



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

Date: September 15, 2016
To: Recreation and Park Commission
Through: Philip A. Ginsburg, General Manager
Dana Ketcham, Director of Property Management, Permits and Reservations
From: Cassandra Costello, Property Manager
Subject: Nonresponsive Determination and Termination of Request for Proposals for the Palace of Fine Arts

Agenda Item Wording

Discussion and possible action to confirm the determination that the response from San Francisco Museum at the Palace is not responsive to the Palace of Fine Arts Request for Proposals (RFP), and to terminate the Palace of Fine Arts RFP.

Strategic Plan

Strategy 1: Inspire Public Space

Objective 1.2 Strengthen the quality of existing parks and facilities

Objective 1.4 Preserve and celebrate historic cultural resources

Background

The Recreation and Park Department (the “Department”) commissioned a Conditions Assessment Study (the “Study”) (**Exhibit A-Conditions Assessment Study**) in 2011 for the Palace of Fine Arts (the “Palace”) in preparation for the departure of the Exploratorium and the need to find a replacement tenant. The Study provided detailed information on a variety of areas including: architectural analysis, historic preservation, structural integrity, transportation, and operating and building systems and concluded that the Palace is in need of significant minimal upgrades of at least \$20 million.

In 2012, the Department assembled the Palace of Fine Arts Advisory Committee (the “Advisory Committee”) (**Exhibit B-The Advisory Committee**) to provide the Department with objectives and goals for future use of the Palace. The Department then commenced a two staged competitive process, starting with a Request for Concept Proposals (RFCP) (**Exhibit C-Request for Concept Proposals and Supporting Documents**) in 2014, followed by an invite only Request for Proposals (RFP) (**Exhibit D-Request for Proposals**) in 2015. The bidding documents incorporated information from both the Study and the Advisory Committee process.

In May of 2015, the Department received the following proposals in response to the RFCP:

-TMG (theater, lodging, event and exhibit space)
-SF Museum at the Palace (SFMAP) (theater, museum, dining)
-Equity Community Builders (ECB) (marketplace, lodging)

-Bladium (theater, sports facility)
-Arcadium (theater, arts and wellness)
-Global Center for Arts and Cultures (performing arts, theater, event space)
-The Bay Club (sports club, theater)



In November of 2015, based on scores (**Exhibit E-Scores from RFCP**) from an independent selection panel (the “Selection Panel”) (**Exhibit F-Selection Panel Members**), the Recreation and Park Commission invited the top three scoring respondents, TMG, ECB and SFMAP, to participate in the RFP. Although SFMAP scored significantly lower than TMG and ECB, especially in the financial capacity category, the Commission invited SFMAP to the RFP stage so the Commission could have a greater variety of uses to consider for the RFP stage.

Midway through the RFP process, two of the three invited respondents, TMG and ECB, informed the Department that they would not be submitting final proposals. Their proposals included lodging and were reliant on leveraging State Historic Tax Credits as part of their individual financing strategies. After further analysis, both TMG and ECB each independently concluded that the ability to obtain the necessary tax credits was not sufficiently certain due to potential historic preservation requirements that could significantly limit or eliminate the windows necessary for lodging.

Notwithstanding the withdrawal of two of the three respondents, the Department continued with the RFP to allow SFMAP to submit a proposal for consideration.

Response to the RFP

The Department received a response to the RFP from SFMAP on May 20, 2016 (the “Submittal”) (**Exhibit G-SFMAP Submittal**). The uses contemplated in the Submittal consisted of a number of elements, primarily, a museum and exhibits, education, a theater and dining opportunities.

Nonresponsive Determination

The RFP states that “only submittals that are complete, responsive and meet all requirements of the RFP, including without limitation, the minimum requirements, will be evaluated during the selection process” (see RFP page 13). Accordingly, Department staff thoroughly reviewed the Submittal and found that it was nonresponsive for the reasons described below. The Selection Panel reviewed the Submittal and the Department’s analysis and affirmed the Department’s finding that the Submittal was non-responsive. The Selection Panel wrote a letter to the Department (**Exhibit H-Letter from Panel to Department**) specifically noting the following:

- The RFP required the respondent to have liquid assets to fund the higher of \$1 million or the anticipated preconstruction expenses and the Submittal did not demonstrate that SFMAP has the required liquid assets.
- The RFP required the respondent to have written commitments from donors equal to at least 50% of the needed donations and the Submittal failed to provide evidence of any donations even though it indicated that significant amounts of donations were required to complete their financing.
- The Submittal also did not include responses to several required provisions in the RFP regarding history and experience of the organizers of SFMAP.

Protest from SFMAP of Nonresponsive Determination and Department Finding

Department staff informed SFMAP of the nonresponsive determination in writing on July 14, 2016 (**Exhibit I-Non Responsive Letter from Department to SFMAP**). Under the RFP, SFMAP had the right to protest the determination and the Department received a written protest from them on July 27, 2016 (**Exhibit J-the Protest from SFMAP to Department**). Department staff carefully reviewed the Protest. The Department denied the Protest on August 5, 2016 stating that SFMAP did not have a valid basis for their Protest (**Exhibit K-Department Response to Protest**).

Discussion of Nonresponsive Elements of the Submittal

- Failure to Have Liquid Assets Sufficient to Fund Preconstruction Expenses

The RFP provides: “At the time of the submittal of RFP, Respondent will be required to demonstrate that it has available Confirmed Funding (as defined below) in hand necessary to fund the development expense through the approval of the project (inducing environmental and planning review but excluding construction expenses) (‘Preconstruction Expenses’). A response will be deemed nonresponsive if this condition is not met.” Confirmed Funding is defined to include “unencumbered (i) available liquid assets, (ii) confirmed lines of credit and (iii) other available fund[s] that the Selection Panel concludes evidence clearly available funding.”

The Submittal and Protest did not demonstrate that SFMAP has liquid assets to fund the higher of \$1 million or the anticipated preconstruction expenses. In the Protest, SFMAP indicated that its preconstruction expenses are estimated to be \$2,073,798.

In the Submittal, SFMAP provided the Department with a letter from the Gordon and Betty Moore Foundation (the “Moore Foundation”) which stated that the Moore Foundation would consider the feasibility of grant support in July of this year. No financial commitment or grant was made and no evidence that grant funds, if they became available, were immediately available for predevelopment expenses. Because the letter was clearly something short of a grant, there were no statements regarding potential contingencies or conditions for release of funds.

The Protest included a new letter dated July 27, 2016 from the Program Officer of the Moore Foundation indicating that the Executive Committee of the Moore Foundation endorsed a proposal to provide funding of \$2.5 million to the SFMAP in the form of a grant and/or program-related investment. The letter further indicates that the Foundation’s Board of Directors would take action on the Executive Committee’s recommendation on August 27, 2016, and that until that action, the endorsement “does not constitute a guarantee.” The Department received a third letter on September 7, 2016 from the Moore Foundation (**Exhibit L-September 7 Packet**). This latest letter says that the Moore Foundation has decided to invest \$2.5 million in SFMAP and that the “funds will be available for general pre-construction costs for the project. SFMAP will be able to start drawing on these funds as soon as SFMAP and the Commission have entered into an exclusive negotiating agreement.” It is not clear whether the Moore Foundation and SFMAP intend to enter into a grant agreement for these funds that would constitute a legally binding commitment.

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SFMAP has had since November 2015 to raise the required liquid assets. The Submittal, and the additional information provided in the Protest, did not fulfill this RFP requirement. The Department understood that significant additional funding would be required during the negotiation and entitlement process, but established a minimum liquid amount required to be in hand at the time responses were due. This requirement was clearly not met. With a written grant agreement, the Department would likely consider the funding from the Moore Foundation as

“Confirmed Funding” under the terms of the RFP (although the intent under the RFP was to have something akin to cash on hand and not a pledge with conditions, such as entering into an ENA). But it remains unclear whether these funds are sufficient to cover all of the predevelopment expenses, which would include all design and entitlement work and all fundraising and other necessary costs to break ground on the proposed \$100+ million project. The failure to meet the minimum funding requirement by the time of the Submittal or even the Protest does not instill confidence in the ability of SFMAP to succeed in raising all of the funds needed to embark on such an ambitious development proposal.

- Failure to Have Written Commitments from Donors Equal to At Least 50% of Needed Donations.

Under RFP Section VII.B.5, SFMAP was required to show it had secured funding commitments to cover at least 50% of the total fundraising needed. This requirement was reiterated in RFP Section X.B.6, which required a letter from individual donors confirming that the specified funding is available (and detailing any conditions for release) and, for general public fundraising, evidence that the money is held in an escrow account or other form of bank account. The RFP further required SFMAP to submit a proposed fundraising plan and schedule for the remainder of the funds, with some evidence to indicate the proposed fundraising is obtainable. As of today, these requirements have not been met.

The Submittal was not clear in the fundraising needs of SFMAP – one section suggested \$60.5 million in funding will come from philanthropy whereas another section indicated that \$25.7 million will come from grants and sponsorship offsets. Meanwhile, the Protest states that SFMAP will rely on \$23 million of fundraising for a project it estimates will cost approximately \$115 million before tenant improvements. Now yet another fundraising number has been provided in the September 7 letter to this Commission: on page 3, SFMAP indicates an intent to raise \$25 million in the next 3 years, with a goal of \$100 million in 5 years. This letter further provides (page 6):

To realize SFMAP as a 21-st century museum in an early 20th-century historic building, we will need to raise a lot of money. The likely figure is \$100 million (with significant in-kind technological contributions to infrastructure and exhibition design) plus the operational costs of a full-fledged, world class museum.

There is no doubt the SFMAP needs to raise a lot of money. But relying on the number set forth in the Protest of \$23 million, SFMAP should have submitted written commitments of at least \$11.5 million under the terms of the RFP. The Protest suggests that SFMAP has met this requirement based on a letter dated May 20, 2016 from the Republic Family of Companies (\$10 million) and the funds from the Moore Foundation (\$2.5 million – which, as noted above, will be used for predevelopment costs).

In the May 20, 2016 letter, Richard L. Kramer on behalf of the Republic Family of Companies stated that “subject to my committee’s conditional and contingent review, we will make an up to \$10 million pledge for the design and construction of the museum complex.” This plainly does not meet the RFP requirements. The amount of the potential donation is unclear as it states that it would be “up to” \$10 million. Because it is not a firm commitment, there are no conditions listed for the release of funds (as required under the RFP for any conditional pledge). Also, the nature of the pledge is unknown. Given that the Republic Family of Companies is not a charitable or philanthropic organization and given the lack of additional information, it is unclear whether this potential pledge might take the form of a cash investment, the provision of services, or some other

form of in-kind contribution. In short, the Republic Family of Companies letter is not a funding commitment with specified conditions for the release of funds. It is nothing more than a promise to consider making a future contribution of up to \$10 million (it could be less) for design and construction of the project. The Department cannot consider this evidence of SFMAP having commitments equal to 50% of its fundraising needs at the time of its Submittal. In addition, the September 7 submittal from SFMAP does not mention this potential funding, or address the Department's reasons for determining that the letter did not satisfy the requirements of the RFP.

The Protest makes much of the fact that any donation at this point in the process would necessarily include caveats and conditions. The RFP recognized this fact – which is why it requires a list of the conditions that would be required in order for the funds to be distributed. There is a significant difference between the promise to consider making a future grant or pledge, subject to unspecified conditions or contingencies, and having actually made a grant or entered into a grant agreement, with the release of funds being subject to specified conditions.

In sum, the \$2.5 million from the Moore Foundation and the letter of a potential contribution from the Republic Family of Companies is far from the 50% fundraising commitment required by the RFP.

Further, we note that the Submittal and the Protest did not include a fundraising plan or a timeline showing when the remaining funds will be raised, or any evidence to indicate why the Department should have confidence in SFMAP's ability to raise the necessary remaining funds within a quick timeframe. As noted above, SFMAP indicated in its September 7 letter that it would try to raise \$25 million in 3 years and \$100 million in 5 years and presented for the first time a fundraising plan. The proposed fundraising plan has an extremely long timeline. A "feasibility study" for fundraising and engaging a consultant does not begin until month 6 and a "campaign kick off" does not begin until month 12.

SFMAP's fundraising failure, when given the opportunity to raise funds between November 2105 and September 2016, is problematic. Considering SFMAP's large fundraising needs and inability to raise dollars (other than the Moore Foundation) as of the date of this memo, the Department does not have confidence that SFMAP will be able to move forward quickly to restore and activate the Palace. Staff believes that more fundraising should have been done in the past 10 months to evidence that the SFMAP proposal is viable and achievable. Furthermore, the Department has significant concerns about the amount of time likely needed by SFMAP to raise these funds before the project can be deemed viable. Meanwhile, if exclusive negotiations proceed with SFMAP, the Department needed renovation of the Palace will be delayed a number of years at a minimum and the Department could miss out on other, more viable, opportunities.

- Omission of Other Required Information

The Submittal did not include information required by several provisions in the RFP. While the Department understands that SFMAP is a newly formed organization, it still must adhere to all of the requirements of the RFP, including the many sections requesting information regarding the development experience and past projects of SFMAP and its members or venturers. See RFP Section X. B (7) on page 26 which required financial statements, real estate portfolio, pipeline projects and lender relationships for SFMAP and each joint venture participant; and RFP Sections X.B(8)(b) and (c) on pages 28 and 29 requiring significant information regarding the development history and qualifications of SFMAP. The RFP did not exempt new entities or nonprofit entities from these requirements, and specifically asked for information relative to the organization and its

joint venture partners so as to obtain needed information about financial qualifications and development experience even if a new entity was to be formed. SFMAP, in its Submittal and again in the Protest, argues that these RFP Sections were clearly intended for for-profit entities and are not applicable to a 501(c)(3) organization. We find that there is no basis for this allegation.

This information was requested so that the Department could confirm that the selected respondent, either for profit or nonprofit, had all of the finances and skills and development experience needed to merit the significant time and monetary commitments to be made, by both the Department and the respondent, in proceeding to the next level and negotiating binding transaction documents and holding the property exclusively for the selected respondent for a period of time. The RFP standards were high, for good reason. The Department needs assurance that the selected respondent can complete the proposed project, both from a financial perspective and from a development perspective. The Submittal failed to provide that assurance. Instead it opted to state that the requested information was not relevant – and as a nonprofit entity – remains not relevant.

The Protest acknowledges that SFMAP is a newly formed entity with no current or past development experience, and no financial records or relationships to discuss or disclose. Having a funding track record and development experience is not a for-profit versus non-profit issue. While SFMAP is willing to engage numerous qualified professionals, including architects, engineers, planners, lawyers, and contractors – and it lists many of these entities in the Submittal - the ability to hire qualified professionals is different than having organizers with the demonstrated ability to complete a complex development project requiring significant fundraising in a historic structure.

Should SFMAP remain an interested party in the future for a long term lease opportunity at the Palace and should it obtain the necessary financial requirements and provide information regarding the project team's relevant experience, among other items, it is welcome to contact the Department and participate in any future bidding processes.

Recommendation

The Department recommends that the Commission support staff's determination and find the response from SFMAP to be nonresponsive and terminate the RFP. This action will close the current RFP process, and allow the Department to consider alternatives for this site.

Interim Activation

The Department will continue the existing lease agreements with ihangar in the former Exploratorium space and the Palace of Fine Arts League, which operates the Palace Theater. This will ensure that the entire building is occupied and active and that revenues remain steady.

Next Steps

Should the Commission support staff's recommendation, staff will restart efforts to consider alternatives and speak with other parties about the building and available opportunities. If research indicates that a new RFP is warranted, staff will explore that option and come back to the Commission for approval.

Looking forward, the Department has hired the historic preservation firm Carey and Company to do further historic analysis of the Palace of Fine Arts Building. The results of this analysis will help guide the conversations around allowable modifications to the building. This information will help guide future RFP's and conversations with interested parties.

Exhibits:

Exhibit A-Conditions Assessment Study

Exhibit B-The Advisory Committee

Exhibit C-Request for Concept Proposals and Supporting Documents

Exhibit D-Request for Proposals

Exhibit E-Scores from RFCP

Exhibit F-Selection Panel Members

Exhibit G-SFMAP Submittal

Exhibit H-Letter from Panel to Department

Exhibit I-Non Responsive Letter from Department to SFMAP

Exhibit J-Protest from SFMAP to Department

Exhibit K-Department Response to Protest

Exhibit A-Conditions Assessment Study

Link to Conditions Assessment Study:

<http://sfrecpark.org/wp-content/uploads/PFA-FINAL-Phase-I-Report-PART-ONE.pdf>

<http://sfrecpark.org/wp-content/uploads/PFA-FINAL-Phase-I-Report-PART-TWO.pdf>

Exhibit B-Palace of Fine Arts Advisory Committee Members

Palace of Fine Arts Advisory Committee

Supervisor Mark Farrell, San Francisco Board of Supervisors

Commissioner Allan Low, Recreation and Park Commission

Jan Berckfeldt, Maybeck Foundation

Scott Maybeck Nittler, Maybeck Foundation

Richard Pettler, Maybeck Foundation

Hans Baldauf, Maybeck Foundation

Commissioner Denise Bradley Tyson, Film Commission, formally with the Museum of the African Diaspora

Ariel Kelley, Marina Community Association

Don Young, D.R. Young Associates

Mike Martin, America's Cup 34

Ferris Ferdon, Marina Merchants

Lori Brooke, Cow Hollow Association

Doug Overman, Golden Gate National Park Conservancy

Jon Ballesteros, SF Travel

John Lum, San Francisco Museum and Historical Society

Jim Lazarus, San Francisco Chamber of Commerce

Lisa Pagan, Mayor's Office of Economic and Workforce Development

Gary Strang, Principal of GLS Landscape Architecture

Ike Kwon, ED Academy of Sciences

Deirdre Araujo, Exploratorium

Tula Mouroufas

Consultants

Lynn Sedway, Sedway Consulting

Kelly Ishida Sloan, Senior Associate, EHDD

Marc L'Italien, Principle, EHDD

Exhibit C-RFCP and Supporting Documents

Link to the RFCP and supporting documents:

<http://sfrecpark.org/about/partnership-opportunities/palace-of-fine-arts-request-for-concept-proposals/>

Exhibit D-Request for Proposals

Link to RFP and supporting documents:

<http://sfrecpark.org/wp-content/uploads/PFA-RFP-Final-with-Updated-Cover.pdf>

Exhibit E-Selection Panel Scores

Proposal Name	Public Access	Financials	Compatibility with the Palace and Neighborhood	Consistency with Dept. and Advisory Committee's Goals	Proposed Use	Public Input	Gross Total Score	Score
	(120 possible points)	(120 possible points)	(120 possible points)	(90 possible points)	(120 possible points)	(30 possible points)	600 possible points	100 possible points
The Maybeck Center at the Palace of Fine Arts	98	108	94	75	105	25	505	84
Palace of Fine Arts-San Francisco Arts, Crafts, Community and Hospitality	94	109	93	76	106	26	504	84
SFMAP Consortium: Response to Request for Concept Proposals for the Palace of Fine Arts	91	52	81	65	89	25	403	67
Center for Global Arts and Cultures	89	21	64	44	82	23	323	54
The Arcadium San Francisco	79	40	66	54	59	19	317	53
The Bay Club at the Palace of Fine Arts	49	90	54	50	53	18	314	52
Bladium Sports and Fitness Club Proposal for the Palace of Fine Arts RFCP	66	56	61	54	51	16	304	51

Exhibit F-Selection Panel Members

Name	Experience and Affiliations
Jim Maxwell	<p>Past President of the Chestnut Street Merchants Association</p> <p>Resident of the Marina</p> <p>Past President of S.F. Council of District Merchant Associations</p> <p>Owner of a local, Marina District based architecture and planning business, "Architects II"</p>
Paula Collins*	<p>Founder of WDG Ventures, a real estate development company</p> <p>Executive Director and Founder of the Presidio Bank in San Francisco</p> <p>Chair of the Presidio Trust Board</p> <p>Board member of the Glide Foundation</p> <p>Past board member of the Yerba Buena Center for the Arts, Special Olympics for Northern California, and BRIDGE House Corporation</p>
Gail Hunter	<p>Vice President of Public Affairs and Event Management for the Golden State Warriors</p> <p>Leads the Warrior's community engagement efforts with the proposed entertainment complex on Piers 30-32 and Seawall Lot 330.</p> <p>Over two decades of experience in professional sports administration</p> <p>Active member of Women In Sports and Events (WISE)</p>
David Wessell	<p>Principal and CEO of Architectural Resources Group Conservation Services</p>
Doreen Woo Ho	<p>35 years of commercial and consumer banking experience</p> <p>Port Commissioner</p> <p>Former President, CEO and Director of United Commercial Bank and President of Community Banking</p>

	Member of the U.S. Bancorp Board of Directors Board member of the San Francisco Opera, Committee of 100 and the Asian Pacific Islander American Scholarship Fund Advisory Board
Dean Macris	Former Director of Planning for San Francisco for over two decades Expertise in urban planning and architecture

*Paula Collins participated only in the RFCP panel and not the RFP panel

Exhibits G-L are attached:

Exhibit G-SFMAP Submittal

Exhibit H-Letter from Panel to Department

Exhibit I-Non Responsive Letter from Department to SFMAP

Exhibit J-Protest from SFMAP to Department

Exhibit K-Department Response to Protest

Exhibit L-September 7 Packet