint venture created between the Oak View Group, LLC and Pat Mathis ("OVG"), in the estimated amount of \$87,500.00. Pursuant to the RFP, staff also recommends a phased approach for additional contracts related to design, operations, and management services. Any future contracts related to this RFP would require additional City Council approval.

- In addition to other duties, OVG provides expert insight to the project team, that will create a more commercially viable and efficient facility by:
- Reviewing design documents after each of the five main design stages: (Predesign, Schematic Design, Design Development, GMP, Construction Documents)
  - Participating in meetings through the design and construction process in order to provide recommendations regarding the operational impact of architectural and systems design
  - Assisting the Owner and Project Team in the planning for, selection of, and procurement of furniture, fixtures and equipment

The method used for this procurement was the request for proposals (RFP), which evaluates criteria in addition to cost. The criteria used for this RFP were relevant firm experience and capabilities, team experience and qualifications, strategic approach, DBE participation, local vendor participation, and fees. The proposals were evaluated on both qualitative and quantitative data. Each proposal had strengths and areas for improvement. This contract is being recommended to the proposer that scored the highest across all six (6) categories.

The proposal was advertised, opened, and reviewed. Delivery: As needed. Terms: Net 30 days. The proposers were:

B.P.	Oak View Group Facilities, LLC (joint venture with Pat Mathis Construction Co.) (Savannah, GA) <sup>(A)</sup>	\$575,000.00*
	SMG Venue Services Joint Venture, LLC (Savannah, GA) <sup>(A)</sup>	\$391,250.00*
	Global Spectrum LP dba Spectra Venue Management (Philadelphia, PA) <sup>(D)</sup>	\$772,500.00*

A pre-bid conference was conducted and nine vendors attended. (A) Indicates local, DBE business. (D) Indicates non-local, non-DBE business. (\*) Indicates the average proposed revenues based on the four scoring scenarios.

Recommend approval.

Local Available: Yes

Total Sent: 700

Total Received: 3

DBE Received: 2

Vendor Federally Debarred/Suspended: No

## Harold Buckley

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**From:** mike vaquer <vaquerfirm@gmail.com>  
**Sent:** Thursday, April 18, 2019 2:23 PM  
**To:** Harold Buckley  
**Subject:** Fwd: Arena Operations and Maintenance

----- Forwarded message -----

**From:** mike vaquer <vaquerfirm@gmail.com>  
**Date:** Mon, Apr 8, 2019 at 9:00 PM  
**Subject:** Arena Operations and Maintenance  
**To:** Eddie DeLoach <Edeloach@savannahga.gov>, Van Johnson Van Johnson <aldermanjohnson1@aol.com>, Bill Durrence01 <BDurrence01@savannahga.gov>, Julian Miller <jmiller03@savannahga.gov>, Estella Shabazz <eshabazz@savannahga.gov>, Carol Bell <cbell@savannahga.gov>, Tony Thomas <aldermanthomas@aol.com>, John Hall <jhall@savannahga.gov>, Brian Foster <bfoster@savannahga.gov>  
**CC:** Martin Sullivan <Msullivan@savannahga.gov>

I am representing SMG International, a respondent on the Arena Operations and Management Contract which is on the City Council Agenda for Thursday's Meeting. I spoke to most of you this afternoon and left messages for several of you and hope to talk tomorrow if possible to discuss this contract.

I met with City Manager Rob Hernandez and Bret Bell this morning and presented them with a list of questions about the methodology, processes and procedures to arrive at the recommendation for award of this important contract. At the same time, I requested that action on this issue be deferred for two weeks to allow staff ample time to respond to these questions, as there were significant changes that were presented as the City moved through evaluation of the three proposals submitted. This was not a simple or straight forward process and many weeks were devoted in an attempt for City staff to understand the financials of these proposals and to work through several iterations of what the individual DBE goals were to be.

I hope that you will be as interested as we are to understand this lengthy process and the rationale presented for considering City-requested changes from the original RFP submissions which significantly altered the process. We hope that we can have a transparent view of this process so that we, and you, can feel confident in making the decision on awarding this very important first aspect of this long term contract.

Here are the questions SMG submitted to the staff this afternoon:

### SMG ARENA RFP QUESTIONS:

-  
**1. How were the fees scored?**

- a. Does the scoring reflect only the price charged for the pre-opening design assist phase during the first 3 plus years?

b. OR, if the scoring is for the entire proposal, what scenario/assumptions were used to determine contractor fees and net return to the City?

**2. How was DBE Participation scored?**

a. Was the formula presented in Exhibit E of the RFP applied? There are inconsistencies/technical flaws in Exhibit E with regard to maximum points, formulas and application to prime contractors vs subcontractors.

b. 75% DBE subcontractor participation is impossible to achieve given the scope of work available and the number of qualified DBE firms in the marketplace. Had this % been realistic, it would seem to impact scoring across the board for all respondents based on the formula communicated in Exhibit E.

c. Did OVG name the firms they will use or just make a blanket statement saying they would achieve the goal of 75%? Have they documented their ability to achieve this % elsewhere?

d. Will OVG be required to follow normal City procurement codes/requirements in sourcing qualified sub-contractors?

e. There was significant dialogue with City reps during the process regarding the use of DBE subcontractors. Did OVG's stated DBE subcontractor participation change significantly during the process, when compared to OVG's stated participation level in their first submittal?

**3. Local Participation:**

a. Why did SMG receive 0 points for local participation? SMG highlighted Symbioscity and Brownstone as major components/partners for the delivery of pre-opening services and ongoing operations.

**4. Financial Qualifications:**

a. Did OVG meet the minimum requirements of the RFP in terms of providing 3 years of audited financial statements?

Thanks and we will see you at Thursday's pre-council meeting.

--

**Mike Vaquer**

**912 655 3748**

**The Vaquer Firm  
Government Affairs Consultants**

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**The Vaquer Firm, LLC is a certified MWBE firm.**

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Mike Vaquer 912 655 3748 The Vaquer Firm Sent from my iPhone. Please excuse any garbled language as this may have been dictated via Siri.