

Stephen G. Larson
Direct: 213.436.4864
slarson@larsonllp.com

November 14, 2022

VIA E-MAIL

Ed Segura, MPA
Purchasing Manager
City of Pomona
Pomona, CA 91766
ed.segura@pomonaca.gov

Re: *Protest of the City of Pomona's Award to Arakelian Enterprises, Inc. dba Athens Services of an Exclusive Franchise Agreement for Residential and Commercial Garbage Recyclable Material and Organic Waste Collection Services*

Dear Mr. Segura:

This office represents Valley Vista Services ("Valley Vista") in connection with the City of Pomona's ("City") December 16, 2021 Request for Proposals ("RFP") for an exclusive franchise agreement for collection, processing, recycling, and disposal of residential and commercial garbage, recyclable material, and organic waste collection services (the "Franchise Agreement"). On October 17, 2022, the City Council approved Resolution No. 2022-194 declaring its intent to award the Franchise Agreement to Arakelian Enterprises, Inc. dba Athens Services ("Athens"). Pursuant to Pomona City Code section 2-990, Valley Vista hereby protests this award of the Franchise Agreement to Athens and requests that the City reopen the RFP process to consider Valley Vista's proposal. It is our understanding that you are the "procurement officer" for the Franchise Agreement for purposes of Section 2-990. If that is not correct, please immediately inform us who has been designated as the procurement officer so that we can direct this protest to them.

As you know, the City initially disqualified Valley Vista from the bidding process following an open letter to the community published January 27, 2022 in Issue No. 150 of *La Nueva Voz*. In the letter, Valley Vista informed the citizens of Pomona about two important developments regarding trash collection in the City. One of those developments was the City's RFP for contracting out all of its waste management services, which Valley Vista called "a major, prudent cost-saving move." In response, City Manager James Makshanoff sent a letter dated February 17, 2022 notifying Valley Vista that it had been disqualified from the RFP bidding process because it failed to get advance permission from the City before publishing what he deemed a "news release."

Valley Vista then sent Mr. Makshanoff a letter on February 22, 2022 apologizing for its inadvertent mistake in not strictly following Section 7.23 of the RFP (the provision Mr. Makshanoff claimed was violated by publishing the open letter), asking that the City reconsider

its decision, and explaining why doing so would be in the best interest of the City and its residents. You rejected that request by email on February 24, 2022, and Valley Vista was subsequently blocked from accessing Planet Bids.

On February 28, 2022 my office sent a letter to Mr. Makshanoff again requesting that the City reconsider its decision to disqualify Valley Vista from the RFP process, pointing out not only that the City was abusing its discretion under the RFP and the Process Integrity Standards, but also that Section 7.23 of the RFP was unconstitutional for a number of reasons. Although my office never received a response to that letter, Valley Vista's access to Planet Bids was subsequently restored without notice or comment by the City. In light of this, Valley Vista's president, David Perez, called you to determine whether a proposal would be accepted, but you reiterated the City's position that any proposal submitted by Valley Vista would be rejected.

Following that communication, Valley Vista ceased all efforts to finalize a proposal to submit in response to the RFP. However, in order to be absolutely certain that any attempt to submit would be futile, Mr. Perez requested that my office reach out to the City Attorney, Sonia Carvalho, on March 11, 2022. Ms. Carvalho responded that she was unavailable to speak with my office until the morning of Monday, March 14, 2022, the day the proposals were due. During that conversation Ms. Carvalho indicated for the first time that a proposal from Valley Vista would *not* be automatically rejected or disqualified; rather the submission would be accepted, and the staff would review and address the RFP violation in their report to the City Council.

Following my office's conversation with Ms. Carvalho, Valley Vista scrambled to put together a proposal to submit by the 3:00 p.m. deadline. At 2:25 p.m., Mr. Perez logged in to Planet Bids to upload Valley Vista's proposal but ran into technical difficulties. Mr. Perez immediately contacted Planet Bid's technical support to determine what to do next, but by the time he finished his call, the bid posting on Planet Bids had expired and was locked for submission. Mr. Perez then promptly reached out to you to describe the issue and offered to submit Valley Vista's proposal via a ShareFile link. You indicated that you would reach out to your team to determine next steps. At 6:01 p.m. you indicated that the City would not accept Valley Vista's submission subject to Section 4.3 of the RFP.

Valley Vista's inability to submit a proposal on time was a direct consequence of the City's repeated and erroneous statements that any proposal submitted by Valley Vista would be automatically rejected based on the unconstitutional application of Section 7.23 of the RFP. The first time the City clarified (or changed) its position was mere hours before the proposal was due, leaving Valley Vista unable to timely submit its proposal due to technical difficulties.

This chain of events not only unfairly prejudiced Valley Vista's ability to submit a proposal, it deprived the City's residents of a fair RFP process to determine the best candidate to be awarded the Franchise Agreement. Had Valley Vista been able to submit its proposal in response to the RFP, or had the City accepted the submission of Valley Vista's proposal via ShareFile link, the City Council would have seen that Valley Vista can provide the same or better services as Athens at a significant savings to the City and its residents.

To begin with, Valley Vista's proposal not only met all of the stated goals of the RFP and procurement process, it demonstrated Valley Vista's ability to meet those goals in the most sustainable and community-friendly manner possible. Among other things, Valley Vista's local yard and facilities would reduce the amount of greenhouse gas emissions and wear and tear on City streets by lowering the number of trucks entering the City. Moreover, awarding the Franchise Agreement to Valley Vista, a family-owned business operating in the City, would ensure the creation of additional sales and utility user taxes—not to mention employment opportunities for Pomona residents—given that Valley Vista would maintain and fuel its fleet locally. And, as the City knows from having worked with Valley Vista for over 10 years, Valley Vista is and has long been the most community-engaged contractor in the City.

Valley Vista's proposal provided all of this at substantial cost savings to the City and its residents. For example, Valley Vista's proposed rate for residential services was \$2.50 a month lower than Athens's proposed rate—which would equate to a minimum savings of approximately \$7.5 million over the course of the Franchise Agreement's term. The City's refusal to even consider the option of obtaining such significant savings for its residents is, at a minimum, a dereliction of duty.

For all the foregoing reasons, as well as the reasons set forth in our February 28, 2022 letter to Mr. Makshanoff (which are incorporated herein by this reference), Valley Vista protests the award of the Franchise Agreement to Athens and requests that the City reopen the RFP process, accept and consider Valley Vista's proposal, and reconsider its award of the Franchise Agreement after giving full and fair consideration to all qualified proposals, including Valley Vista's.

Sincerely,



Stephen G. Larson

cc: James Makshanoff, City Manager
Andrew Mowbray, Finance Director / City Treasurer