

# FRAIM & FIORELLA

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

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November 2, 2005

Mr. John Grook  
*City of Portsmouth*  
801 Crawford Street, 5<sup>th</sup> Flr.  
Portsmouth, VA 23704

Via Facsimile and US Mail

Dear Mr. Grook,

I represent Harbor Center Joint Venture, LLC and Team HCJV in the RFP bid proposal No. 04-054G.

An article ran in The Virginian-Pilot October 12, 2005, which reported that Harbor Center Joint Venture, LLC owed the City nearly \$75,000 in unpaid admission taxes. The article implied that HCJV might owe more taxes pending the outcome of an incomplete audit. HCJV received a letter from the City Treasurer on October 12, the same day, stating that HCJV was current on all taxes. The article was misleading and appeared at the exact time the City is discussing the selection of an operator for the Harbor Center.

The October 12, 2005 article states that, although tax issues are confidential, The Virginian-Pilot somehow acquired the HCJV paperwork. Obviously, someone within the City of Portsmouth released confidential documents to The Virginian-Pilot. The release of a confidential document during the RFP selection process is extremely suspect.

The Virginian-Pilot has run a number of articles in the past year which have been equally misleading. One recurrent issue relates to monthly attendance reports, which HCJV was required to provide to the City. These reports were delivered to City officials on a monthly basis as required by the Contract. The City representatives later claimed that they did not receive the documents and requested the same reports, which were once again given to the appropriate City officials on October 6, 2004. These reports were the focus of questioning during HCJV's RFP oral presentation. One of the City's representatives who personally received the documents was present during the questioning. That official remained silent, although he knew that HCJV provided the documents on time.

On October 26, the City contacted HCJV to request several reports because City officials lost them once again. My clients believe that the questioning about these monthly reports by the RFP selection committee, the misleading press stories surrounding these reports, and the release

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of confidential tax information resulting in an inflammatory story, was orchestrated to create an incorrect and improper bias against them during the selection process.

It has further come to our attention that one of the bidders on the RFP met with City officials and/or voting members of the RFP committee after the September 2, 2005 RFP deadline and before the oral RFP presentations. Any such meetings are a violation of the RFP instructions, page eighteen, paragraph I, entitled "Ethics."

In addition, one of the voting members for the committee represents an adverse interest in a legal matter involving some of the members of HCJV. This same individual previously expressed a bias against members of HCJV in a letter related to that legal matter. We are happy to make that letter available for your review.

Further, my clients understand that Todi may be a partner/participant with a company submitting for this RFP. We would like to know whether any citizen member of the RFP committee has personal ties to anyone associated with the Todi Festival, as such a relationship would seemingly create a conflict of interest.

Finally, the recent November 1, 2005 article in The Virginian-Pilot states that a "finalist" has been selected. Kenneth Wheeler is quoted as saying that negotiation with the "finalist" is proceeding "so far, so good." Section VII of the RFP, Evaluation and Award Criteria, requires the selection of two or more offerors for subsequent negotiations. The RFP further makes reference to compliance with Portsmouth City Code §12-276(d). Portsmouth City Code §12-276(d) reads in pertinent part as follows:

Selection shall be made of two (2) or more offers deemed to be fully qualified.

Negotiation shall then be conducted with each of the offerors as selected...after negotiations have been conducted with each offeror so selected, the purchasing agent shall select the offeror, which, in his opinion, has made the best proposal.

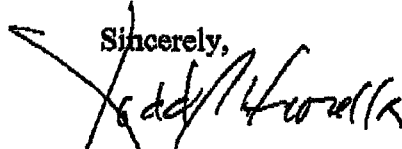
Assuming the November 1, 2005 article is accurate, negotiating with a single finalist violates §12-276(d) of the Code.

HCJV believes that the RFP has been compromised and requests that the appropriate actions be taken to remedy these issues.

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I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Fiorella". The signature is written in a cursive style with a large, sweeping initial "T".

Todd M. Fiorella

TMF/acm

cc: Dr. Patton (*Via Facsimile 393-5241*)

cc: Kenneth Wheeler (*Via Facsimile 393-5241*)

cc: A. William Reid

cc: Kenneth Young



**CITY OF PORTSMOUTH, VIRGINIA**

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November 4, 2005

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**Re: RFP Bid Proposal No. 04-054G**

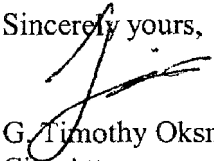
Dear Todd:

Your letter of November 2 has been referred to me. We have started a detailed inquiry into all matters raised in your letter. Once the inquiry is complete, I will provide a response to you.

Thank you for bringing these concerns to the City's attention.

With kind regards, I am

Sincerely yours,

  
G. Timothy Oksman  
City Attorney

GTO:sts  
cc: James B. Oliver, Jr., City Manager  
Bryan K. Meals, Esq.