

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement



September 26, 2008

TO ALL INTERESTED PARTIES:

Subject: **Notice of Protest**
Solicitation No.: DCAM-2008-R-1010
Caption: Eastern Market Square Manager

Dear Sir or Madam:

This serves as notification to all offerors of a protest filed against the subject solicitation. The following information is relative to the protest filed:

1. On September 22, 2008, the Office of Contracting and Procurement received notice from the Office of the Attorney General of a protest to the above subject solicitation. The protest, Protest Number P-0785, was filed with the Contract Appeals Board on September 18, 2008 (copy attached).
2. The protestor is: Eastern Market Venture, Inc.

Further inquiries or communication regarding the protest should be made directly to the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, DC 20005. Telephone: (202) 727-6597.

Sincerely,

A handwritten signature in blue ink that reads "Jim Marshall".

Jim Marshall
Contracting Officer

Attachment

DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

THE PROTEST OF EASTERN MARKET VENTURE, INC. OF THE SOLICITATION
FOR A NEW MARKET MANAGER FOR EASTERN MARKET SQUARE

EASTERN MARKET VENTURE, INC.
c/o Richard D. Cohen, Esq.
2141 Industrial Parkway; Suite 200
Silver Spring, MD 20904
(301) 680-9000 - phone
(301) 680-9001 - facsimile

PROTESTOR,

Under Solicitation # DCAM-2008-R-1010, as amended.

STATEMENT OF PROTEST

Eastern Market Venture, Inc. ("EMV"), by and through its undersigned representative, hereby files its protest of Solicitation # DCAM-2008-R-1010 and in support thereof states as follows:

BACKGROUND

1. EMV is a District of Columbia Corporation whose sole business involves its master tenancy and role as market manager responsible for overseeing operations of the historic Eastern Market located at 225 7th Street, SE, Washington DC (hereinafter referred to as the "Premises").

2. The Premises is commonly known as the Eastern Market and has been owned by District for hundreds of years.

3. The Premises has been or operated by EMV as master tenant and market manager for approximately the past seven (7) years.

4. The Premises is subject to the Eastern Real Property Asset Management and Outdoor Vending Act found in District of Columbia Code (the Eastern Market Act”).

5. EMV’s tenancy and management of the Eastern Market is governed by a Lease and Property Management Agreement dated December 21, 2001, a First Amendment and Extension of Lease and Property Management Agreement dated January 1, 2003, a Second Amendment and Extension of Lease Property Management Agreement dated May 1, 2004, a Third Amendment and Extension of Lease and Property Management Agreement dated September 14, 2007 and a Fourth Amendment and Extension of Lease and Property Management Agreement dated and June 27, 2008 (hereinafter collectively referred to as the “Lease”). A true and correct copy of the Lease is attached hereto and is expressly incorporated by reference.

6. The Lease provided EMV an option term to extend the initial term of the Lease for a period of five (5) years from January 1, 2008 through December 31, 2012.

7. EMV timely notified the District in writing of its intent to exercise the option term by letter to the District dated April 11, 2007 sent by certified mail, return receipt requested. A copy of such mailing is attached hereto and made a part hereof.

8. On or about April 30, 2007, the Eastern Market building was partially destroyed by a fire.

9. Following the fire the District failed and refused to honor EMV’s option term in violation of the Lease and failed to provide any written response to EMV’s letter exercising the option term.

10. Following the fire the District failed to negotiate in good faith with EMV concerning its five year option and advised EMV that it had no intention of discussing or entertaining a five year extension with EMV under any circumstances.

11. Following the fire the District further subjected EMV to duress and other strong-arm tactics designed to force EMV to agree to new, interim short-term lease arrangements and undertake additional managerial responsibilities in connection with the lease and operation of the Premises and a temporary structure known as the East Hall which was erected by the District to house the displaced merchants of Eastern Market.

12. At all times following the fire, EMV maintained its rights with respect to the existence of the five year option term and so advised the District both verbally and in writing on multiple occasions.

13. EMV's current interim agreement with the District to oversee the Premises (which agreement makes reference to EMV's ongoing dispute concerning the option term) is scheduled to end December 31, 2008.

ISSUANCE OF RFP

14. The District recently issued a request for proposals under Solicitation #DCAM-2008-R-1010 (the "RFP") seeking to retain a new market manager for the Premises and Eastern Market Square. A copy of the solicitation is attached hereto.

15. The Office of Contracting and Procurement issued the RFP and the Office of Property Management is charged with administering the RFP.

16. Pursuant to the RFP, the District seeks to replace EMV as the tenant and market manager of the Eastern Market prior to the time EMV's option term would have otherwise expired on December 31, 2012.

17. Responses to the RFP were initially due to the District on or before September 16, 2008.

18. The District thereafter issued Amendment #DCAM-2008-R-1010-001 extending the closing date of the RFP to October 7, 2008 and requiring any written questions to the RFP be submitted by September 23, 2008. A copy of the Amendment is attached hereto.

19. The solicitation remains open as of the date of this protest.

20. On or about August 14, 2008 a pre-bid meeting was held concerning the RFP and numerous potential bidders, including EMV, were in attendance.

21. One or more of the potential bidders in attendance at the meeting were parties who have been previously involved in vending or other activities at the Eastern Market for many years.

22. According section 6(c) of the Eastern Market Act any entity having an ownership, management or fiduciary interest in any activity subject to the management of the market manager shall be ineligible to be selected as market manager.

23. EMV believes that one or more of the registered respondents to the RFP are ineligible as a matter of law to act as market manager or respond to the RFP.

PROTEST POINTS

24. EMV is an aggrieved party entitled to file a protest to the Contract Appeals Board because its rights under the existing Lease and its economic interests under the Lease will be adversely affected if the RFP process is allowed to continue and the District is permitted to replace EMV before December 31, 2012.

25. Alternatively, EMV is a prospective bidder on the RFP and should not be handicapped by being forced to compete with one or more parties who are ineligible to act as market manager under the Eastern Market Act as a matter of law and should be proactively disqualified from the bid process

26. EMV stands to lose significant income if the RFP process is allowed to continue and its Lease is terminated prior to December 31, 2012.

27. EMV's protest is timely in that the RFP remains open as of the date hereof and responses to the RFP are not due until October 7, 2008.

28. EMV requests that the RFP process be immediately halted until such time as EMV's rights to an option term ending December 31, 2012 under the existing Lease may be determined. EMV will be irreparably harmed if the RFP process is allowed to continue and its replacement is selected.

29. EMV further requests that any parties ineligible to act as market manager under the Eastern Market Act be excluded from the bid process proactively or, alternatively, the RFP process be immediately halted until such time as the eligibility of all prospective bidders can be established.

30. No compelling reason exists requiring the RFP process to continue while this protest is pending as qualified management is currently in place to facilitate the ongoing management and operation of the Premises while the protest is pending. EMV has acted as the market manager for past +/- 7 years and the Premises would not be adversely affected in any manner if the RFP process was delayed while a determination is made by the Board.

31. EMV requests the right to conduct discovery in connection with this matter. Discovery will be essential as the frequent change in personnel at the Office of Property Management ("OPM") has resulted in a situation where many of the individuals with personnel knowledge of the facts relevant to these matters are no longer employed by OPM. In fact, during EMV's tenure as market manager, it has been forced to coordinate with four (4) different Directors of the Office Property Management and five (5) different OPM employees who acted as Eastern Market coordinator on behalf of OPM.

32. EMV is ready, willing and able to perform all of its obligations under the Lease through December 31, 2012 and EMV seeks an order that its Lease and right to occupy the Premises and/or act as market manager should not expire until December 31, 2012. This cannot happen if the RFP process is allowed to continue.

33. The District's refusal negotiate in good faith with EMV and/or to honor EMV's option term was, upon information and belief, arbitrary and capricious, without legal justification and designed to facilitate the District's expressed desire to replace EMV before the scheduled expiration of the option term.

34. In determining the appropriate remedies in connection with this protest, EMV asks the Board of Appeals to consider the totality of the circumstances and how the District has dealt with EMV following the fire at Eastern Market.

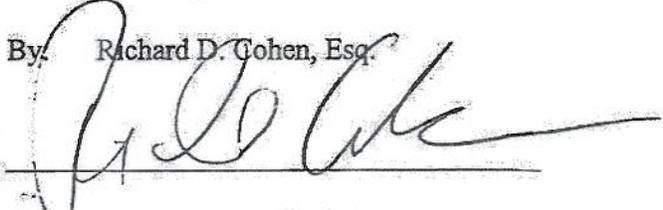
35. Specifically, throughout the term of the Lease, District has committed willful and/ or intentional and/or negligent acts, including but not limited to the following: (a) conducting private negotiations with EMV's sub-tenants to the exclusion of EMV; (b) failing and refusing to sign and return sub-lease agreements to EMV; (c)

engaging in operational acts and decision-making regarding the operation of the Premises without ever consulting or advising EMV; (d) changing responsible OPM personnel so frequently that no consistent method of operation could be implemented at the Premises, all of which have had the effect of undermining EMV's ability to effectively manage the Premises in accordance with the Lease and cast EMV in a bad light.

36. The District knew or should have known that its conduct would cause damage to EMV and undermine its ability to operate the Premises in accordance with the terms of the Lease.

Respectfully submitted on behalf of Eastern
Market Venture, Inc.

By: Richard D. Cohen, Esq.



Law Office of Richard D. Cohen
2141 Industrial Parkway; Suite 200
Silver Spring, MD 20904
(301) 680-9000 - phone
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A copy of the foregoing THE PROTEST OF EASTERN MARKET VENTURE, INC. OF THE SOLICITATION FOR A NEW MARKET MANAGER FOR THE EASTERN MARKET SQUARE, Solicitation # DCAM-2008-R-1010, was served by overnight delivery upon the following parties this 17th day of September, 2008

1. Office of Contracting and Procurement
441 4th Street, NW; Suite 700 South
Washington, DC 20001

2. Office of Property Management
441 4th Street, NW; Suite 1100 South
Washington, DC 20001

A handwritten signature in black ink, appearing to be "P. D. V.", written over a horizontal line.