

BEFORE THE PROCUREMENT APPEALS BOARD

IN RE:)
Nashville Adventure)
Park)
_____)

BEFORE:
THE BOARD OF PROCUREMENT
September 27, 2017

1 APPEARANCES:
2 For the Appellant:
3 Devinder Sandhu, Pro Se
4 Board Members:
5 Michele Donegan
6 Scott Potter
7 Talia Lomax-O'Dneal
8 Nikki Eke, Esq.
9 Nancy Whittemore
10 Monica Fawksonton
11 Michelle Lane
12 Jeff Gossage
13 Macy Amos
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None.		

1 MS. O'DNEAL: I'm going to call
2 the meeting to order for the Procurement
3 Appeals Board Hearing. For the record, I'd
4 like to let everyone in the room know that we
5 do have a court reporter here today, and she
6 will be taking notes and doing the
7 transcription of today's events. So if
8 you're called upon to speak, please identify
9 yourself so that she knows who is speaking
10 and she is able to take note of that in her
11 notes.

12 With that, first of all, I would
13 like to turn this over to Nikki Eke just for
14 -- to do a reading of the appeals decision
15 announcement. And Nikki Eke represents me
16 today as the attorney for the Procurement
17 Appeals Board.

18 MS. EKE: Thank you.

19 Appeals -- Appeal of Decisions
20 from the Procurement Appeals Board. Pursuant
21 to Section 2.68.030 of the Metropolitan Code
22 of Law, please take notice that decisions of
23 the Procurement Appeals Board may be appealed
24 to the Chancery Court of Davidson County for
25 review on that common law writ of certiorari.

1 Any appeal must be filed within 60 days after
2 entry of a final decision by the Board. Any
3 person or other entity considering an appeal
4 should consult with an attorney to ensure
5 that time and procedural requirements are
6 met.

7 MS. O'DNEAL: And then second of
8 all, I would like for Ms. Eke to prepare a --
9 present the announcement for the specific
10 appeal to be heard today.

11 MS. EKE: Before the Procurement
12 Appeals Board today is the appeal of
13 Nashville Adventure Park, Inc., regarding the
14 intent to award issued with respect to
15 RFQ 969636 rehabilitation and lease of Greer
16 Stadium property. After an administrative
17 hearing, the Purchasing Agent dismissed the
18 protest filed by Nashville Adventure Park.
19 Nashville Adventure Park has appealed the
20 Purchasing Agent's determination.

21 MS. O'DNEAL: Okay. Before we
22 begin the presentations, I would like to walk
23 through the instructions of -- of how today's
24 session is going to go. And you may wish to
25 take notes. And there are also handouts that

1 are available in the room in terms of time
2 that will be allotted for each party.

3 First of all, we have an initial
4 presentation by the Purchasing Agent, and
5 that shall be limited to 40 minutes. And
6 then that will be followed by 40 minutes from
7 the appealing party. And after that, we will
8 have an opportunity for a rebuttal from the
9 Purchasing Agent, which will be limited to
10 30 minutes, as well as the Appellant. And
11 then at the end of that, we will give an
12 opportunity for other interested parties to
13 present any information that they may have to
14 this board, that they wish to be considered.
15 And then the Board will deliberate and make a
16 determination as to -- as to the result of
17 today events.

18 The only -- I would ask you that
19 during the time for -- we do have a
20 timekeeper back here -- during that time,
21 that there not be any interruptions of
22 anyone's remarks, because we want to be
23 respectful of each person's allotted time.
24 And you will have an opportunity to rebut any
25 remarks made in that second portion of

1 today's hearing. So once again, I would ask
2 that there be no interruptions during that
3 process as people present.

4 Okay. Are -- are there any
5 questions in terms of process? And then I --
6 I'm going to do introductions next. Are
7 there any questions in terms of the process?

8 MS. WITTEMORE: Well, I -- I would
9 like for either you or Nikki to speak
10 specifically about the -- the authority of
11 this board and that it's really about the --
12 the procurement process --

13 MS. O'DNEAL: Okay.

14 MS. WITTEMORE: -- is what we can
15 address, not all the other issues that are --
16 that are, you know, on this issue.

17 MS. O'DNEAL: Okay. We'll do
18 that. Why don't we really quickly, just
19 because she may not know who you are, Nancy.

20 MS. WITTEMORE: Okay.

21 MS. O'DNEAL: Let us go around the
22 table so that everyone knows who everyone is
23 at the table. I'll start down here at the
24 end. First of all, we'll be introducing the
25 members of the Procurement Appeals Board.

1 MS. DONEGAN: My name's
2 Michele Donegan, and I'm Director of the
3 Department of Emergency Communications.

4 MR. POTTER: My name is
5 Scott Potter. I'm the Director of Metro
6 Water Services.

7 MS. O'DNEAL: Talia Lomax-O'dneal.
8 I'm Finance Director, and I serve as the
9 Procurement Appeals Board Chair.

10 MS. EKE: Nikki Eke, attorney for
11 the Procurement Appeals Board.

12 MS. WITTEMORE: Nancy Whittemore,
13 Director of General Services.

14 MS. FAWKSONTON: Monica Fawksonton
15 Executive Director of Metro Sports Authority.

16 MS. O'DNEAL: Okay. Those are the
17 members of the Appeals Board. And then the
18 staff here?

19 MS. LANE: My name is
20 Michelle Hernandez-Lane. I'm Chief
21 Procurement Officer for the City of
22 Nashville.

23 MR. GOSSAGE: Jeff Gossage. I
24 served as the Purchasing Agent between
25 January 20- -- 2005 and June 17th -- July the

1 -- yeah, June 17th. I now have moved to MNPS
2 to 1 and transitioned to Lie-1 (phonetic).

3 So I was the Purchasing Agent
4 during the period of the solicitation and the
5 protest hearing.

6 MS. AMOS: My name's Macy Amos
7 from Metro Legal. I'm representing the
8 Purchasing Agent.

9 MS. O'DNEAL: We -- we need the
10 people at the table.

11 THE APPELLANT: Sandhu with
12 Nashville Adventure Park. Sandhu with
13 Nashville Adventure Apartment, Appellant.

14 MR. CANT (phonetic): Will --
15 William Cant, consultant for Nashville
16 Adventure Park.

17 MS. O'DNEAL: Does anyone else in
18 the room wish to introduce themselves at this
19 time?

20 (No response.)

21 MS. O'DNEAL: Okay. With that, I
22 will turn it over to Nikki, and she will
23 summarize for everyone in the room the
24 responsibility of this board.

25 MS. EKE: Sure. The role of the

1 Board today as set forth in the Metro Code is
2 to determine whether the solicitation award
3 was done in accordance with applicable law
4 and the terms and conditions of the
5 solicitation. Applicable law includes the
6 constitution, statutes, procurement code and
7 procurement regulations. The Board reviews
8 the record and relevant information to
9 determine whether the evidence establishes
10 that the award or solicitation was in
11 accordance with applicable law. If the Board
12 determines that the award was in accordance
13 with applicable law, the Board can uphold the
14 decision of the Purchasing Agent. If the
15 Board determines that the award was not in
16 accordance with applicable law, the Board can
17 modify the decision of the Purchasing Agent
18 and remand the matter to the Purchasing Agent
19 with further directions.

20 MS. O'DNEAL: Okay. Nancy, did
21 that address your question?

22 MS. WITTEMORE: I just want people
23 to be clear on what our authority is today.

24 MS. O'DNEAL: Okay. Okay. With
25 that, we will move into the presentations.

1 THE APPELLANT: I have a question.

2 MS. O'DNEAL: Okay.

3 THE APPELLANT: I have some
4 questions early.

5 MS. O'DNEAL: Okay. Is -- is it
6 -- does it have to do with this procedure?

7 THE APPELLANT: Absolutely.

8 MS. O'DNEAL: Okay.

9 THE APPELLANT: The reason I asked
10 for attendees, especially Mr. Zak Kelley, is
11 that he is officially designated as Public
12 Records Request Coordinator for your
13 department and the different divisions within
14 your department. We have made numerous
15 requests for documentation that we felt were
16 unfulfilled and not responded to and not
17 responded to in writing.

18 At the last letter that was sent
19 to us setting this meeting, prior to that
20 last letter, we had again requested the
21 documentation, and we requested a meeting
22 before the hearing date was set. We got no
23 response other than here are the dates we
24 have, take one, with the additional caveat
25 added to that from Ms. Judy Caplan, that the

1 request for documentation was being forwarded
2 to the Metro Clerk's office. I want you-all
3 to know that the Metro Clerk's office is not
4 responsible for your documents. That is the
5 responsibility of Mr. Zak Kelley.

6 So before this board now, I'm
7 officially going to ask Mr. Zak Kelley or
8 whoever is in his stead to provide us those
9 documents, okay? And I will show you, as is
10 required by the law, my driver's license and
11 my passport, if that is necessary
12 (tendering).

13 So, again I will say that we have
14 not been provided -- and Ms. Eke should be
15 familiar with that -- the documentation that
16 we need to properly prepare for this appeal.

17 That's my driver's license
18 (tendering).

19 MS. O'DNEAL: I think this
20 question is for you.

21 MS. EKE: Well --

22 THE APPELLANT: Now, the second
23 question I have --

24 MS. O'DNEAL: Oh, there's two?

25 THE APPELLANT: This is for all of

1 you.

2 MS. O'DNEAL: Okay.

3 THE APPELLANT: If you may please
4 -- if I may pass that out to everybody
5 (tendering). And if you want to write my
6 driver's license down on your document, it's
7 44345498.

8 All right. Now.

9 MS. O'DNEAL: Did you have a
10 second question?

11 THE APPELLANT: Secondly, at the
12 hearing for the Purchasing Agent, all the
13 members of the Selection Committee were
14 present except for Mr. Bailey (phonetic). We
15 expect that all of them be present today. I
16 think there are only two present, and that is
17 not acceptable to us either, because we have
18 questions for them as well. Okay.

19 MS. O'DNEAL: Anything else?

20 THE APPELLANT: So we are
21 officially attending this meeting under a
22 heavy protest because we don't believe we've
23 been given our due process to properly
24 prepare for this very, very important hearing
25 for a very, very important project from

1 Metro.

2 MS. O'DNEAL: Okay. I would like
3 to -- Nikki to address each one --

4 MS. EKE: Oh, okay. Well, just --

5 MS. O'DNEAL: -- on what to do in
6 terms of from a -- from a legal perspective.
7 I just want to make sure we're clear on
8 the --

9 THE APPELLANT: I will add that --

10 MS. O'DNEAL: -- on the
11 information we have.

12 THE APPELLANT: I -- I may add --
13 if I may add to that. We had to get the --
14 the policy for your records request procedure
15 from the Metro Clerk. It was not provided by
16 anybody in your office.

17 MS. O'DNEAL: Okay.

18 MS. EKE: Okay. In general, let
19 me state that, first of all, under the Public
20 Records Law, a public record request must be
21 sufficiently detailed to enable the custodian
22 to identify the records sought. A Government
23 entity is not required to stock -- to compile
24 -- compile information or to create a
25 document that does not exist. It's my

1 understanding, based on the filings that have
2 been made in this case, that the Appellant
3 propounded interrogatories, and inside those
4 interrog- -- interrogatories were requests
5 for documents. It's also my understanding,
6 as indicated in the documents provided by the
7 Appellant, that the Appellant received a
8 thousand or more pages of documents from the
9 Procurement division, to whom these requests
10 were propounded.

11 Let me state that there is no
12 authority for appealing party to propound
13 interrogatories in this process. So
14 interrog- - -interrogatories are not part of
15 the -- this process. That is part of general
16 litigation, but not part of this
17 administrative process. Really what is
18 before this board today is whether relevant
19 documents are not -- documents that are
20 directly relevant to this procurement have
21 been provided to the Appellant, and it's my
22 understanding that documents have been
23 provided to the Appellant.

24 And the Purchasing division may
25 want to speak -- will be the one to speak to

1 the documents that they provided in response
2 to the request for documents propounded by
3 the Appellant.

4 MS. O'DNEAL: Okay. And then on
5 the second matter in terms of the --

6 THE APPELLANT: I need to --

7 MS. O'DNEAL: -- members of the
8 committee --

9 THE APPELLANT: I -- I need to
10 respond. I need to respond.

11 MS. O'DNEAL: I'll give you a --

12 THE APPELLANT: I need to respond.

13 MS. O'DNEAL: Can I just give you
14 -- I just want to --

15 THE APPELLANT: I want to -- I
16 want to respond first to that.

17 MS. O'DNEAL: I want to address
18 Item 2 first --

19 THE APPELLANT: Let me --

20 MS. O'DNEAL: -- which is --

21 THE APPELLANT: Okay, go ahead.

22 MS. O'DNEAL: -- the members of
23 the Selection Committee. As far as I know,
24 Nikki, I'd just like -- because I would like
25 to discuss that with you. As far as I know,

1 there is no requirement that --

2 MS. EKE: No.

3 MS. O'DNEAL: -- that members of
4 the RFQ Selection Committee be in attendance
5 at this hearing.

6 MS. EKE: Correct. There is no
7 requirement that members of the committee be
8 present at the hearing.

9 MS. O'DNEAL: Okay. I just wanted
10 to address that.

11 MS. EKE: It's entirely up to
12 these committee members whether they choose
13 to attend or not. The role of the Board is
14 to essentially consider this procurement
15 record and determine whether the award was
16 done in accordance with applicable law. It's
17 a pretty narrow mandate that the Board has
18 been given under the Code.

19 MS. O'DNEAL: Okay. I just wanted
20 to take both questions. So I will just --

21 THE APPELLANT: Let me --

22 MS. O'DNEAL: -- momentar- -- I'll
23 come back to your follow-up question, and
24 then I think we'll be moving into the more
25 formal presentations. But I do want to give

1 you an opportunity to ask your questions.

2 THE APPELLANT: Okay. So let me
3 respond to Ms. Eke's response to mine. In --
4 in the Procurement Policy and Procedure Code,
5 there is a requirement to provide documents
6 to the appealing party. I don't have the
7 exact section, but if you will show that to
8 me, I can point it out to you exactly where
9 that is. So the requirement is in your own
10 code to provide the documents that are
11 requested.

12 No. 2, we made a detailed listing
13 of all the documents we wanted, and we just
14 sent -- put it out there, broadcasting. We
15 reviewed the thousand pages of documents that
16 were submitted, and out of those thousand of
17 pages, there were many documents that said --
18 that were e-mails that said "See the
19 attached," "See the attachment," "See the
20 attachment." None of the attachments were in
21 any of the documents that we were able to
22 find.

23 So we -- after reviewing those,
24 we're not making this -- we're not making
25 this request just in order to make a request.

1 We have -- we have a need to be properly
2 prepared to know how this process went
3 forward, and we believe that there are
4 documents that are still out there that we
5 have not seen that would help us prepare for
6 this case.

7 So if you are telling me that the
8 thousand pages of documents that were
9 provided are all the documents that you have
10 that pertain to this case, I would request
11 that in writing from Ms. Eke and from
12 Mr. Zak Kelley, and Ms. Terri Troup who
13 actually provided the documents at the behest
14 of Mr. Kelley, I think.

15 MS. O'DNEAL: Okay.

16 THE APPELLANT: So I would -- I
17 would request that.

18 Now, with that in light -- with --
19 given that, and given the fact that not even
20 half of the Selection Committee is here, I
21 don't really see any need to go forward with
22 this thing, because we have no way of asking
23 the Selection Committee members, who made the
24 selection, any questions about how they made
25 the selection --

1 MS. O'DNEAL: Well, let me --

2 THE APPELLANT: -- and what the
3 process was.

4 MS. O'DNEAL: Well, let me be
5 clear about -- I mean, I walked through the
6 procedure today. That opportunity for you to
7 make a presentation was not an opportunity to
8 quiz the Evaluation Committee [sic].

9 THE APPELLANT: Excuse me -- okay.

10 MS. O'DNEAL: It was for you to
11 present facts as to why you believe something
12 to be not valid in the procurement process.

13 THE APPELLANT: Okay. All right.
14 That's fine, we'll -- we'll move forward, and
15 I'll address that at a later time.

16 MS. O'DNEAL: Okay.

17 THE APPELLANT: Because I believe
18 that the way this procurement process was set
19 up, being a consensus vote, it is key that
20 those members be present, because it was done
21 by consensus, and there's nobody here to
22 answer to me how the consensus was reached.

23 MS. O'DNEAL: Okay. Do any of the
24 Board members have any comments or questions?
25 Are you guys ready to proceed?

1 MR. POTTER: I'm ready to proceed.

2 MS. O'DNEAL: Okay, I have a
3 timekeeper back here in the back. And,
4 again, we have time limits today. The first
5 portion is, again, limited to 40 minutes and
6 -- and it's a presentation by the Purchasing
7 Agent. As noted in the introductions,
8 Michelle Lane is currently the Purchasing
9 Agent, but she was not involved in the
10 selection or the protest hearing. So based
11 on Legal's advice, we have invited
12 Mr. Gossage in to walk through the
13 determination that he made during the
14 protest. So he will be presenting his -- the
15 results of his hearing to this board today.
16 Okay?

17 Anything I need to add to that,
18 Nikki?

19 MS. EKE: No.

20 MS. O'DNEAL: Okay. Okay. So
21 Mr. Gossage, turn it over to you.

22 And, Nikki -- I mean, Christina --
23 Christina's going to give me a warning if you
24 start getting close to the 40 minutes.

25 And just as a reminder, we're

1 asking that as -- as individuals make their
2 presentations, that they not be interrupted
3 and they have an opportunity to -- to present
4 any facts. So if you think that you may have
5 a rebuttal to anything that's said, be sure
6 to take notes so that you can address that
7 during your remarks.

8 Mr. Gossage?

9 MR. GOSSAGE: I was told my
10 attendance today of the Appeals Board was
11 mandatory. I'm not here because I believe in
12 the development. I'm here because I believe
13 in the procurement process, and I'm confident
14 that the procurement staff and Evaluation
15 Committee complied with the procurement
16 process as defined in the TCA, the
17 Metropolitan Code, Title 6 Procurement Code,
18 procurement regulations and the solicitation
19 documents.

20 There has been significant effort
21 made by the parties to reframe the
22 procurement in support of different policy
23 outcomes for this property. The procurement
24 process did not yield a development. It
25 selected a best -- the best developer. But

1 because the Appellant, the media -- the media
2 they contacted, subsequent supporters have
3 challenged those policy decisions using the
4 procurement process, so it's important to
5 step back and understand how the procurement
6 originated, the actions, rules and
7 limitations of the procurement staff that
8 they confronted and how the protest was
9 considered.

10 During my 12 years as agent -- as
11 the Purchasing Agent, as previously
12 discussed, that is the role of the Appeals
13 Board to consider the options available to
14 the Purchasing Agent, his or her authority to
15 make the determination, and the determination
16 rendered, was it in accordance with the
17 Constitution, State law, Metropolitan Code,
18 regulations and in the best interest of
19 Metro. I have prepared this response based
20 on that process.

21 The abandoned Greer Stadium
22 resulted in a deteriorating structure that
23 was becoming an -- a blighted area of the
24 Wedgewood-Houston community, the Adventure
25 Science Museum, and Fort Negley. Several

1 public hearings took place to -- and -- to
2 collect input from stakeholders who are
3 interested in the desired property. Those
4 meetings did not involve procurement staff,
5 but were referenced in the RFP that was
6 issued. I bring this to the Board's
7 attention because as -- the Appellant calls
8 for public meetings in his letter of appeal.
9 That activity has already been heard.

10 I was made aware that the
11 procurement would be coming for the
12 redevelopment of the property. This was not
13 unusual. We've been involved in the initial
14 redevelopment of SoBro with the Music City
15 Center, the redevelopment of Germantown with
16 the FirstTennessee ballpark, redevelopment of
17 riverfront resulting from the
18 Ascend Amphitheater and related structures;
19 however, more similar to what we're talking
20 about here was procurement's involvement in
21 the Nashville Convention Center redevelopment
22 and the Shelby Park Able Building
23 redevelopment. Those were all procurement
24 assignments.

25 The reason I reference those

1 projects is because the Appellant claims the
2 division of Purchases has no authority to
3 purch- -- to conduct these solicitations. It
4 is interesting that the Appellant did not
5 make that claim when they submitted a
6 proposal for the development of the property.

7 Because the scope of this
8 redevelopment was wide-reaching, the
9 Evaluation Committee was expanded, from the
10 usual three, to five members. It was also
11 very diverse. It involved Metro department
12 members, as well as those from the community
13 to ensure that a wide range of stakeholders
14 were involved. The Evaluation Committee
15 intentionally did not include other
16 developers as the Appellant claims should
17 have been done. Our concern was not about
18 what developers think, but it was about what
19 do those key stakeholders from the affected
20 community who were being evaluated -- or who
21 were evaluating those proposals. Again,
22 Parks and Recreation, Planning, Finance, the
23 Mayor's office all had representatives.
24 Outside of Metro, they'd also involved on the
25 Evaluation Committee individuals who were

1 associated with friends of the Fort Negley,
2 the Wedgewood-Houston neighborhood and a
3 local African-American church. The Appellant
4 challenged the qualifications of the
5 Evaluation Committee in the protest hearing.
6 I found them to be very informed, engaged and
7 involved in the evaluation of discussions.

8 The solicitation process included,
9 as do all solicitations, an online question
10 feature. All potential suppliers can see
11 what others are asking. Those questions are
12 forwarded to the responsible departments to
13 consider and provide responses. The
14 solicitation is then amended and the
15 questions and the answer provided online.
16 Those respondents may not answer specifically
17 what our -- what is being asked. There are
18 many reasons for that. And that was evident
19 in this solicitation. There were questions
20 outside of procurement. There were questions
21 that don't make sense. Questions asked in
22 multiple ways and were not relevant to the
23 solicitation.

24 The process is transparent and
25 fair, as all suppliers see the same set of

1 questions and the answers that are provided.
2 The Appellant claims that the questions were
3 not answered or were incomplete. The answers
4 are not intended to satisfy the suppliers'
5 interests. They are to provide the direction
6 that is fair to all preparing a proposal
7 based on the exact same information.

8 The RFP circulated through both
9 the Planning and Parks and Recreation
10 department. This development touched many,
11 so I'm assuming others may have reviewed or
12 offered input into the RFP, but I cannot
13 attest to that. All I can attest to is the
14 involvement of Planning and Parks. The RFP
15 was not how to bring back the stadium -- how
16 to bring back the stadium, which would have
17 required engineering studies for the
18 structure. The RFP requested how the
19 property would be redeveloped and included a
20 demolition document supporting that approach.
21 The Appellant will claim that their request
22 for engineering studies went unanswered.

23 Metro received five proposals:
24 BNA Associates, Lendlease Communities,
25 Nashville Adventure Park, oneC1TY , The

1 Mathews Group. The Appellant group -- the
2 Appellant will object to the inclusion of The
3 Mathews Group saying that they did not
4 propose. That is just factually incorrect.
5 They did. The Mathews Group's submission
6 included a proposed formation of the Cloud
7 Hill development entity name for the area on
8 which Fort Negley was built. The formation
9 of a partnership, joint venture or other
10 business entity is a common practice for
11 large developments and construction projects.

12 I can cite the Convention Center,
13 the ballpark and multiple others where the
14 proposer was a supplier, and then the entity
15 contracting for that was what they proposed,
16 which was a larger, more involved project.

17 The Evaluation Committee was
18 convened to consider the proposals. The Code
19 -- we followed the Code, which also follows
20 the Tennessee Code Annotate, and it states
21 the following: "4.12.040, Competitive Sealed
22 Proposals, Section D, Receipt of Proposals.
23 Proposals shall be opened so as to avoid
24 disclosure of any contents to completing
25 offerors during the process of negotiation.

1 A register of proposals shall be prepared and
2 in accordance with regulations promulgated by
3 the Standards Board, and shall be open for
4 public inspection after contract award. This
5 consideration of proposals must be conducted
6 in a manner that permits disclosure of
7 contents. They can only be conducted in a
8 private manner."

9 If the meetings were publicly
10 conducted, Metro would have violated State
11 and local laws. The Appellant claims that
12 these were secret meetings and should be open
13 to the public for discussion.

14 The Evaluation Committee received
15 the proposals, read them, met with the rest
16 of the committee and the Procurement staff to
17 discuss and conduct the consensus score. The
18 dynamics of this large committee was they
19 discussed the proposals, identified comments
20 about strengths and weaknesses, and quickly
21 culled it to three offers -- culled three
22 offers and shortlisted down to two firms,
23 oneC1TY and The Mathews Group. Scores
24 followed and were rendered in whole numbers.
25 There was no averaging or fractional scoring.

1 It was simple whole numbers to support their
2 assessment of shortlisting. The two
3 proposals referenced had scores in the 90s.
4 All the others had 70s or below.

5 The Appellant questions the
6 process because of the spesicivity [sic]. It
7 was a general consensus scoring that followed
8 the discussions, and it was done in simple
9 whole numbers, the scores ranging top two in
10 the 90s and bottom ones, 70s or below.

11 The only fractional scores came
12 from the Business Assistant's Office, BAO,
13 related to the Diversity Plan. The total
14 available points for the Diversity Plan was 5
15 out of 100 total points in the evaluation
16 criteria. The BAO considers all Diversity
17 Plans against a rubric they have been using
18 for several years. None of the proposals
19 received the full five points for this
20 criteria.

21 The Appellant questioned the
22 objectivity and concluded -- concluding
23 points because the principal owner of this
24 project was himself a minority. In the
25 protest, Bryan Gleason of the BAO stated they

1 scored the plan not on business ownership.
2 They followed the solicitation document which
3 set the Diversity Plan. There's a difference
4 between those two.

5 The Evaluation Committee included
6 Parks, Planning, Finance, the Mayor's Office,
7 faith-based organizations, Wedgewood-Houston
8 community, Friends of Fort Negley. And the
9 Procurement staff, of course, was involved.
10 The solicitation was managed by a nonvoting
11 staff member and the manager of the Business
12 Assistant's Office, who reviewed only the
13 Diversity Plan. The Appellant questioned the
14 involvement of BAO; however, as a section
15 within the Division of Purchasing, their
16 involvement was unnecessarily -- is
17 unnecessary to def- -- to defend. They are
18 part of the division.

19 The discussions with the two
20 shortlisted firms was challenged on two
21 fronts. Again, the Appellant raised the
22 issue of secret meetings, and then they
23 questioned the ability to discuss only two
24 firms and them having discussions. The Code
25 speaks to that. In 4.12.040, Competitive

1 Sealed Proposals, Section F: "Discussion
2 with Responsible Offers and Revisions to
3 Proposals: As provided in the request for
4 proposals and under the regulations
5 promulgated by the Standards Board,
6 discussions may be" -- they don't have to be
7 -- "may be conducted with responsible
8 offerors who are" -- "who submit proposals
9 determined to be reasonably susceptible of
10 being selected for award for the purpose of
11 clarification and to assure understanding of,
12 and responsiveness to, the solicitation
13 requirements."

14 It goes on to say that in
15 conducting the discussions, "There shall be
16 no disclosure of any information derived from
17 the proposals submitted by competing
18 offerors." Those discussions, again, had to
19 be conducted in a private manner and could
20 only take place with the two firms determined
21 to be reasonably susceptible of being
22 selected for award. The Appellant's claim
23 that secrecy and the demand for all offers to
24 have its part in the discussions is without
25 basis and would violate State law.

1 An intent to award was made, and
2 the Appellant filed a timely protest based on
3 the background issues that I just discussed,
4 and introduced nearly 100 interrogatories.
5 The protest hearing is an administrative
6 hearing, not a legal filing. As a result,
7 the Appellant was informed verbally that I
8 would address only those issues that fall
9 under the Purchasing Agent's authority to
10 resolve.

11 Additionally, questions for
12 discovery would not be entertained. The
13 Appellant demanded then and demands now that
14 all those questions be answered. Under the
15 advice of Legal, I did not provide those
16 questions -- answers to all those
17 interrogatories.

18 As with all protests, I read the
19 opening description of the process, much as
20 you've done today, Talia. One line in that
21 distribution was that the discussions needed
22 to be on point and brevity was preferable to
23 prolonged debate. The Appellant protested
24 that this information was not provided prior
25 to the hearing and then asked how long they

1 had to speak. The response was that
2 generally presentations lasted about 20
3 minutes, and that again was met with
4 complaints. While the Appellant will claim
5 that they were limited to only 20 minutes,
6 the presentation ran for 1 hour and 15
7 minutes. Their presentation ran for 1 hour
8 and 15 minutes, and then they concluded.

9 Throughout the presentation,
10 instead of articulating the issues I
11 previously summarized, the Appellant
12 continually introduced new or reintroduced
13 old interrogatories that were outside the
14 procurement process. He demanded to know how
15 the status of the process related to the
16 Parks' award approval vote, the council's
17 approval vote, the determination of the
18 property as being in surplus. He rejected
19 the response that those were not issues of a
20 procurement, but rather of timing. All
21 necessary steps have to take place.

22 The Appellant demanded that
23 engineering, archaeological surveys and
24 historical studies all be presented. They
25 were again told that these were outside the

1 procurement process, which was to select a
2 developer that was in the best interest of
3 Metro. Many of these issues would be
4 resolved in the contracting process, which
5 was stayed with the filing of the protest; to
6 which the Appellant claimed that the stay had
7 not been implemented and that the Mayor had
8 met with The Mathews Group to discuss the
9 contract. I have no idea what the subject
10 matter was or if the meeting ever took place.
11 The fact that the Division of Purchases, as
12 defined by the Code, is the Central
13 Contracting office, they along with the Parks
14 and Planning departments had not begun the
15 negotiations -- that argument was rejected by
16 the Appellant.

17 Throughout the protest, the
18 Appellant demanded answers and was repeatedly
19 told that they that needed to make their
20 case, and once concluded, I would allow The
21 Mathews Group to speak if they desired, and
22 that I would ask questions of all parties for
23 the purpose of reaching a determination. The
24 Appellant has reframed that response as a
25 promise to answer all his questions. The

1 protest is not an opportunity -- another
2 opportunity to purport discovery, but an
3 opportunity for the protesting firm to
4 present how the process erred in following
5 the TCA, the MCL regulations for the
6 solicitation itself. The Appellant presented
7 inadequate protest claims to show how the
8 process failed to satisfy those requirements.

9 As is my standard practice, at the
10 conclusion of the protest, I asked -- the
11 Evaluation Committee members were present --
12 as you pointed out, they were there but
13 one -- if they had heard anything during the
14 protest that gave them concern in their
15 scoring of the proposals. They unanimously
16 responded that they did not see any reason to
17 change their scores. There have been protest
18 hearings where one member will indicate they
19 had reservations, and we will discuss those
20 before ever rendering a decision. We've even
21 reversed the decision or upheld the protest
22 as a result of those.

23 The action was framed -- that
24 action of asking the Evaluation Committee has
25 been framed by the Appellant as being

1 disingenuous.

2 The closing observation I made was
3 that the Purchasing Agent could only consider
4 those claims over which the Purchasing Agent
5 has authority, as defined in the Charter,
6 Code and regulations. Those claims were not
7 sufficient to uphold the protest and overcome
8 the point differential between the second and
9 third ranked proposals. They certainly did
10 not overcome the top scoring developer, to
11 which the Appellant -- to which the Appellant
12 remarked that they were not trying to
13 overcome the scoring gap. With no
14 procurement violation of a TCA, the MCL
15 regulations, solici- -- or the solicitation
16 documents and no closure [sic] of the scoring
17 differential, there was no basis for the
18 claims or authority to be given to the
19 Purchasing Agent to uphold the protest, so it
20 was dismissed.

21 The appeal -- the Appellant
22 continued their argumentative style and
23 demanded that they be able to rebut the
24 claims. Since the claims were nothing more
25 than a declaration of what they had already

1 stated, there was no reason to have that.
2 And that continued -- argumentative style
3 continued in attempts to intimidate and
4 control the narrative. The process had
5 exhausted the normal course of discussions
6 and -- and continued arguments would result
7 only in more baseless, inflamed accusations.
8 The meeting was concluded.

9 You're fully aware of the actions
10 that the Appellant has made that have
11 occurred -- that have occurred subsequent --
12 subsequent to the protest determination and
13 have attempted to continually re- -- reframe
14 the issue. Those actions played no part in
15 my determination, but reinforced the wisdom
16 of the Evaluation Committee that the
17 selection of The Mathews Group as the
18 developer was and is in the best interest of
19 Metro. The wisdom and quality to develop is
20 a tempered debate, and again outside the role
21 of the Division of Purchases [sic] or the
22 Purchasing Agent.

23 MS. O'DNEAL: Thank you.

24 We will now move to your
25 presentation. So I would like to -- are you

1 ready, Christina?

2 MS. ALEXANDER: Yes.

3 MS. O'DNEAL: All right. You will
4 have the same --

5 THE APPELLANT: I need a minute
6 because I've got to review what Mr. Gossage
7 said.

8 MS. O'DNEAL: Okay. We'll give
9 you just a moment.

10 THE APPELLANT: Thank you.

11 MS. O'DNEAL: And do keep in mind
12 that you'll have an opportunity --

13 THE APPELLANT: I understand.

14 MS. O'DNEAL: -- he'll have an
15 opportunity to respond, and you'll have the
16 final word, if you will.

17 THE APPELLANT: I understand.

18 MS. O'DNEAL: Okay. You ready --

19 THE APPELLANT: Yes.

20 MS. O'DNEAL: And I really want to
21 say it correctly. Is it Sandhu?

22 THE APPELLANT: Devinder Sandhu.

23 MS. O'DNEAL: Okay. Devinder.
24 I've got an odd name, too, so I know....

25 THE APPELLANT: Not as odd as

1 mine -- or more odd than mine, yes.

2 MS. O'DNEAL: Okay.

3 THE APPELLANT: But that's okay.

4 I understand and I empathize with you.

5 MS. O'DNEAL: Okay. So I'll turn

6 it over to you right now for your

7 presentation.

8 THE APPELLANT: Thank you.

9 My name is Devinder Sandhu with
10 Nashville Adventure Park. I want to go on
11 record as saying that I am not opposed to the
12 selection of The Mathews Group as a developer
13 for this project. I consider them to be
14 friends, and I know that they do wonderful
15 work. I am, however, quite disturbed by the
16 procurement process and the selection
17 methodology.

18 I understand that Mr. Gossage has
19 said that the selection process was not to
20 select a development, but a developer. But
21 if you'd look at the RFQ, it is asking for
22 detailed plans and financial considerations.
23 It's asking for qualifications and
24 experience, which is a lot to ask for people
25 if you're only looking for a developer. I

1 know The Mathews Group spent a lot of time
2 and money. They have it. I spent a lot less
3 because I don't have it. I'm an engineer who
4 was brought into this. I had given up on the
5 development of the Fort and the Greer Stadium
6 park as a recreation facility in my
7 discussions with Metro Parks when I was told
8 by Metro Parks that the Mayor had decided to
9 open that up to developers. As an engineer,
10 I felt I was not qualified to be a developer,
11 so I pulled out of the process.

12 However, before the process was
13 set to begin, I was approached by some
14 friends who were developers, and they had a
15 grand vision. So we actually met with
16 officials within Metro Government. I won't
17 say who, but we were told: "Great, give us
18 your best plan. We want to see the best plan
19 we can for that site." And that is what we
20 did.

21 Now, Mr. Gossage has complain- --
22 and I don't really appreciate that baseless
23 and inflamed accusations [sic].

24 I have never made baseless or
25 inflamed accusations, Mr. Gossage, and I

1 don't appreciate that. There are other
2 people who submitted on this who are also
3 friends of mine, and I don't consider them to
4 be inadequate as doing development.

5 Now, in the -- I'll go back to my
6 questions earlier about Zak Kelley being the
7 keeper of the records and the books and not
8 giving me any response since the days of the
9 initial hearing on what the procedure was for
10 getting these records and what detail I had
11 to provide on getting these records. And I
12 will reiterate again that without those
13 records, I do not feel that I can properly
14 assess this selection process. Because I
15 feel that in those records, there has to be
16 some way that the seven Selection Committee
17 members came up with a number to rank all of
18 us. And I'll read you the numbers, and they
19 are fractional. They're not whole numbers as
20 Mr. Gossage stated. They are fractional
21 numbers.

22 At the bottom of the first was
23 BNA Associates with 65.25. In next to last,
24 it's us, 70.00, Nashville Adventure Park.
25 Third place was Lendlease Communities, LLC,

1 71.50. So we're the laggards. Up at the top
2 in second place was oneCITY with 92.25. And
3 then The Mathews Group with an almost perfect
4 score of 96.

5 Now, this perfection was reached
6 because they got the maximum -- they got the
7 highest points in the Diversity Plan, which
8 was 3 out of 5. In their financial
9 considerations, they've achieved a perfect
10 score of 30 out of 30, something that, given
11 the nebulous nature of this proposal, I find
12 it hard to believe. And the justification
13 says: "Appears to be fully funded." Again,
14 they either are or they're not. And there
15 are no documents required to be showing what
16 your funding sources are. How can you get a
17 30 out of 30 on that?

18 In the Detailed Plan, they got 24
19 out of 25. Almost a perfect score. In their
20 details, many things were left out. I like
21 their plan. I think they had a very nice
22 plan, but there are a lot of details that are
23 left out that would have suggested to me this
24 is not a perfect score. Like, for example,
25 where is all the parking? Where is really

1 all the green space that you're claiming?
2 Where are you going to put all these
3 buildings? Those details are not there. We
4 provided a lot of detail on ours, including
5 numbers.

6 Another -- another score that they
7 got perfection was Experience, 20 out of 20.
8 The Mathews Group deserves a 20 out of 20.
9 They have done a lot of great work.

10 Cloud Hill Partnership is an
11 entity that does not exist. Cloud Hill
12 Partnership is an entity that submitted the
13 proposal. The RFQ said that the -- the
14 submitting entity had to be listed on the
15 proposal along with the RFQ number. The
16 Mathews Group is not listed. So to give the
17 presenting authority -- entity 20 out of 20
18 when they don't exist again calls into
19 question that how was this done.

20 Now, when Mr. Gossage in my
21 protest hearing asked me, "Mr. Sandhu, what
22 experience does Nashville Adventure Park
23 have," I responded, "Mr. Gossage, we don't
24 have any experience. We were formed
25 specifically for this RFQ. However..." --

1 but then he cut me off and then he asked
2 Mr. Mathews -- asked Mr. Mathews what
3 experience they had. And, of course, they
4 were able to reiterate and call out all the
5 great projects that they have done for our
6 fine city over the years.

7 And, again, I will say to this
8 board and to Mr. Mathews that I'm very proud
9 of his accomplishments. I've very proud of
10 the accomplishments he has done for our city
11 and the service he's provided to our city,
12 not only to make money for himself, but also
13 as a manufacturer of many charitable
14 organizations and groups who benefit
15 underprivileged youth and senior citizens,
16 people who have health issues and so on. So
17 I -- I wish I could do half the things that
18 Mr. Mathews does.

19 However, on the experience side,
20 on our team, which Mr. Gossage refused to
21 allow me to add, was Giarratana. I think you
22 guys have heard of Tony Giarratana. He's
23 building the largest building in downtown
24 right now. He actually helped with the
25 Mathews family revitalize downtown when

1 everybody was saying it's crazy that people
2 are living downtown. That was Tony
3 Giarratana who was in our group.

4 We also have The
5 Holladay Properties and Holladay
6 Construction. They're the ones who are
7 building the huge complex out on the east
8 side of the airport right now. They're also
9 the ones who refurbished the Tennessee
10 Department of Transportation Vehicle
11 Maintenance Center on Charlotte Avenue right
12 across from the Red Cross. They also
13 refurbished and won awards for building the
14 Sawtooth Building on -- on Lindell Avenue,
15 very close to the WeHo neighborhood.

16 So these are -- and then we also
17 have Roger Ligon of IFC Builders, who is a
18 minority builder, who has done a lot in the
19 last 45 to 50 years to build churches,
20 retirement communities, athletic facilities,
21 apartment complexes, condominiums and houses
22 in north Nashville and west Nashville.

23 So to get -- to say that we have
24 no experience and to give us the points on
25 those [sic] experience of 12, I think, begs a

1 question that this is something else they got
2 wrong.

3 On the Diversity Plan, which is
4 really what started me on this protest path
5 and appeal path, I'm the only minority that
6 submitted. I am the only minority that
7 submitted. I'm an Asian-African. I was born
8 in East Africa, Kenya. My ancestors came
9 from India to help the British build the
10 railroad. So in Kenya, we were considered
11 third -- second class citizens to the rich.
12 We came over here when we thought we had
13 equal opportunity, and I will say we have had
14 a great opportunity. I've gotten great
15 education, I've made great friends, and this
16 was my first attempt to have procurement in
17 Nashville-Davidson County, and I'm
18 disappointed.

19 Because in the Diversity Plan,
20 which was written by Don Hardin, who is --
21 who actually has recused himself from our
22 group when I went to appeal because he's on
23 one of your other boards in procurement -- so
24 Don Hardin wrote our Diversity Plan, and
25 Don Hardin graded 4 out of 5. The guy who

1 helped Metro with the Diversity Plan
2 procedure could not come up with enough to
3 pass muster. So if that was wrong, and me as
4 a minority doesn't count in the so-called
5 matrix or so-called grading, then when are
6 minorities ever going to get a chance to
7 perform in this town? If all that counts is
8 how the minority is going to be paid out, how
9 -- and how many minorities are you going to
10 have and so on, anybody can write that. But
11 we're at a 2 percent minority participation
12 in this town. That is shameful, absolutely
13 shameful.

14 This procurement asked for 20
15 percent. So if we're required to have 20
16 percent minority participation, we should all
17 be getting perfect scores, because all this
18 is is looking for a developer you can hold
19 their feet to the fire to say that you better
20 have 20 percent procurement or you're going
21 to be paying fines.

22 And we committed ourselves to have
23 20 percent procurement. And if you look at
24 the pictures on our team, you will see we
25 have across-the-board diversity, much more so

1 than any of the other people who -- who --
2 who submitted.

3 What's my time?

4 MS. ALEXANDER: 27 minutes.

5 THE APPELLANT: That's all I got
6 left or I got to go?

7 MS. ALEXANDER: That you have
8 left.

9 THE APPELLANT: How many [sic] did
10 he use? How many --

11 MR. ALEXANDER: 24.

12 THE APPELLANT: He used 24?

13 So that was actually my
14 introduction. I've got a real short
15 statement to make after that.

16 Again, I want to tell you, and I
17 want Ms. Eke to underline, that we're
18 appearing under protest because we feel that
19 we have not been supplied the documentation
20 that we need to properly prepare, especially
21 the so-called consensus score has not been
22 properly explained to me; neither has the
23 matrix for the Diversity Plan been explained
24 to me how that was achieved, and so on.

25 So Nashville Adventure Park is

1 hereby appealing all decisions made to
2 conduct the sale or lease of the Greer
3 Stadium/Fort Negley property under the
4 grounds that the flawed process, inconsistent
5 specifications, other ambiguities served as a
6 basis for this appeal. Nashville Adventure
7 Park believes that the solicitation of the
8 RFQ and the awarding of this RFQ is not in
9 accordance with Metro Code of -- and
10 regulations, despite the opinion of
11 Mr. Gossage. Metro Legal has not provided a
12 definitive written response to this question
13 from the Metro counsel.

14 Nashville Adventure Park appeals
15 this RFQ on the fact that the terms and
16 conditions of solicitation are ambiguous, the
17 scoring was administered incorrectly and
18 arbitrarily in a matter not permitted under
19 their very own terms of the RFQ.

20 Mr. Gossage had said that the
21 Metro Procurement has the authority to
22 administer a sale or a lease of real
23 property, real estate, as provided in the
24 procurement regulations, but I -- we believe
25 that it does not because nowhere in the

1 procurement regulations does it mention real
2 property or real estate. It talks about
3 other types of property. So that -- that is
4 a gray area that maybe needs to be addressed
5 or corrected. Yet if you have the authority
6 to do real estate, then that should be put in
7 your code.

8 So based on all this, we -- we
9 request that the Procurement Appeals Board
10 repeal, rescind and cancel the RFQ 90- --
11 -969636 in its entirety. We request that
12 process start over, be done correctly in a
13 manner that follows codes and is not
14 secretive, and includes the Metro Council,
15 Metro Properties and the Metro Tax Assessor;
16 as well as, provide for input from
17 stakeholders and the public.

18 I'm not saying the public has to
19 be involved in the selection process, but I
20 strongly believe that they should be allowed
21 to see the documents that are presented and
22 provide input for -- for a project of this
23 intensity for this town.

24 Now, we say that the -- the gaps
25 these -- those so-called scoring gaps are

1 artificial and they're arbitrary. So we're
2 not asking for a reduction in the gap to make
3 us more competitive. We believe that the
4 scoring, again, was not done properly. And
5 do -- this is based on the fact that no
6 appraisal was given to the committee or to
7 the members of procurement until much later
8 in the process. It was an afterthought, "Let
9 us do an appraisal."

10 And I think I have a copy of a --
11 of a bill that was sent to Metro Properties
12 of \$9,600, dated May 3rd, 2017, for an
13 appraisal. This should have been done way
14 before the process started, which means it
15 was an afterthought. Because how do you
16 evaluate what the financial aspects of
17 considerations are of a property when you
18 don't even know how much the property's worth
19 and what you're getting for it in return?
20 It's unfair to The Mathews Group, it's unfair
21 to oneClTY, and it's certainly unfair to us.

22 There was no mention of how much
23 park space was needed or required. This is a
24 park property. Everybody wants it to be a
25 park. But there wasn't anything in the RFQ

1 to say we've got to maintain so much park
2 space. So everybody had to come up with
3 their own idea of what the public would want.
4 Well, the public wants it all to be park,
5 frankly, and we agree. I agree with that. I
6 was forced into this development because it
7 was supposed to be going to developers. I
8 wanted a park for recreation for the public.

9 We were also told that there
10 wasn't any archaeological study and there
11 wasn't any reason for the proposal to have
12 one, that this was outside the scope. Well,
13 subsequently we found out that two previous
14 archaeological studies had been done, one in
15 1993 and one in 2004, and we don't know how
16 many other private ones have been done. Why
17 did Procurement not have this and provide
18 this to us? It didn't take us long to find
19 this.

20 There wasn't a survey done of what
21 property is to be -- is to be in this RFQ.
22 There are actually -- there are actually two
23 parcels that the Greer Stadium property
24 encompasses. One is the stadium and a little
25 bit of parking around it. And those of you

1 who have been up there, the second part is
2 that big raw piece of parking area to the
3 north of the -- of the stadium. That is
4 actually part of the property. That's part
5 of Fort Negley and leased by Adventure
6 Science Center. That is not officially part
7 of the Greer Stadium property or Greer
8 Stadium parcel. So because of that, how can
9 that be -- how -- because we don't have a
10 survey to show exactly where this parcel is,
11 how can that be an accurate representation?

12 There's another parcel of the
13 property to the north of this subject site
14 that is actually owned by a private
15 individual, but there are a couple of parcels
16 that are owned by Metro within that. And if
17 you don't look at it very closely, like The
18 Mathews Group actually didn't, they put some
19 of their development on this private
20 individual's property. So if the detail of
21 the plan got 24 out of 25 and they missed
22 that part, I think that's a pretty big
23 detail, that you put in your development on
24 somebody else's property.

25 I don't understand that -- that

1 Mr. Gleason was the one who was tasked with
2 providing the Diversity score when it's not
3 the RFQ. The RFQ never said that somebody
4 else would be -- unless I missed it, that
5 somebody else would be providing the 5 point
6 -- 5 points of the scoring system.

7 I want to say that because --
8 these statements I'm making are to show you
9 that the process is flawed. The scoring
10 system is not correct. The scoring system
11 does not have a basis to score from. Metro
12 is going to get -- is going to lose value
13 with anybody's proposal because we're not
14 properly valuating it, what you and I own
15 together.

16 I would also -- it's my
17 understanding that the financial
18 considerations were done by the Finance
19 department, and nobody within the Evaluation
20 Committee had any idea what that score was
21 going to be. This also, I don't think, was
22 in the RFQ process and how the scoring of it
23 was going to be done. And who within the
24 Finance department provided the scoring, and
25 how were they tasked to do that when there

1 was no requirement for providing a detailed
2 financial plan or any -- any documentation on
3 where the funding was?

4 Again, 30 out of 30 for Mathews
5 Group, 28 out of 30 for oneC1TY, and we're at
6 20 out of 30.

7 We were fully funded. Nobody
8 asked us that. It was in our documentation.
9 Nobody looked at that. We were fully funded.
10 So if there are no scoring cards, how can the
11 score be given or be validated? Where is the
12 scoring information? There's no e-mails,
13 there are no notes, there's no tabulation,
14 there are no ballot sheets, there are no
15 calculations, there are no questions from any
16 of the Evaluation or Selection Committee
17 members to anybody in our documentation that
18 were given to us in the thousand pages. None
19 of that information's there.

20 So how am I supposed to determine
21 if this scoring was done fairly? How can you
22 determine that? How can the public determine
23 that? When you have scores that range from
24 65.25 to 96.00 , when your significant
25 figures are -- go to two digits, that means

1 that there was some scoring going on from
2 mathematics. Anybody in mathematics would
3 tell you that. There's something going on;
4 that there's more to this than just
5 consensus. Consensus would be ranking 1, 2,
6 3 and 4. Not give a score of 96.

7 One of the questions we asked was
8 No. 51, if you want to look at it in your
9 doc- -- in our request for documentation, and
10 it -- the response to that was: "Terri Troup
11 did collect the consensus scores and entered
12 them into the report."

13 So I don't know what Ms. Troup
14 received. We never got a copy of what she
15 received in our request for documentations.
16 And we would like to have those, and I think
17 we should have those also.

18 Now -- how many minutes do I have
19 now?

20 MS. ALEXANDER: 16.19.

21 THE APPELLANT: Left?

22 MS. ALEXANDER: Uh-huh.

23 THE APPELLANT: Now, if the RFQ
24 did not call for a funding letter, how can
25 this be used to contribute to the score or

1 evaluate one proposer over another? To be
2 awarded full points, 100 percent, for
3 appearing to be fully funded does not seem to
4 me to be correct or right or fair or
5 equitable. We were fully funded, and we
6 ended up with 20 points. We did not appear
7 to be. We were. We had documentation to
8 show it.

9 The housing units was something
10 else that came up, but there wasn't any idea
11 of how many housing units the Mayor for the
12 City wanted. So everybody came up with an
13 idea of what the housing units would be. We
14 knew that they were supposed to be affordable
15 and workplace housing, so we came up with
16 those numbers. So now you're comparing
17 different -- everybody's different ideas
18 instead of saying, "We want such a percentage
19 of housing to be affordable, such a
20 percentage to be workplace, such a percentage
21 to be for the general public." That would
22 have been a more equitable way of asking this
23 question for -- for -- for this site,
24 especially if you're asking for a detailed
25 plan. Because I don't think this was just a

1 request to select a developer. This was to
2 get a baseline for what your development
3 would look like. But at least put us all on
4 a fair -- on the same basis. If I'm going to
5 supply you pencils or I'm going to build a
6 wastewater treatment plant that's going to do
7 -- provide me this kind of discharge, I --
8 then I know what I have to do and what the
9 costs are associated with that.

10 That's for you.

11 MR. POTTER: Thanks.

12 THE APPELLANT: Mr. Potter, I have
13 a beef with you later.

14 MR. POTTER: Lovely.

15 THE APPELLANT: One other item was
16 the -- the viewsheds. We were supposed to
17 protect the viewsheds for Fort Negley.
18 Nobody could tell us what their viewsheds
19 were. Procurement couldn't. Friends of Fort
20 Negley couldn't. Historic Commission
21 couldn't. The Confederate -- Sons of
22 Confederacy were up there and couldn't -- or
23 the Sons of the Union. Nobody knew what the
24 viewsheds were until much later in our
25 process.

1 Again, I want to say and I want to
2 reiterate that with all these inconsistencies
3 and gray areas, how do you come up with a
4 score? How do you come up with a score with
5 all these gray areas?

6 I was going to -- well, maybe I'll
7 say it. I'm looking at Bert. I'm not going
8 to say it. I'm going to leave Bert out of
9 this.

10 MR. MATHEWS: Thank you.

11 THE APPELLANT: I will say,
12 however, that the Cloud Hill Partnership
13 reserved their name the day after we pointed
14 it out in our hearing with Mr. Gossage. They
15 went to the Secretary of State and reserved
16 the name. Because I was going to try to
17 reserve the name before they got to it, but
18 we decided not to do that.

19 So the RFQ states: "The developer
20 will be selected based on the RFQ criteria."
21 So if this is true, why was a matrix scoring
22 used? Why were people involved in the
23 process that were beyond the committee? Why
24 was consensus scoring used at all in a --
25 such a -- such a complicated and large

1 development for Metro? All this points to a
2 scoring system that nobody is accountable
3 for. Who was accountable for the scoring
4 system? Is it the Mayor's office? Is it
5 Ms. Talia Lomax-O'dneal?

6 Did I say that correctly?

7 MS. O'DNEAL: Close.

8 THE APPELLANT: Close enough.

9 Is it Mr. Gossage in Procurement?
10 Is it the Park Board? It's their property.
11 Who was accountable for the scoring system?
12 I haven't found anybody who'll step up and
13 say who is.

14 Cost for use and development,
15 unknown consensus score, unknown cost score,
16 unknown matrix score, all that leads to
17 unknown evaluation.

18 The members who were selected for
19 this committee said: "I will maintain my
20 independence in this evaluation." If they're
21 maintaining -- if they're maintaining any --
22 if they're maintaining independence in this
23 evaluation but then they're asked to join a
24 consensus, where is that independence? And
25 that is in the -- that's in the secret

1 document that they signed. I keep saying
2 "secret." I know it wasn't, but I think it
3 was. But it's in the document in the Review
4 Board Agreement that says: "I will maintain
5 my independence."

6 So if they're to be independent
7 scoring, why a consensus score? Why were the
8 cost scores not permitted to be seen or
9 reviewed, or the matrix scoring for the B- --
10 from the BAO office not allowed to be seen or
11 commented on? Those are numbers they were
12 forced to accept. I think they should have
13 been given a chance to ask the question: Why
14 is there perfection here? Why 96 out of 100?
15 Why 91-point -- 92.25 out of 100 for the No.
16 1 and 2 proposers? And then why does it drop
17 off so drastically after that when there's
18 not much difference in detail of the plan in
19 experience and qualifications? Why?

20 Mr. Gossage said that the
21 consensus score was captured without
22 explaining from where. So unless there's
23 documentation that supports these
24 tabulations, it's not possible to verify --
25 verify the end result, especially with these

1 meetings being held in secret or without the
2 sunshine on them. If these scores were never
3 collected or provided by the committee
4 members, then how is a score given at all?
5 So that is -- that is what we're asking for.
6 How can we come to these numbers when no
7 scoring system was kept?

8 And then finally, the developer,
9 whoever selected -- once the -- once a
10 picture is shown and the public hears from
11 it, Metro Council has a chance to go talk
12 about it, changes are made. So -- so what's
13 finally developed may be completely different
14 than what was presented. So again I ask you,
15 why put us through this ordeal of providing a
16 detailed plan? Why make us go through this
17 expense of showing what can be done at that
18 site when all you really want was
19 qualifications, all you want to do is find
20 the best-qualified developer?

21 That's all I have.

22 MS. O'DNEAL: Are we good,
23 Christina?

24 Okay. Thank you very much. At
25 this time, we are scheduled to go back to the

1 Purchasing Agent to --

2 MR. POTTER: I think we're
3 scheduled for a break.

4 THE APPELLANT: I think somebody
5 wants -- people want a break.

6 MS. O'DNEAL: I think we did have
7 a scheduled five-minute break in here, didn't
8 we?

9 MR. POTTER: Yes.

10 MS. O'DNEAL: Okay. Let's take a
11 five-minute break. And when we return, the
12 Purchasing Agent will begin his rebuttal to
13 any remarks made.

14 (Brief recess observed.)

15 MS. O'DNEAL: Okay. Welcome back
16 from the break.

17 We ready? Okay.

18 Now we'll move into the second
19 presentation by the Purchasing Agent, where
20 he will have an opportunity to respond to
21 anything that he heard earlier. And this --
22 this portion of the presentation is limited
23 to 30 minutes. And, again, we have a
24 timekeeper that will keep us on schedule.

25 So, Mr. Gossage, I'm going to go

1 back to you, if you would begin.

2 MR. GOSSAGE: I'll first -- I'm
3 kind of taking these in the order they were
4 presented. The points. The Evaluation
5 Committee evaluated the Detailed Plan, the
6 Experience, Qualifications and Financial
7 considerations all in whole numbers, just as
8 I'd said. The only fractional points were in
9 the Diversity Plan where they were looking at
10 five available points, and that was done by
11 BAO, as is the standard practice. BAO is a
12 part of Procurement. They don't have to be
13 explained of being in the division.

14 The questions about how the scores
15 were captured: I can't show you the
16 spreadsheet because the spreadsheet would be
17 on the wall. It would just shine up there.
18 It looks exactly like this piece
19 (indicating). And as the discussion takes
20 place -- and several of you have been on the
21 Evaluation Committees -- as the group
22 discusses the issues, they assign a point and
23 it's keyed in. All you're seeing here is the
24 output, the printout, of the spreadsheet that
25 was on the wall in the room where they were

1 doing the consensus scoring. There are no
2 notes. There are no fractional scores
3 submitted. There is nothing to do. So as
4 there is an ac- -- an accusation that the
5 numbers are somehow handled mysteriously in
6 the -- in the thing, it's just factually
7 untrue. It is a discussion, and the scores
8 are captured. The only fractional numbers
9 are those submitted by BAO. In this case
10 they received three points out of -- two
11 points -- two or three?

12 MS. LANE: Three.

13 MR. GOSSAGE: Three points out of
14 five. And two points for --

15 MS. LANE: Yes.

16 MR. GOSSAGE: -- two points for
17 Adventure Science Museum [sic] -- Adventure
18 Nashville Park [sic]. Had they received all
19 points, the score would only have closed to a
20 96 points for Mathews and 93 for them. It
21 doesn't change the outcome. I really don't
22 care what the view is of how the scores took
23 place. We're conveying the truth, and I'll
24 let it stand at that.

25 The supplier issue came up. It is

1 a matter of record. You can look in the
2 system. The Mathews Group submitted the
3 proposal. The proposal included the
4 formation of Cloud Hill as a developer
5 package. That's not inconsistent with any
6 other proposal that we have seen on this
7 magnitude for development. That's a standard
8 practice.

9 As far as the minority discussion.
10 Once again, as was described in the protest
11 hearing and described in my statements, the
12 business ownership is irrelevant. It is the
13 plan submitted, and that is what is scored by
14 the rubric. It was stated in the procurement
15 that way as well. It went through in detail
16 what was -- had to be in the plan, and it was
17 scored against that.

18 As far as the minority ownership
19 that's being claimed, the Appellant is not an
20 approved minority. Regardless of what his
21 personal ethnicity is, he is not an approved
22 minority. So if that had been the criteria,
23 he would have got no points. But that was
24 not the criteria. The criteria was the plan.

25 This was a proposal. So the size

1 and location of the park was something that
2 had to be worked into the entire mesh, and
3 the Evaluation Committee discussed that at
4 length. Not only the size, but the location
5 and how it presented in -- entrance and
6 egress into the property. How did it affect
7 how the Adventure Science Museum was viewed
8 from the street? They didn't know what would
9 be proposed. There was discussion prior to
10 it being released that the street access was
11 probably the most favorable for a commercial
12 aspect, but they would really like to see how
13 that was going to be approached. And so this
14 was a proposal.

15 Same thing for the number of homes
16 that would be there. This is all about the
17 developer coming together with this mix that
18 they were proposing. They were looking for
19 the -- not only the qualifications. They
20 were looking for the vision and the potential
21 for what was going to take place.

22 As far as the secrecy thing, I'm
23 -- I'm really -- could care less about how
24 that is being phrased. The Sunshine law, if
25 they want to participate and have a Sunshine

1 law, Florida is a good place to go for that.
2 Tennessee states how the evaluation is to be
3 done. It is to be done in such a way that no
4 information is disclosed on the competition.

5 Okay. And then on the BAO, I want
6 to revisit that, where the Diversity Plan was
7 scored. There is a need to have a
8 consistency. Not to have everyone just weigh
9 in on what it is, but a consistency on each
10 evalu- -- each Diversity Plan that is
11 permitted on subsequent proposals. So it's
12 important that that be a standard- --
13 standardized process, and one person does
14 that. That has always been the practice. It
15 is not necessarily [sic] -- necessary under
16 the Code or in the regs or under the State
17 law to disclose who is scoring what part of
18 an evaluation. So while that was questioned
19 as well, it's just not a requirement.

20 With that, I'm going to let my
21 comments stand, and I'll yield the time back
22 to the Board. And you can ask questions if
23 you'd like to get some clarification.

24 MS. O'DNEAL: Okay. Mr. Sandhu?

25 MS. ALEXANDER: You want me to

1 start his time?

2 MS. O'DNEAL: Are -- are you
3 ready?

4 THE APPELLANT: You have no
5 questions for him?

6 MS. O'DNEAL: We will -- the Board
7 will ask its questions after all parties have
8 presented. So if you'll tell us when you're
9 ready, she'll begin.

10 THE APPELLANT: Okay. I'm not
11 ready yet.

12 Give me a minute?

13 MS. ALEXANDER: Yeah.

14 THE APPELLANT: Hold on.

15 Okay. Devinder Sandhu, again,
16 with Nashville Adventure Park. Let me thank
17 you for bearing with me on this. I know this
18 is not easy, and I don't -- I don't relish
19 being a bad guy in this town causing problems
20 for the well-oiled machine of Metro
21 Government, but I think it's not that
22 well-oiled at times. It's -- we have issues.
23 And some of the statements Mr. Gossage's made
24 just now lead me to reinforce my opinion that
25 there are problems with Procurement of the --

1 of this machine of Metro Government Works.

2 If he doesn't care about how the
3 scoring is done as long as it's done by the
4 so-called Procurement code and it's always
5 been that way, there's a problem if it's
6 always been that way. That is where we have
7 2 percent participation from minority
8 companies in this town. We have a 2 percent
9 participation because many of them are not
10 qualified or choose not to participate
11 because of this process, because they know
12 they're not going to get a fair shake.
13 Because I'm looking across the table, and I
14 see women and minorities who would be
15 considered as part of the Disadvantaged
16 Business Enterprise Group. I don't know how
17 many of you guys are registered as a minority
18 group, but it doesn't take long to do it.

19 Nashville Adventure Park was in
20 the process of applying for minority status.
21 Why? Because I am a minority, and I can
22 apply for that. Similarly, if you use the
23 logic that Mr. Gossage has said, that I'm not
24 a minority so it shouldn't be considered, I'm
25 not an entity, then neither is Cloud Hill

1 Partnership. They're not an entity. Why are
2 they considered? It's just a group, people
3 said they could do something. What
4 assurances do we have that they can do it,
5 other than Mathews standing behind them? So
6 I don't know -- I don't know the logic of
7 that -- of that statement.

8 And it disturbs me that he would
9 make that statement; that there's nobody
10 accountable, that it's -- if you put numbers
11 up on the Board, you wouldn't see anything,
12 you'd see a blank sheet. Somebody's entering
13 numbers. Nobody kept a number of who scored
14 a 1. A 96 is a number. I didn't like
15 getting 70s in college or in high school or
16 elementary school. That's a failure. That's
17 what I got. A 96 is a good number. It means
18 he did a good job. But you were given a test
19 that you could answer questions to to get
20 that 96.

21 I've got to take a breath after
22 that one. It bothers me.

23 Mr. Gossage just said the plan and
24 the proposal was not -- was most important,
25 business entity was not important -- not that

1 important. That's not what he said in the
2 beginning. He said the plan wasn't that
3 important; they were looking for a developer.
4 That's a contradiction right here within this
5 room.

6 I'll go back to the Diversity
7 Plan, the Diversity Plan which led me on this
8 path of -- of standing up against Metro
9 Government. And I saw Ms. Lane looking at
10 some kind of score sheet, which has not been
11 provided to us. So I don't know if that's a
12 score sheet for the Diversity Plan or some
13 kind of matrix, but I would like to see how
14 the one individual who developed those five
15 points -- which I agree does not close the
16 gap. I'm not about closing the gap. I'm
17 about fairness, about equity, about a system
18 that is available to hold somebody
19 accountable in the selection process. So if
20 that score sheet -- if that is a score sheet,
21 I would like to see it. And if -- and I
22 would like to know who within Metro
23 Government --

24 MS. LANE: It's the RFP. It's the
25 RFP.

1 MS. O'DNEAL: I just want to make
2 sure that --

3 MR. GOSSAGE: There are only two
4 documents we've looked at here, RFP and the
5 score sheet, both provided.

6 MS. LANE: Details of how the plan
7 would be scored.

8 MS. O'DNEAL: Okay. I just want
9 to make sure your -- you don't have something
10 down there that nobody else has access to.

11 MS. LANE: The top page
12 (indicating).

13 THE APPELLANT: So this --

14 MS. O'DNEAL: Okay.

15 THE APPELLANT: So if you had an
16 individual making -- making a determination
17 that I'm worth 2.00 points and oneC1TY is
18 worth 1.25 points, do they just -- there's no
19 -- there's no guideline for this person to
20 make that? It's one person to make those
21 determinations?

22 Similarly, how does the committee
23 of seven people come up with a score of 30
24 for -- 30 for financial consider- -- well,
25 financial consideration, again, was done

1 outside the scope of the RFQ and outside the
2 Selection Committee. So you essentially have
3 35 points or one-third -- one-third of this
4 process was outside the Selection Committee.
5 Is that my gap? Does that one-third close my
6 gap? Which is not something I'm asking for,
7 but does that close my gap? If the Selection
8 Committee had something to say about that,
9 would I have scored higher?

10 If you have -- have all of you
11 read the comments on this score sheet?
12 Everybody has seen those? Those are not
13 exact numbers. Those are opinions. Those
14 are very subjective statements.

15 BNA Associates seems out of line
16 with historic relevance.

17 OneClTY, there's a density concern
18 and asks for a TIF. This process is flawed.
19 The oneClTY was asking for a TIF. The TIF --
20 at the beginning, that process [sic] was said
21 there was no TIF on financing involved in
22 this, yet they were looking for a TIF. They
23 scored 28 out of 30 on their financial
24 consideration. If they're basing their
25 requirement on TIF, then how can they score

1 so much higher than we are? We were fully
2 funded.

3 There was a question that was
4 brought up by one -- some member of the
5 Selection Committee after their names were
6 released -- because I had discussions with
7 some of them. And many of them are not happy
8 with how this process went about, and I -- I
9 encourage all of you on this board, before
10 you make your decision, call each and every
11 one of those folks and ask them: Was there a
12 score? How did you come up with a consensus?
13 How did you do this? How did you come up
14 with a 96? How come -- how did you come up
15 with 65.25? I'll leave out the .25. How did
16 you come up with a 63?

17 We had in our plan funding for not
18 only Fort Negley to restore the Fort --
19 almost \$9 million worth that we put in there
20 -- but also for capturing revenue for
21 Metro Parks and for Adventure Science Center
22 to help bring more and more people and more
23 and more of the public to that area to
24 generate revenue towards the development of
25 that area. It seemed like none of that was

1 even considered in this plan. We had money
2 to give to the City. We had parkland that we
3 had donated -- people who were donating --
4 willing to donate land to help with this
5 development that would go towards the 4,500
6 acres that Metro Parks is trying to get. We
7 had anywhere from 30 to 300 acres that we
8 were proposing to give to Metro as a gift for
9 developing this site. Where is that
10 valuation? It's not in here. It wasn't
11 considered. Would that be part of the
12 financial consideration? Would that be part
13 of qualifications?

14 We had a proposal to provide
15 recreation for the kids, indoor soccer,
16 something that Nashville is lagging 20 years
17 behind surrounding communities. We had
18 indoor basketball and volleyball, which is a
19 Park Board function. This is park property.
20 I wanted more park property. We had the
21 Tennessee State Soccer Association ready to
22 move into the offices. Tennessee State
23 Soccer Association, the largest body of
24 amateur adults and youth soccer players in
25 the state was ready to move their offices

1 into the Sounds headquarters. That was not
2 considered. They were willing to pay a rent
3 in excess of \$70,000 a year for those -- for
4 that space. That was not considered.

5 We had plans to hold concerts,
6 special games, special events, provide the --
7 refurbish that stadium, refurbish that
8 stadium which is not dilapidated. It is a
9 solid concrete chunk. I'm an engineer. I've
10 seen it. I've been through it. And if it
11 hadn't been allowed to be vandalized, it
12 would have been able to be saved very easily
13 and very quickly. And the example of the
14 stadium being repurposed and reused for the
15 benefit of the public all over the country
16 and all over the world, that was part of our
17 plan, and that wasn't considered.

18 If I had my druthers, I would have
19 wanted that to be a manual park plan, but we
20 were forced to do this development, which I
21 think goes against what we need for middle of
22 Metro. We can have develop- -- have
23 development around that park, but I think
24 this plan, as it stands, would take away from
25 the magnificence of Fort Negley.

1 And I did question why we were
2 doing this. When Mr. Gossage said he didn't
3 ask the question about -- about, you know,
4 developing this at the beginning, yes, I did.
5 We asked that question. We asked: Who came
6 with this RFQ to develop Metro Park property?
7 And we were never given an answer. It was a
8 group of people, but we were never given an
9 answer exactly who it was and how they came
10 up with this evaluation of criteria.

11 There are many -- there are many
12 developers that I know who said, "We're not
13 going to bid on that because we don't know
14 what the hell they're asking and we don't
15 know how we can make money at it."

16 So let me go back, you know --
17 MS. ALEXANDER: You have 17:54
18 left.

19 THE APPELLANT: Left? Geez.

20 MS. O'DNEAL: You have plenty of
21 time.

22 THE APPELLANT: You gave too much
23 time.

24 MR. MATHEWS: Agreed. You'll have
25 to take it home.

1 MS. O'DNEAL: I want everyone to
2 have an opportunity, right?

3 THE APPELLANT: So let me go --
4 let me go back to Greer Stadium
5 rehabilitation. The only -- only -- only
6 report that was issued, and Metro paid for
7 this, was the demolition plan for Greer
8 Stadium. There was never a study done to --
9 to evaluate the building condition, the
10 building condition report, which is the
11 American Society of Testing Materials format,
12 to go evaluate a building and see what value
13 it does have. Recently we were about to tear
14 down a State building downtown, you may
15 remember, to make room for a building that
16 could not be developed yet. They were going
17 to tear down this State building, and it
18 would have been a loss to our city. It was a
19 historic World War II art deco building. And
20 fortunately, we saved that. And the study
21 showed -- when they went back and did a
22 proper study on that building, it showed that
23 it could generate a lot of revenue for this
24 city.

25 The lease -- one thing about this

1 lease agreement that was -- that is proposed
2 for this is that you've got to realize that
3 we're putting buildings on this site that is
4 not going to generate any tax revenue for the
5 State or for our government. It's going to
6 be lease property for whatever -- whatever
7 Metro can agree to pay or get from -- from
8 Cloud Partnership as part of the leasing
9 agreement. There's no -- there are no
10 property taxes that are to be paid. If the
11 build- -- if the property was sold or a
12 portion of that property was sold, then Metro
13 would realize great revenue.

14 The Tax Assessor is kind of upset
15 about some of these other lease agree- --
16 arrangements that have gone wrong around town
17 because they should -- they figure that
18 they're losing revenue on parcels that have
19 been -- property has been put on those
20 parcels that do not generate revenue for the
21 City. So was that ever considered when the
22 RFQ was put together? The process itself,
23 this RFQ process, does not stand the muster
24 of a good financial stewardship off our
25 monies and our properties. I think it needs

1 to be revisited with some professionals
2 looking at it from all aspects, before it's
3 put out. This is too valuable a piece of
4 property to be done in such a willy-nilly
5 manner.

6 And I apologize if I'm -- I'm not
7 saying that in a nice way.

8 MR. CANT (phonetic): How much
9 time does he have left?

10 MS. ALEXANDER: 14:54.

11 MR. CANT (phonetic): Fourteen
12 minutes.

13 THE APPELLANT: We spent a lot of
14 time developing these things. And, you know,
15 when I sit here before you guys as people, I
16 -- I want you -- I don't want you to get
17 bored by all this stuff I'm putting to you.
18 But I want to reiterate that this process was
19 not fair to any of us. To any of us, not
20 just me. I've been called disgruntled. I've
21 been called dissatisfied. I've been called
22 somebody who's going where he shouldn't be
23 going. But I want you to know that -- I was
24 wrong about this being my first attempt to
25 deal with Metro. This is my second.

1 My first one, Mr. Potter, was
2 trying to deal with your sludge problem back
3 20 years ago.

4 MR. POTTER: It was our sludge
5 problem.

6 THE APPELLANT: It was our sludge
7 problem. I'm adding a little humor on the
8 side. And I'll talk to you about that later.

9 So, again, the Procurement office
10 did not provide the requested documents to us
11 in a timely manner, and we have now submitted
12 to you officially with my Tennessee driver's
13 license that we want these documents. And if
14 Mr. Kelley needs a detail of which documents
15 we think are missing, we'd be guessing
16 because we don't know what documents were
17 generated. So we'll do our best to do that
18 by going through the thousand that were
19 submitted. But I will tell you that there
20 were some that were called attachments to
21 e-mails that we never saw.

22 We would like to see the thought
23 process of -- on the Diversity Plan and on
24 the financial considerations, because those
25 were done outside the committee. I would

1 like also to be able to ask questions to the
2 seven members of the Evaluation Committee to
3 see if there were any -- if there was any
4 scoring done. And I don't know if I'm
5 allowed to do this between this process or
6 between this process and when you guys get
7 ready to do your stuff, give us your -- your
8 hearing.

9 Again, we asked for, multiple
10 times, the rules, including how to get
11 records. Those were not provided [sic] us.
12 We were not provided procedures until just
13 before the hearing. And, again, we've not
14 been provided documents. We have not gotten
15 a property survey.

16 (Sotto voce discussion.)

17 THE APPELLANT: Now, this all,
18 again -- thank you.

19 This is all things that we asked
20 in the protest hearing that Mr. Gossage said
21 was outside procurement. How can it be
22 outside procurement not to have a property
23 survey or at least metes and bounds or
24 exactly description of the property when
25 everything depends on that? How can that be

1 the case? How can archaeological reports or
2 any kind of environmental reports that may or
3 may not have been done -- at least give us
4 that, because it's too important a project.

5 There was an appraisal done that
6 wasn't provided. We had to go dig for that.
7 And I referenced that to you, May 23rd, 2007
8 was -- we have a -- we have a bill for that,
9 \$9,600. That should have been provided so we
10 could properly evaluate the site.

11 MR. CANT (phonetic): To the --
12 provided to the committee.

13 THE APPELLANT: And it should have
14 been provided to the committee so whoever was
15 doing the financial consideration -- to know
16 what that property is really worth. What are
17 -- what are we giving away as citizens of
18 Nashville?

19 We were told that rehabilitation
20 or renovation of the site means that
21 everything could be torn down and restored
22 back to its original condition or some other
23 condition, yet in the engineering field,
24 rehabilitation/renovation actually means
25 fixing up something. That's what I've always

1 thought it to be. Restoration means you're
2 restoring it to its original state. That was
3 something than what you have. So the
4 terminology there is also wrong. It's
5 misleading to think that Greer Stadium must
6 be demolished because it's decrepit. I'll
7 again repeat, it's not decrepit. It can be
8 refurbished. It can be a great facility for
9 the public to use.

10 You may know that we filed an
11 ethics complaint with the Ethics Commission.
12 You may or may not know that, but we did do
13 that because we felt like we were not getting
14 our just -- we're not getting what we needed
15 to properly prepare for these -- for these
16 hearings, and also we thought there was -- we
17 think there was conflicts of interest in how
18 some members who selected people on the
19 committee were situated in the public in
20 their -- either their work or in the process
21 of dealing with this -- with the selection.

22 Your procurement stated that
23 related questions go far beyond the scope of
24 the procurement process and those questions
25 are outside of the authority of the Purchase

1 -- by the Purchasing Agent and will not be
2 considered. There was no explanation of why
3 they would not be considered or how something
4 like providing a survey or how providing a
5 scoring system or how providing the expertise
6 of their Evaluation Committee is beyond the
7 scope of this procurement process. There was
8 no "why" or "how" given.

9 I do know that the Mayor did meet
10 with the Cloud Hill team on Tuesday, June the
11 14th, 2017 after we'd filed our protest on
12 June the 5th. And this is -- this goes
13 against Metro Code Section 4.36.010F.

14 I did cite something. I'm not
15 used to that. Section 4.36.010F. It says:
16 "The process is to come to a halt until the
17 protest can be heard." Seems like that part
18 of the Code was not made clear to the Mayor's
19 office. And I know Mathews Group would not
20 know about it because they're like me; they
21 don't expect to be conversant in the Code.

22 There were some other issues we
23 were -- we were -- we asked if we should have
24 legal representation at the protest hearing.
25 We didn't -- we didn't realize that Metro

1 Legal would be here representing Procurement.
2 If that were the case, we might have had --
3 might have had an attorney, or at least
4 somebody who is assisting us with that. That
5 should be in your -- in your rules that there
6 always will be an attorney here, because I
7 wouldn't have known that.

8 There is one -- there are -- there
9 are a couple of -- there are a couple of
10 items in this process. We met with
11 Mr. Clay Bailey (phonetic) prior to him being
12 put on the RFQ committee because we knew he
13 was friends with Fort Negley, because we
14 wanted to get information or input from all
15 interested parties. And he gave us some very
16 good discussions [sic] and very good input.

17 Now, part of -- part of the RFQ
18 committee selection process was if you'd been
19 approached by members of people soliciting,
20 you should inform the comm- -- the people
21 making the selection. I don't know if
22 Mr. Bailey (phonetic) did that. If he did,
23 would that have recused -- would that have
24 forced him to recuse himself from being on
25 the committee?

1 We also asked for an audience with
2 Mr. Colby Sledge to discuss with him as a
3 councilman of this area, to get his ideas
4 about what he wanted. He refused to meet
5 with us. He refused to meet with us. He
6 said, "Everything's up to the Selection
7 Committee." Why would a council member
8 representing that community refuse to meet
9 with one of the proposers for one of the
10 biggest projects that is going to go in
11 history?

12 The RFQ participation was greater
13 number of affordable housing units, yet this
14 was not a requirement for the RFQ [sic]. RFQ
15 participants were graded on appearing to be
16 funded, yet this was not a requirement of the
17 RFQ.

18 Diversity scoring, we have no idea
19 about this matrix system that was used, and
20 we'd like to have that back. And, again, I
21 consider it almost an insult that Mr. Gossage
22 would say, "I don't care what his minority
23 status is. He's not a minority." That
24 really, really, really is upsetting to me and
25 it should be to you, especially when I look

1 across this table and I see DBEs all over the
2 place.

3 Except for you, Mr. Potter.

4 Experience scoring, not accurate.
5 I'll reiter- -- reiterate, I was not allowed
6 in the -- in the protest hearing to give the
7 experience of my team, which was a diverse
8 group, including an Indian who's a structural
9 engineer who's listed as a minority;
10 including Don Hardin, Construction
11 Management, who is listed as a minority;
12 including Roger Ligon of IFC Builders, who's
13 listed as a minority. Were these people
14 taken into consideration as part of the
15 Diversity score as part of my team and only
16 got fourth place? Who else had such
17 diversity on their team? I had women. I had
18 Indians. I even had one guy who's an
19 American-Indian who is registering; who is
20 not officially minority, but he is based on
21 his heritage.

22 So paperwork ain't always what it
23 needs to be because it's obvious that if
24 Cloud Hill Partnership did not have to be an
25 entity, even though it was required that the

1 responding party be listed on the top of the
2 RFQ. It wasn't Mathews Group, it was Cloud
3 Hill Partnership. Mathews Group should have
4 been listed on the RF-- on the submittal.

5 There's no indication Procurement
6 obtained the value of the property that
7 Nashville Adventure Park was considering it
8 as payment in its final calculations. We
9 don't think that Metro Properties was ever
10 conferred with on this momentous task, and
11 they're the ones who have the expertise to
12 evaluate and give their opinion on these
13 properties. We believe that Metro Council or
14 a committee within Metro Council and Metro
15 Properties and the Tax Assessor should have
16 been consulted before this RFQ was put out.

17 And, again, I will tell you that
18 we -- we had in our proposal a gift, in lieu
19 of cash, of park property in other locations
20 that could have been developed to make up for
21 some of the 4,500 acres that Metro Parks is
22 trying to obtain. We were not given anything
23 for that. We also had money to pay to -- for
24 development of Fort Negley. Cloud Hill was
25 going to put up \$7 million up front for

1 infrastructure improvement, but they would be
2 getting that back through the course of this
3 lease, and then they would -- after that,
4 then they would pay towards -- towards their
5 lease payment. So is that a -- is that a
6 profit for Metro and us as citizens, or is it
7 not? That was not evaluated. But they
8 appeared to be fully funded.

9 Now, since this thing has come in,
10 it's blown up all over town with protests
11 from the African-American groups, heritage
12 groups, from the -- UNESCO wants it to be
13 cat- -- declared a site, a heritage site,
14 international heritage site. So it's a good
15 thing that we have opened -- opened this up
16 to the public to -- to comment on. But,
17 again, I think we can do the right thing here
18 very soon and make sure that this process, if
19 you guys so deem, can be redone and done
20 properly and done with proper oversight and
21 done with some accountability on how the
22 scoring was done.

23 MS. O'DNEAL: Okay. Thank you.

24 I think you just made it.

25 MS. ALEXANDER: Yeah, 26 seconds.

1 MS. O'DNEAL: So we'll -- do you
2 guys want to take a break --

3 MR. POTTER: Yes.

4 MS. O'DNEAL: -- or would you be
5 interested --

6 MR. POTTER: Yes, please.

7 MS. O'DNEAL: You do want to take
8 the break? Okay. We will take a five-minute
9 break, and then the interested parties, if
10 they went to present, will have an
11 opportunity to come to the table to provide
12 any presentation they may have to the
13 committee.

14 Do you-all have -- do you guys
15 have a presentation?

16 MR. MATHEWS: Just a very short
17 statement.

18 UNIDENTIFIED SPEAKER: Thirty
19 minutes or less.

20 MS. O'DNEAL: Thirty minutes or
21 less? Okay.

22 Five-minute break and then we'll
23 reconvene.

24 (Brief recess observed.)

25 THE APPELLANT: I'd like to just

1 state one thing for the record, if I may?

2 MS. O'DNEAL: Okay.

3 THE APPELLANT: May I?

4 MS. O'DNEAL: Yes, you may.

5 Let me just reconvene the meeting.

6 I'd like to reconvene the Appeals

7 Board from a break.

8 And, Mr. Sandhu, you said you

9 wanted to state one other thing?

10 THE APPELLANT: Yeah, just

11 regarding interested parties. I think if you

12 look in the procurement rules, it doesn't

13 allow in -- in your own rule, I don't -- I

14 didn't see where it allows interested parties

15 to comment during this, but I think -- I have

16 no problem with that. I think if interested

17 parties are allowed to comment, then I think

18 other stakeholders should also be allowed to

19 comment, if they wanted to. If they can't do

20 it at this venue, then they sh- -- they --

21 they're written or e-mail responses should be

22 accepted as part of this record for this.

23 MS. O'DNEAL: Okay. We'll address

24 that during deliberation, okay?

25 With that....

1 MR. MATHEWS: My name is Bert
2 Mathews with The Mathews Group, and I just
3 have a short -- very short statement. I want
4 to say that we stand behind our proposal and
5 by -- behind our experience. We're very
6 proud of the team that we've brought to this
7 Request for Qualifications. We're very proud
8 of the work and our history in Nashville.
9 We're proud of each element of our submittal.
10 We appreciate the time of the Board that
11 you've taken to listen to this and the time
12 of the Evaluation Committee. And hopefully
13 we're looking forward to moving ahead.

14 So thank you very much for your
15 time.

16 MS. O'DNEAL: Okay. That was very
17 brief. Thank you very much.

18 I'm going to go to the
19 deliberation portion -- Discussion and
20 Deliberation by the Board portion of this.
21 But before we open it up for the committee to
22 begin with their questioning, Nikki, can you
23 address Mr. Sandhu's question regarding the
24 interested party presentation?

25 MS. EKE: It's appropriate for the

1 Board to allow those entities that submit a
2 proposal to make a presentation today because
3 they are interested -- they're legal
4 interested parties in these proceedings.
5 Individuals that did not submit a proposal,
6 this is not the venue for them to make
7 presentation. Because, again, the role of
8 this board is pretty limited as to whether
9 the solicitation was conducted in accordance
10 with applicable law. So there are other
11 avenues outside of this Board for those that
12 may have a general interest, or that did not
13 submit a proposal, to make their views known
14 to other entities. They may consider this
15 matter in the future, but this is not the
16 appropriate avenue for that.

17 MS. O'DNEAL: Thank you very much.

18 And -- and -- and just one more
19 matter. Again -- and we talked about this at
20 the beginning of the session, but before we
21 begin our deliberations, I do think it's
22 worth repeating the responsibility of this
23 Board in terms of what we are assessing,
24 based on the facts that have been presented
25 to us today.

1 MS. EKE: Yes. The -- the role of
2 the Board is to determine whether the
3 solicitation award was done in accordance
4 with applicable law and the terms and
5 conditions of the solicitation. So the Board
6 reviews the record and the relevant
7 information to determine whether the evidence
8 establishes that the award of solicitation
9 was done in accordance with applicable law.
10 If the Board determines that it was done in
11 -- in accordance with applicable law, the
12 Board can uphold the decision of the
13 Purchasing Agent. If the Board determines
14 that the award was not done in accordance
15 with applicable law, the Board can modify the
16 decision of the Purchasing Agent and remand
17 the matter to the Purchasing Agent for
18 further directions.

19 MS. O'DNEAL: And -- and I just
20 say that before we begin our deliberation
21 because it is not the responsibility of this
22 Board to assess the merits of any individual
23 proposal that was presented for the
24 Evaluation Committee. We are merely here to
25 assess the procurement process and whether

1 laws have been followed. So before we begin
2 our discussion, I thought that that would be
3 worth noting.

4 So I am going to open this up for
5 discussion and who -- Nancy, you look like
6 you really want to jump in.

7 MS. WITTEMORE: Well, I had a --

8 MS. O'DNEAL: I'm going to
9 recognize Nancy Wittemore.

10 MS. WITTEMORE: Thank you.

11 I have one clarification I need.

12 And, Jeff, I think you're the
13 person who probably needs to do this. But a
14 couple of times it was mentioned that the
15 Diversity Plan and the Financial Plan was
16 done outside of the -- of the process. And
17 so if you will address how that's done and
18 why it's done, you know, so -- not that the
19 -- the evaluation team actually opens the
20 cost, but why it's done in the way it's done.
21 And is that -- why it's not -- considered
22 outside the process.

23 MR. GOSSAGE: Sure. On the
24 Diversity Plan -- and I want to clarify
25 something that was said earlier. There was a

1 question about a -- the plan and the question
2 about the ethnicity of the individuals. This
3 is not about business ownership. It is about
4 the plan submitted, and that's what -- the
5 reason I say I don't care about it, because
6 it -- I care about the plan, and the plan was
7 done by the Procurement division conducted by
8 BAO by one individual, which is standard
9 practice for looking at Diversity Plans. And
10 I'm going to kind of look to Michelle because
11 she can probably best frame why that is the
12 case.

13 MS. O'DNEAL: Well, I'll -- it's
14 addressed -- just answer to best of your
15 ability, and then I'll bring in other parties
16 as needed.

17 MR. GOSSAGE: Okay. That's the
18 way it's been.

19 MS. WITTEMORE: Okay. And
20 financial --

21 MR. GOSSAGE: And on the
22 financial, the financial, I don't know why
23 it's being called out as -- as being
24 processed outside the committee, because this
25 was not cost-submitted and evaluated

1 separately. It was, in fact, a discussion on
2 the proposal that came before the Board. It
3 was a consideration of cost as one of the
4 criteria. It was not -- and it wasn't cost
5 as it normally would be selling property and
6 looking at the cost. It was about the entire
7 financial plan for what was taking place.
8 And so that was -- that was discussed by the
9 committee, some with more knowledge than
10 others. But then other areas, you'd find
11 other people discussing things at a higher
12 level.

13 MS. WITTEMORE: But it was not
14 outside the process?

15 MR. GOSSAGE: It was not outside
16 the process.

17 MS. WITTEMORE: Michelle, do you
18 want to talk about diversity?

19 MS. O'DNEAL: Go ahead, Michelle.
20 Would you just speak to that from a general
21 sense, please, in terms of how the BAO scores
22 for Diversity?

23 MS. LANE: Yeah. So typically,
24 you know, a Diversity Plan or an Equivalent
25 Small Business, Service-Disabled Veteran

1 Business Plan would be scored separately by
2 the Business Assistants Office to provide
3 kind of a singular view to ensure that all
4 responses are reviewed through a single lens
5 and that you don't have all members of the
6 Evaluation Committee kind of bringing their
7 own perspective to the review of that,
8 because there are specific established
9 criteria listed in the solicitation. If we
10 say, you know, let's paint this room pink,
11 you know, five people may come in with five
12 different shades of pink, whereas here we're
13 looking at a singular approach as to how that
14 response is being scored. And that is the
15 standard practice.

16 The way that they are scored is
17 consistent with what is requested in the
18 solicitation. It does ask for specific
19 things such as their state of commitment, any
20 kind of strategic approaches to maximize
21 participation. And that is designed to
22 understand what their overall inclusion
23 strategy is, not simply looking at who the
24 owner is or just simply looking at the
25 businesses that would serve as subs. So that

1 was requested on four other items. But what,
2 if any, of the subs are unable to fulfill
3 their duties through the course of this
4 solicitation or the contract, the pursuant
5 contract, what kinds of actions would you
6 take to ensure that you maintain that
7 strategic approach throughout the life of
8 contract, rather than perhaps saying: "We
9 lost the subs, and that was our plan." What
10 are you doing to ensure that you have the
11 continuity throughout the life of contract?

12 MS. O'DNEAL: Does that answer the
13 question, Nancy? I'm going to just start
14 down here.

15 Monica?

16 THE APPELLANT: May I add?

17 MS. WITTEMORE: We're going to
18 recognize the ch- -- the Board members and
19 their questions first, okay?

20 MS. FAWKSONTON: This may be more
21 of a comment, because I think looking outside
22 of the process is not the same thing as
23 looking at a process that is imperfect,
24 right? But would you speak to -- Mr. Sandhu
25 mentioned a couple of times that the minority

1 participation for Nashville is 2 percent.

2 Could you speak to that?

3 MS. LANE: Yeah. So during --
4 most recently in the fiscal year, Fiscal Year
5 '17, the City reported 9.17 percent minority-
6 and women-owned business participation. That
7 is based upon actual expenditures, as well as
8 actual subcontractor expenditure. I'm not
9 sure where the 2 percent came from. I have
10 heard some rumblings about 2.8 percent
11 African-American business participation. But
12 we look at the totality for those -- for our
13 approaches of minority business. We don't,
14 you know, just look at African-American or
15 Asian-American or Hispanic-American. It is
16 the full scope of it when we report. So last
17 year it was 9.17.

18 MS. FAWKSONTON: Okay. Thank you.

19 MS. O'DNEAL: Okay. Scott?

20 MR. POTTER: I have a question to
21 the fundamentals. Mr. Sandhu stated that the
22 process hadn't been stopped. So in the
23 procurement process, has the award been --
24 okay. So the award was made, appeal was
25 lodged, the appeal is heard by the Purchasing

1 Agent, and now we're at the Appeals Board
2 hearing. So we're still in the process.

3 MR. GOSSAGE: From the time of the
4 filing of the protest, the contracting
5 process would stay. The contracting, of
6 course, was led by Procurement. We were not
7 involved in it. The Mayor's not part of that
8 negotiation process, so that's -- needs to be
9 broken away because that seems to be
10 something we're pointing to. As of July 1,
11 there had been no negotiations, no contract
12 development taking place. I'll let
13 Michelle --

14 MS. LANE: As of today, the same
15 is true.

16 MR. GOSSAGE: -- enter anything as
17 to --

18 MR. POTTER: Okay. And from
19 Nikki, I'd like you to give counsel to this
20 -- to my question that we're not able to
21 discuss or question the RFQ; the RFQ stands
22 alone as the Procurement Appeals Board?

23 MS. EKE: You have to -- in order
24 to make any decision that challenges the RFQ
25 that was issued, you'll need to find that

1 that RF- -- RFQ contained illegality. So
2 there was something in that RFQ that was not
3 done in accordance with applicable law. And
4 there has to be evidence presented that
5 indicates what is it in this RFQ that was not
6 done in accordance with applicable law.

7 MR. POTTER: And we -- we don't
8 have authority to question the members of the
9 committee, the Selection Committee?

10 MS. EKE: Well, this is not a
11 trial, a testimonial proceeding where
12 parties, appealing parties, get to question
13 and then cross-examine witnesses. This is a
14 quasi-judicial appellate body that reviews
15 basically the parties that are part of this
16 proceeding, make presentations, present
17 documentations, and then you make a decision.
18 But there is no process for the parties to
19 cross-examine witnesses, question witnesses.
20 This is not what the -- it's not the
21 appropriate proceeding for this body because
22 it's not a trial body.

23 MR. POTTER: Okay. I may have
24 some follow-up questions.

25 MS. O'DNEAL: Okay. Ms. Donegan?

1 MS. DONEGAN: One question's
2 already been answered as far as the finance
3 and diversity outside the committee; you've
4 answered that.

5 And my other question is, is it --
6 is the consensus scoring with a score, is
7 that the norm on all of your....

8 MR. GOSSAGE: Yes. The bringing
9 together for discussion for consensus scoring
10 is a standard practice, and I -- we've been
11 doing it for years. They've actually
12 discussed -- some people have different
13 strengths in those -- on those teams. That's
14 intentional. And as they discuss it, they
15 come up with a consensus score. The
16 individual conducting it will actually key in
17 the score, and they can see it on the screen.
18 The end result is the printout of the scores
19 that we held up earlier. So -- and that's
20 the standard practice.

21 MS. DONEGAN: So for this RFQ, as
22 the many before it, it's the same procedure?

23 MR. GOSSAGE: Yes.

24 MS. LANE: Yeah.

25 MR. GOSSAGE: Absolutely.

1 MS. DONEGAN: That's all I have.

2 MS. O'DNEAL: Okay. You guys are
3 going to have to bear with me because I have
4 lots of questions.

5 Mr. Gleason --

6 MR. GLEASON: Yes.

7 MS. O'DNEAL: -- can you join us
8 at the table for my question -- questions?

9 I want to specifically have just a
10 short conversation regarding Mr. Sandhu's
11 discussion about him being a minority and
12 that -- the evaluation being done based upon
13 the business plan, okay, the Diversity Plan.
14 Can you just -- in terms for this Board, I
15 want you to distinguish that for this Board
16 so we have an -- we have absolute clarity
17 about what that distinguishing factor is
18 between those two. Because I listened to his
19 remarks carefully, and I think we should be
20 very careful and make sure that we understand
21 with absolute clarity what we're saying here
22 in terms of that component of the scoring,
23 okay?

24 MR. GLEASON: Okay.

25 MS. O'DNEAL: So if you would

1 explain to the Board, I'd appreciate it.

2 MR. GLEASON: As mentioned by
3 Jeff, the Diversity Plan is not looked upon
4 -- we don't look at the ethnicity, race or
5 gender of the prime contractor. It's based
6 off of the narrative that they submit, the
7 information that's asked in the solicitation,
8 those high points. What is their commitment
9 to small business, how they -- how they plan
10 to maximum their reporting, and so forth.
11 Within that, we look at their responses, and
12 it's based off of a matrix that's -- across
13 the Board that everybody is evaluated on.
14 And points are associated based on that.

15 MS. O'DNEAL: Okay. So can -- do
16 you have a recollection as to what was
17 included in their plan?

18 MR. GLEASON: There was an
19 expressed commitment to being -- to utilizing
20 -- for diversity. However, when you get to,
21 you know, any expressed interest as to their
22 past performance or anything like that, there
23 was no interest mentioned as to any known
24 work or how they've done with minority
25 utilization prior to -- they briefly touched

1 on the outreach, how they planned to bring in
2 diverse businesses, based on the list that
3 was presented, those that they proposed to
4 utilize.

5 Other than that, there was nothing
6 else as to any assistance or anything like
7 that that they're going to use or provide
8 those individuals.

9 MS. O'DNEAL: And how -- how was
10 that distinguished from another firm that
11 received a higher score?

12 MR. GLEASON: It was clearly laid
13 out in their proposal.

14 MS. O'DNEAL: Can you be a little
15 more specific?

16 MR. GLEASON: They just hit --
17 they planned on -- for instance, if it was
18 something on outreach, they planned on
19 publicizing it in the newspaper, having small
20 venues where those subcontr- -- interested
21 subcontractors would come in. They would
22 provide that assistance with understanding
23 what they're actually going to do with the
24 bid packages that they may let out to these
25 individuals, how they plan to report their

1 subcontractor utilization back to Metro.

2 There's a portion in there about
3 prompt pay, are they committed to prompt pay.

4 I mean, these firms have identified those
5 that got the points. And as stated, no one
6 that -- no prime that submitted a business
7 plan got the five points.

8 MS. O'DNEAL: Okay. That's
9 helpful for me.

10 Do any of the Board members need
11 any more clarification on that? I just
12 wanted to make sure that we had that
13 discussion.

14 Okay. Do y'all have any more
15 questions of Bryan?

16 (No response.)

17 MS. O'DNEAL: No? Okay.

18 My -- my second question, and I
19 don't -- I don't really know who to address
20 this to, but I want to address the public
21 information and document requests that were
22 submitted in various forms and at various
23 times over this last few months. Legal
24 received one request, I think, and I think
25 Purchasing received a different request. I

1 -- someone -- I would like for someone to
2 summarize for me what requests were received
3 and -- and where we stood in terms of turning
4 over that documentation.

5 And I don't know who's best to
6 take that question. I want to make sure that
7 -- that we did what we were supposed to do.

8 MS. AMOS: So I know that
9 Purchasing received what appeared to be some
10 discovery. It was interrogatories mixed with
11 Requests for Production of Documents. In a
12 good-faith effort to respond to Mr. Sandhu,
13 Jeff Gossage presented the documents that he
14 could identify, along with Terri Troup, even
15 though it was discovery and it wasn't a
16 public records request.

17 MS. O'DNEAL: So that was the
18 thousand-page --

19 MS. AMOS: Yes.

20 MS. O'DNEAL: -- document that he
21 was --

22 MS. AMOS: And that was released,
23 I think, maybe three days or two days before
24 the protest hearing. It was -- we -- we
25 treat public records requests separately than

1 something that was part of the protest. It
2 was -- I mean, we have seven business days by
3 State law to respond to those, and it was
4 responded to in accordance with State law.

5 MS. O'DNEAL: Do you have anything
6 to add to that? Is it --

7 MR. GOSSAGE: No. The question --

8 MS. O'DNEAL: Is there anything
9 that was outstanding from that list of
10 requests that he did not receive or have
11 we --

12 MR. GOSSAGE: It's been so long, I
13 could not tell you what documents were sent
14 in that. I don't have a way to go back and
15 look at those. I do know that we sent
16 everything that we could identify to them. I
17 sent more than I was advised to do so. I got
18 my hand slapped a little.

19 And there were questions like: "I
20 want the scoring done by the individuals of
21 the Evaluation Committee." I cannot produce
22 what does not exist. And that's the kind of
23 questions that continued to come in.

24 There were also questions about
25 the Mayor meeting with individuals or

1 questions about surveys and studies. The
2 Procurement department does not manage the
3 departments and require of them documents
4 that are outside of our role. If you're
5 redefining the procurement role, that's
6 interesting. We only can ask for information
7 from the departments, and the departments
8 supply what they have. And if we're not
9 supplied that, we can't give what we don't
10 have. It's that simple.

11 MS. O'DNEAL: Does anyone have
12 follow-up on that? I may come back to that
13 in a moment.

14 Okay. My next question has to do
15 with the RFQ, and I think you've stated this,
16 but I just want to say this for the record.
17 In terms of the -- everybody -- every firm
18 had access to the same information at the
19 same time?

20 MR. GOSSAGE: That is correct.

21 MS. O'DNEAL: And if there were
22 potential flaws in an RFQ, there was an
23 opportunity to raise red flags and to ask
24 questions during the process if a firm felt
25 like something was not correct in the

1 process? And did that happen during the
2 process?

3 MR. GOSSAGE: Yes. The same set
4 of questions.

5 MS. O'DNEAL: Okay.

6 MR. GOSSAGE: We did have
7 questions raised.

8 MS. O'DNEAL: But in terms of the
9 initial RFQ period, were there any concerns
10 that -- prior to this proposal being
11 submitted, in terms of any of those issues?

12 MR. GOSSAGE: There were questions
13 asked for which we could not supply
14 documentation because we didn't have that.
15 That -- if that's what you're asking. Was
16 there a protest of the solicitation -- which
17 has happened in the past. We had a protest
18 before it ever came to fruition. There was
19 no protest filed prior to that.

20 MS. O'DNEAL: I'm just trying to
21 make a determination as to every -- every
22 potential bidder had access to the same
23 information --

24 MR. GOSSAGE: Exactly the same
25 information.

1 MS. O'DNEAL: -- at the same
2 time --

3 MR. GOSSAGE: Same time--

4 MS. O'DNEAL: -- and the same
5 opportunity to respond?

6 MR. GOSSAGE: Yes.

7 MS. O'DNEAL: Ms. Lane?

8 MS. LANE: I think it's fair to
9 note, also, that built into solicitations,
10 all solicitations that we issue is an
11 acceptance of the request for the RFQ as it's
12 written, and that acceptance was attested to
13 by all the offers.

14 MS. O'DNEAL: Does anyone want to
15 jump in here? Because I'm going to keep on
16 going.

17 MS. WITTEMORE: I have a question.

18 MS. O'DNEAL: Okay.

19 MS. WITTEMORE: Mr. Sandhu, you
20 spoke about a conflict of interest on one of
21 the committees. And I'm not real clear on
22 what that conflict of interest, who that
23 person is and which committee you're --
24 you're speaking to. Can you clarify that for
25 me, please?

1 THE APPELLANT: Well, we
2 considered a couple of conflicts that, you
3 know, one -- one to grasp on would be
4 Clay Bailey. He was on -- appointed later.
5 We were initially told there were going to be
6 three and then five and then seven committee
7 members. So committee members were added,
8 and Mr. Clay Bailey was added after we'd
9 already had discussions with him about our
10 proposal, long, drawn-out discussions with
11 him. So I don't know if he ever mentioned to
12 the folks that proposed him that he already
13 had discussions with us and the other members
14 of the proposers. And I don't know if that
15 -- if that's allowed or not.

16 And I also think Mr. Sledge, who's
17 the councilman for the district, refused to
18 meet with us. But he was also employed by
19 the PR firm for another partnership. And
20 also the PR firm for Metro Parks, McNeely,
21 Pigott & Fox. And for them to -- for him to
22 -- if he -- if he refused to meet with
23 everybody, then I understand that, but I
24 think for him to refuse to meet with us when
25 it's in his district kind of makes me a

1 little suspicious of exactly what's going on.

2 MS. WITTEMORE: So I will ask
3 Legal if this constitutes a conflict of
4 interest as it relates specifically to this
5 procurement?

6 MS. EKE: Well, there has to be a
7 conflict that disqualifies an individual from
8 participating as part of the -- a member of
9 the Evaluation Committee under the law. So
10 it has to be a conflict that is -- rises to
11 the level as defined by law. Such conflicts
12 may include someone who has a controlling
13 ownership interest in an entity that
14 submitted a proposal also being a member of
15 the Evaluation Committee or someone having an
16 evaluation interest in someone that submitted
17 a proposal and failing to disclose that, and
18 then being a part of -- a member of the
19 Evaluation Committee.

20 Again, it just can't be
21 allegations. There has to be material
22 evidence presented that demonstrates a
23 conflict under the law, and that the -- and
24 the person would be prohibited under the law
25 from being a member of the Evaluation

1 Committee. So merely allegations are just
2 not....

3 Again, a council member refusing
4 to meet with someone, that's not -- there's
5 no law that requires a council member to meet
6 with somebody from -- that's a proposal. So
7 there has to be material evidence presented
8 that shows that there is a legal conflict as
9 defined by the law, as opposed to allegations
10 made, allegations of feelings or
11 suppositions, et cetera.

12 THE APPELLANT: If I may?

13 MS. O'DNEAL: Yes, I'll recognize
14 you.

15 THE APPELLANT: I think Mr. Sledge
16 did appoint or recommend an appointment to
17 the members of the Selection Committee. So
18 that should be also considered because it's a
19 -- that -- I'll just leave it at that, that
20 he did recommend Evaluation Committee
21 members.

22 THE COURT REPORTER: I'm sorry,
23 speak up --

24 MR. POTTER: That presumes ill
25 intent on his part, so is that what you're

1 accusing --

2 THE APPELLANT: No, I'm not --

3 I'm --

4 MR. POTTER: Are you making that
5 statement?

6 THE APPELLANT: No. I'm just --
7 you know, there is [sic] various items here
8 that just don't feel right to me. And I know
9 feelings have nothing to do with it. I have
10 to have evidence. I don't have any of that.

11 MR. POTTER: Okay. I wanted to be
12 clear on that.

13 THE APPELLANT: So -- yeah.

14 MS. O'DNEAL: That it, Nancy?

15 MS. WITTEMORE: Uh-huh.

16 MS. O'DNEAL: You good?

17 MS. DONEGAN: Uh-huh.

18 MS. O'DNEAL: I want -- I have
19 another question, and I think it's for Legal.
20 And -- and most of these are just in terms of
21 me just getting clarification --

22 THE APPELLANT: I -- I -- I need
23 to --

24 (Unintelligible overlapping.)

25 THE APPELLANT: I need to ask one

1 question.

2 MS. O'DNEAL: Yes.

3 THE APPELLANT: Ms. Eke said that
4 it's about legality. I thought that the
5 legality part of it would not come at the
6 level of this process and should not be at
7 this level of the process. This is not about
8 legality. This is about the process. And
9 it's not about whether the process was
10 following the legal course, but it was
11 following what is the correct course within
12 the Code and if there's accountability. And
13 it's not always accountability when you look
14 at legal. If it's always been done this way,
15 then you can say it's always been done this
16 way, so we're going to continue always doing
17 it this way. And that's where the problem
18 lies, is it's always been done this way. And
19 then that is why when we have 15 percent
20 African-American participation, the
21 population is down. You have 2 percent
22 African-American participation in building
23 this town. And the 9.1 percent participation
24 by minority/disadvantaged businesses is
25 skewed against the true minorities in this

1 town.

2 MS. O'DNEAL: Okay. Did you --
3 did you need to respond?

4 MS. EKE: Well, I just want to
5 elaborate what the standard in the Code is
6 that is specified in the Metropolitan Code of
7 Laws as the role of this Board, and that is
8 to determine whether the solicitation award
9 was done in accordance with applicable law.
10 So -- so the issue remains what -- any
11 allegations, they must be shown how what was
12 done was not done in accordance with
13 applicable law, and that is the role that's
14 been given to this Board by the -- the
15 Metropolitan Council through the ordinance
16 that's set forth in the Code, to determine
17 whether the solicitation and award was done
18 in accordance with applicable law, which
19 would include constitution, statutes,
20 procurement code, procurement regulations,
21 and the terms and conditions of the
22 solicitation.

23 MS. O'DNEAL: Agree. And that's
24 why I really want to be deliberate on --
25 we've heard a lot today, and I want to make

1 sure that everything that's come up in these
2 discussions are discussed by this Board
3 today.

4 The next item that I heard during
5 this discussion was this notion of the
6 committee shortlisting the group in terms and
7 -- and only two firms being permitted to move
8 forward in the process and other firms not
9 being able to present to the Board or to move
10 to that next level. And I also want to speak
11 to the legality of that.

12 Again, I'm just -- I was writing
13 notes along because I wanted to make sure
14 that every issue was addressed for the Board
15 today.

16 So, Ms. Eke, could you summarize
17 that?

18 MS. EKE: Yes. I'll actually read
19 a portion of the Code that addresses this
20 issue and that is at 4.12.040, Subsection F,
21 and it says in relevant part that:
22 "Discussions may be conducted with
23 responsible offerors who submit proposals
24 determined to be reasonably susceptible of
25 being selected for award for the purpose of

1 clarification to assure full understanding of
2 and responsiveness to the solicitation
3 requirements."

4 And so that is a procedure that's
5 allowed for in the Code in regards to those
6 entities who submit proposals to be
7 reasonably suscept- -- susceptible of being
8 selected.

9 MS. O'DNEAL: Okay. The next
10 point of discussion that I heard was the
11 notion that the committee met -- I'm para- --
12 I'm just repeating what I heard -- in secret
13 in terms of their deliberation and that that
14 was not an open meeting. So I'm going to go
15 to the lawyer again in terms of what is
16 permissible in terms of when that information
17 becomes public and what -- and the notice
18 regarding those deliberations.

19 MS. EKE: Okay.

20 MS. O'DNEAL: Okay?

21 MS. EKE: Of course, the
22 Procurement division is bound by State law in
23 the manner in which they handle this RFQ.
24 Under the Open Records Act, it specifi- --
25 specifically states that "proposals and

1 statements of qualifications received in
2 response to a solicitation and within the
3 records, including but not limited to
4 evaluations, names of Evaluation Committee
5 members, and all related memoranda or notes
6 shall not be open for public inspection until
7 the intent to award the contract to a
8 particular respondent is announced."

9 So that confidentiality is
10 required by State law during the process --
11 during the process when the proposal is being
12 evaluated.

13 MS. O'DNEAL: Okay. My next point
14 that I wrote down is that there was a notion
15 presented that we should have disclosed the
16 scoring, not the scoring of points, but the
17 scores process and how those scores would be
18 compiled in terms of -- of how that's done.

19 I'm not aware of a requirement
20 that we disclose a scoring process within an
21 RFP in the laws, that we disclose the point
22 -- the point assignments.

23 MS. EKE: Yeah, the RFP did
24 contain the factors that are going to be
25 evaluated as part of the RFP process and the

1 points to be recorded as those factors. And
2 that's what -- that is consistent with law,
3 that the factors to be evaluated will be
4 disclosed. And that was contained in the
5 RFP.

6 MS. O'DNEAL: Okay.

7 MS. EKE: It says that: "The
8 Request" -- the Metro Code says that: "The
9 Request for Proposal shall state the relative
10 portion of price and other evaluation
11 factors."

12 And -- and the RFP did have a
13 section that set forth the factors and their
14 relative importance.

15 MS. O'DNEAL: Okay. I'm going to
16 go through my notes and see if any other
17 committee members want to jump in here.
18 Again, I was trying to make note of all
19 points being made that might be related to
20 current laws and processes.

21 MR. POTTER: I'll ask the
22 Purchasing Agent if the --

23 MS. O'DNEAL: Which one?

24 MR. POTTER: Mr. Gossage.

25 MS. O'DNEAL: The prior Purchasing

1 Agent.

2 MR. POTTER: -- the -- all the
3 proposals were submitted timely?

4 MR. GOSSAGE: Yes.

5 MR. POTTER: And they were
6 qualified to submit?

7 MR. GOSSAGE: Yes.

8 MR. POTTER: Okay.

9 MS. O'DNEAL: I think those are my
10 questions in terms of....

11 Mr. Sandhu, I do want to come back
12 to you. Do you think that I have summarized
13 for the Board the items that need to be
14 considered by this Board in terms of the
15 Purchasing laws and rules and processes?
16 Again, without regard to the subjective
17 nature. But have -- have we missed anything
18 that the Board needs to have a discussion
19 about before we continue?

20 THE APPELLANT: Yes. I -- I think
21 it's important to realize that we can hide
22 behind the legal language of how the Code is
23 written and say that everything was done per
24 code and per regulation, but this was not a
25 process that necessarily can be pigeonholed

1 into -- into something that's so codified
2 because there's so many different ways that
3 this RFQ could be addressed and answered.
4 And subsequently, the way it was evaluated
5 seemed to be, to me, not consistent across
6 the board.

7 So you can say: "Well, yeah, they
8 followed all the legalities and they followed
9 all the requirements of they've always done
10 it this way and "it's always been done like
11 this," but where is the process? Where is
12 the accountability for that process? Nobody
13 has asked me about -- nobody has asked to --
14 to produce or at least testify that there was
15 no scoring -- there were no comments, there
16 were no notes from any of the Evaluation
17 Committee members that discussed this.
18 There's no -- there were no recordings made
19 in there, and none of -- it's beyond me to
20 think that nobody in that Evaluation
21 Committee or none of the people who were --
22 who were monitoring this Evaluation Committee
23 made any notes or made any comments to come
24 up with a consensus. It's beyond me to come
25 up with a projects that's worth hundreds of

1 millions of dollars, that there's no
2 accountability on how the selection was made.

3 So the legality of this
4 documentation and the RFQ can say that the
5 whole process was done within the bounds and
6 the -- of the Code and the regulations and
7 the law, but where is accountability of that?
8 Where is that accountability of that?

9 Okay. And in the RFQ, I think it
10 also did say that the -- the whole process
11 was going to be evaluated by the Selection
12 Committee, and now we're finding out that
13 35 percent of the evaluation was done outside
14 of that committee. So that -- that I think
15 in the RFQ is my -- is the way I read it does
16 not seem to jive with what he said, that it
17 can go outside for -- for part of the process
18 and evaluation.

19 MS. O'DNEAL: Just a remind- --
20 reminder what is within the purview of this
21 Board's decision today, is it has to do with
22 the legalities and the --

23 THE APPELLANT: I think the
24 legalities come at the next level, right?
25 Yeah.

1 MS. O'DNEAL: So if there's no
2 more questions, I'll entertain a motion
3 from....

4 MR. POTTER: I make the motion
5 that the Purchasing Agent's decision be
6 upheld.

7 MS. WITTEMORE: I second.

8 MS. O'DNEAL: Okay. Any
9 discussion?

10 (No response.)

11 MS. O'DNEAL: Okay. All in favor?

12 MR. POTTER: Aye.

13 MS. WITTEMORE: Aye.

14 MS. DONEGAN: Aye.

15 MS. O'DNEAL: Any opposed?

16 (No response.)

17 MS. O'DNEAL: Motion passes.

18 Purchasing Agent's decision stands.

19 (The proceeding concluded at
20 3:58 p.m.)

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C E R T I F I C A T E

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Carissa L. Boone, a Shorthand
Reporter, do hereby certify that the
foregoing proceedings were taken down and
transcribed to the best of my knowledge,
skill, and ability.

Carissa L. Boone, RPR
TLCR No. 382
Expiration Date: 6/30/2018

Date

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