

Memorandum

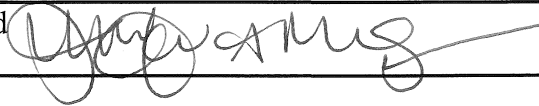
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: December 5, 2018

Approved



Date

12-6-18

**SUBJECT: REPORT ON REQUEST FOR PROPOSAL FOR INFORMATION
TECHNOLOGY INFRASTRUCTURE REFRESH PROJECT**

RECOMMENDATION

Accept the report on the Request for Proposal and adopt a resolution authorizing the City Manager to:

- a. Negotiate and execute an agreement with SHI International Corp. (Somerset, NJ) for all hardware, software, licensing, and associated professional services required to complete, support, and maintain the City's Information Technology (IT) Infrastructure Refresh Project for an initial five-year term beginning on or about January 7, 2019 and ending December 31, 2023 for a maximum compensation not to exceed \$2,146,830; and
- b. Negotiate and execute amendments and change orders as may be required for any unanticipated changes for a contingency amount not to exceed \$415,000 during the initial five-year term, subject to the appropriation of funds; and
- c. Exercise up to five one-year options to extend the term of the agreement through December 31, 2028 to maintain current and purchase new software subscriptions, technical support, maintenance, and related professional services, subject to the appropriation of funds.

OUTCOME

Modernization of the City's information technology infrastructure to optimize and enhance technical capability and functionality to support the City's current technology-based needs, reduce staff resources required to maintain operations, and provide scalability to accommodate emerging technology programs such as Smart Cities and the Internet of Things.

BACKGROUND

In January 2012, the Office of the City Auditor conducted an *Audit of Information Technology General Controls*.¹ The audit identified several weaknesses in the City's general information technology controls, including data security vulnerabilities, inconsistent and resource-intensive backup processes, lack of disaster recovery, and outdated computer systems. In 2017, City Council approved the 2017-2019 Innovation and Technology Strategic Plan² targeted to address these findings, as well as many other areas.

The City owns and operates two data centers that house the City's network and server equipment used to support its central information technology operations. The City's information technology infrastructure has not been fully updated in over twelve years. Over 70% of the City's existing servers have been sustained through minor upgrades, are beyond end of life, and can no longer be upgraded to address the audit findings or sufficiently accommodate the City's growing technology needs.

ANALYSIS

A Request for Proposal (RFP) for the IT Infrastructure Refresh Project was published on the City's e-procurement system in March 2018. The RFP solicited proposals from qualified vendors for an outcome-based solution for its IT Infrastructure Refresh Project, including all hardware, software, licensing, and associated professional services required to implement and support the new environment. A total of 219 companies viewed the RFP, and 31 companies represented by 52 individuals subsequently participated in the mandatory pre-proposal conference and site visit held on April 11, 2018.

The City received seven proposals prior to the RFP deadline from the following:

- Burwood Group Inc. (Chicago, IL)
- Insight Public Sector (Tempe, AZ)
- Kovarus, Inc. (San Ramon, CA)
- PCM-G, Inc. (Herndon, VA)
- Questivity Incorporated (Santa Clara, CA)
- Savant Solutions (Sacramento, CA)
- SHI International Corp. (Somerset, NJ)

¹ 12-02 Audit of Information Technology General Controls: <http://www.sanjoseca.gov/DocumentCenter/View/3168>.

² Innovation and Technology Strategic Plan:

http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2677&meta_id=625589.

Evaluation Process: Proposals were evaluated and scored independently by a five-member evaluation team comprised of representatives from the City's Information Technology Department, the City's Department of Public Works, and the County of Santa Clara's Enterprise Infrastructure Support Group. Four proposers who earned the highest scores were then invited to oral presentations to 1) demonstrate their knowledge and understanding of the City's requirements, 2) provide a comprehensive demonstration of their proposed solution, and 3) provide detailed information on their project delivery approach to ensure the City's requirements for design, implementation, and knowledge transfer will be fulfilled.

Following oral presentations, staff conducted a first Best and Final Offer (BAFO) with the four finalists to:

- 1) reiterate that the City's standard terms and conditions would be the basis for any resulting contract and provide them with an opportunity to modify or remove any previously submitted exceptions;
- 2) restate the City's budget and provide finalists the opportunity to sharpen their pencils to bring proposed costs into budget;
- 3) modify the cost proposal form to require a 20% retainer pending final acceptance;
- 4) make additional clarifications regarding the City's requirements for a cloud-enabled solution, training credits, virtualization, and support; and
- 5) request additional information regarding how each solution could be scaled to meet budgetary requirements and support the open data architecture environment.

Local and Small Business Enterprise Preference: In accordance with City policy, ten percent of the total possible evaluation points were reserved for the local and small business enterprise preference. Two finalists requested these preferences. Insight Public Sector, with a local office in Cupertino, CA, requested and received the local business enterprise preference. Savant requested and was originally awarded the local business enterprise and small business enterprise preferences, which resulted in the first Notice of Intended Award (NOIA) to Savant.

The application of the local and small business enterprise preference does impact the award recommendation for this RFP.

First NOIA: Following publication of the first NOIA on August 31, 2018, the City received an inquiry from SHI about the local business enterprise preference granted to Savant. SHI noted that the local address provided by Savant was a single family residential property located in Sunnyvale, and that it was not listed on Savant's website as a satellite office. In an unrelated previous solicitation, SHI had applied for and was denied the local preference for a residential property from which one of their local employees worked. SHI wanted to know whether the City's practice had changed.

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The Municipal Code defines a local business enterprise as a business enterprise which has a *legitimate* business presence in the County of Santa Clara. Evidence of a legitimate business preference includes:

- 1) having a current San José business tax certificate; and
- 2) having either a principal business office or a regional, branch, or satellite office with at least one full-time employee located in the County.

Based on memos related to the adoption of the preference and how the preference has been applied historically, the local preference was intended to put vendors located in the County of Santa Clara on par with vendors located outside of the County. The assumption was that maintaining a place of business in the County would create a competitive disadvantage absent the preference because of higher costs in the County including sales tax, rent or property ownership, and wages. These are costs typically associated with the traditional regional, satellite, or branch offices of a commercial nature. Most companies list their satellite offices at locations open to the public to engage in commercial transactions.

During the initial follow-up discussions with staff, Savant confirmed that the primary purpose of the location was as a residence and that the residence served as a “home office” which implied that an employee lived and worked from the Sunnyvale location. In keeping with past practice and interpretation, staff determined that a “home office” did not qualify for the local business preference.

Revised NOIA: The City conducted a second BAFO to make additional clarifications and obtain final pricing within the City’s not-to-exceed budget requirements. On September 28, 2018, the City issued a Revised Notice of Intended Award which recalculated cost points based on second BAFO responses and removed the local and small business enterprise preferences for Savant (per the Municipal Code, a contractor may receive the small business preference only if they first qualify for the local business reference).

Award Recommendation: The final recommendation of award is to SHI International Corp. (SHI).

The final evaluation scores are summarized below:

Evaluation Criteria	Maximum Points	Insight Public Sector	Kovarus, Inc.	Savant Solutions	SHI International Corp.
Experience	5	4	4	3	4
Project Approach/Schedule	15	13	13	12	12
Technical Capabilities	10	7	7	8	7
Cost (Second BAFO)	15	13	14	15	14
System Demonstration	45	28	36	33	39
Local Business Preference	5	5	0	0	0
Small Business Preference	5	0	0	0	0
TOTAL	100	70	74	71	76

Protests: The RFP process included a ten-day protest period that commenced when the City issued the Revised Notice of Intended Award. The City received two protests within the ten-day protest period.

Savant Protest: Savant submitted a protest on October 4, 2018 on the basis that they were denied the local and small business preference. In the protest letter, Savant considered their use of a residence equivalent to a home business, and contended they should have been awarded the preference because a home-based business would have received the local preference.

A home-based business is a business owned by the owner or tenant and solely operated from the residential property. In this case, Savant is a business headquartered in Sacramento. Since Savant failed to provide staff with independently verifiable evidence that a legitimate business presence existed at the Sunnyvale residential property location (e.g. listing on the company's website as a satellite or branch office, visible signage etc.), the Chief Purchasing Officer denied the protest on October 9, 2018 based on this rationale.

On October 11, 2018, the City also received email correspondence from California Strategies, LLC, a paid lobbyist for Hewlett-Packard Enterprise. Savant listed Hewlett-Packard as a subcontractor in their proposed solution for this RFP. The email was received outside of the established protest process and period. The email expressed support for Savant's protest on the basis that it was a home-based business.

Once Savant received the letter denying its protest, it submitted additional information on October 11, 2018. Staff did not receive this information from Savant when they requested the preference, before the revised NOIA, nor as part of the protest letter. In the email, Savant stated that the residence is not an employee's home but belongs to the

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mother of a former school mate of the business owner and that Savant pays a monthly fee to utilize a room from which one Savant employee works full time. Savant also noted that it planned to open a satellite office in San Francisco in November 2018, but did not indicate any plans to open a satellite office in San Jose. On October 12, 2018, staff requested supporting documentation such as a lease. The requested information was not submitted to staff for follow-up review, but was submitted in Savant's appeal to Council filed with the City Clerk's Office on October 21, 2018.

In its appeal to Council, Savant stated it did not have a lease, but instead had a one-year "gentleman's agreement" with the landlord with options to renew. Though there is no requirement for a written agreement for a periodic tenancy of less than one year, the absence of a written lease makes it difficult for the City to evaluate the likelihood Savant will maintain business activity at the location. Savant also provided bank statements for cash withdrawals in varying amounts at various intervals as evidence of payment of rent and telecommunication services but the statements alone do not identify the withdrawal as a rental or business expenses and the one bank transaction for telecommunication services provided does not specify the service location.

An interpretation of the local business preference that would extend to rental of a room in a residential property would enable any company that seeks the local preference in future procurements to simply rent a room before submitting a proposal to the City. However, it is up to the City Council to make this policy determination. Based on historic interpretation and how other vendors have been treated in this procurement, staff recommends upholding the Revised NOIA to SHI.

Kovarus Protest: Kovarus, Inc. (Kovarus) submitted a protest on October 5, 2018 on the basis that they believed they should have received higher scores in three areas of the RFP: 1) Cost Proposal, 2) System Demonstration, and 3) Technical Capabilities. Kovarus believed it should have received higher points on its cost proposal because it had reduced its pricing in the second BAFO from the first BAFO, questioned why it had not scored higher in the system demonstration and technical capabilities of the RFP, and requested documentation such as the other proposers' proposals.

The protest was carefully reviewed by the Chief Purchasing Officer. In the City's response to the protest, the City explained the scoring methodology, provided the appropriate documentation, and concluded that the City fairly evaluated and scored all proposals against the criteria set forth in the RFP.

Both vendors were advised of their right to appeal the decision of the Chief Purchasing Officer to the City Council. Savant filed an appeal prior to the October 22, 2018 deadline; Kovarus did not.

Both protest letters, the Chief Purchasing Officer's corresponding responses, all follow-on communications, and Savant's appeal are attached to this memorandum as Appendix A (Savant) and Appendix B (Kovarus).

Award Recommendation: Staff recommends award of contract to SHI as the most advantageous and best value proposal per the evaluation criteria set forth in the RFP. SHI's proposal met or exceeded all of the RFP specifications, their solution was cost effective and met the City's budgetary requirements, and they rated highly in several key areas:

- SHI provided a superior system demonstration in which they established themselves as the solution that could best meet the City's technical, functional, and business requirements.
- SHI is partnering with Nutanix, a cloud computing company specialized in hyper converged technology and headquartered in San José, and Dell EMC, a data storage and data management company headquartered in Hopinton, MA with multiple regional offices in Santa Clara and throughout the South Bay area, ensuring a large, local support base.
- SHI has a large and experienced project implementation and support team who can provide additional resources as required to facilitate the success of the project implementation.
- The City currently uses Nutanix's hyper converged infrastructure solution for its virtual desktop infrastructure deployment that was competed through a separate solicitation in late 2017, so City staff have existing familiarity with the proposed technologies.

Staff conducted reference checks with Pinellas County, Clerk of the Circuit Court and Comptroller; Miles and Stockbridge P.C.; and Rutgers University, Institute for Health, Health Care Policy, and Aging Research. All three references were positive.

Summary of Proposed Agreement: The agreement with SHI will include 1) professional services for project management, requirements gathering and business process mapping, installation and testing, solution deployment at both City data centers, private secure cloud environment setup, migration of City's existing environment to the new solution, on-site co-work, knowledge transfer, and documentation, and training vouchers for ongoing staff training and certifications; 2) fixed pricing for an initial five-year term; 3) a detailed scope of services to ensure that the implemented solution complies with the City's requirements, including security, scalability, redundancy, disaster recovery, and performance; 4) a preliminary project implementation plan that meets the City's requirements for project completion; and 5) a compensation schedule within the City's budget that includes milestone payments tied to the successful completion of key project deliverables and a final acceptance process that triggers release of the retainage held on all implementation deliverables.

Increases in rates after the initial five-year term must be justified by the vendor, approved by the City, and are subject to the appropriation of funds.

EVALUATION AND FOLLOW-UP

This memorandum will not require any follow-up from staff.

POLICY ALTERNATIVES

As noted above, staff has maintained consistent practices to ensure that application of the local and small business enterprise preferences supports the policy rationale behind the City's adoption of the preference. However, the protest submitted by Savant raises questions around the application of the preference.

Alternative #1: Reject staff's recommendation of award to SHI; clarify requirements by which staff may identify and award local and small business enterprise preference going forward; direct staff to provide all RFP finalists the opportunity to request local and small business enterprise preference under Council's new direction; and recalculate scores and make a revised recommendation of award accordingly.

PROS: Provide direction for determining a local business enterprise preference, including what constitutes a legitimate business interest in the County of Santa Clara in various situations such as 1) a home-based business (where the business owner operates out of his/her home), 2) an employee who works out of a room in their home, 3) a business who uses and/or rents a room in a private residence, and 4) a business who rents office space in a co-location facility. Other considerations could include, but are not limited to, a) frequency of use, b) public signage and noticing, c) whether the location (and any income or expense associated with it) is being reported by the involved parties on their taxes, and d) whether or not use of the property is governed by an agreement (such as a lease agreement).

CONS: Will result in project delay, of approximately 3-4 months.

Alternative #2: Reject staff's recommendation of award to SHI; identify clear and specific requirements by which staff may identify and award local and small business enterprise preference going forward; and direct staff to reissue the RFP.

PROS: Provide direction for determining a local business enterprise preference, including what constitutes a legitimate business interest in the County of Santa Clara in various situations such as 1) a home-based business (where the business owner operates out of his/her home), 2) an employee who works out of a room in their home, 3) a business who uses and/or rents a room in a private residence, and 4) a business who rents office space in a co-location facility. Other considerations could include, but are not limited to, a) frequency of use, b) public signage and noticing, c) whether the location (and any income or expense associated with it) is being reported by the involved parties

on their taxes, and d) whether or not use of the property is governed by an agreement (such as a lease agreement).

CONS: Will result in significant project delay, with an estimated time delay of up to one year, which will require re-planning of the Innovation and Technology Strategic Plan and how to address the audit findings.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the December 18, 2018 City Council meeting.

COORDINATION

This memorandum has been coordinated with the Department of Information Technology, the City Attorney's Office, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

FISCAL/POLICY ALIGNMENT

This action is consistent with the Council-approved budget strategy for the effective use of technology.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION (5-year initial term) \$2,146,830

2. COST ELEMENTS:**One-Time Implementation Services**

- Project Management	\$57,245
- Requirements Gathering / Design Plan	63,516
- Small Scale Environment Installation and Testing	25,256
- Solution Deployment at Primary Data Center	20,605
- Backup / Failover Deployment at Secondary Data Center and Cloud	20,604
- Migration of City's Existing Environment to New Solution	33,674
- On-Site Co-Work and Knowledge Transfer	50,512
- Testing and Documentation	54,214
- Go-Live	16,838
- Final Acceptance	85,616

Implementation Subtotal \$428,080

Hardware & Software

(Includes Maintenance, Support, and Warranty for the Initial 5-Year Term)

- Servers, Appliances, and Components	\$574,762
- Software Licenses / Subscriptions	683,988
- Open Data Environment	400,000

Hardware & Software Subtotal \$1,658,750

Estimated Sales Tax \$60,000

CONTRACT NOT TO EXCEED TOTAL (5-year initial term) \$2,146,830

Contingency 415,000

GRAND TOTAL \$2,561,830

3. SOURCE OF FUNDING: 001- General Fund

4. FISCAL IMPACT: After the initial five-year term, any price increases in ongoing subscriptions, maintenance, and support must be justified by the vendor, approved by the City, and are subject to the appropriation of funds.

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BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the contract recommended as part of this memorandum.

Fund #	Appn #	Appn Name	Current Total Appn	Amt for Contract*	2018-2019 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0432	Non-Personal / Equipment	\$10,789,590	\$1,746,830	VIII-215	10/16/2018 Ord. No. 30172
001	203Y	City-wide Open Data Environment and Architecture	\$600,000	\$400,000	IX-21	06/19/2018 Ord. No. 30124

*Amt for Contract reflects funding for 2018-2019. Contingency is subject to the annual appropriation of funds.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JULIA H. COOPER
Director of Finance

For questions, please contact Jennifer Cheng, Deputy Director of Finance, at (408) 535-7059.

Attachment

Appendix A



Date: 10/4/18

To Whom IT May Concern,

This letter serves as our formal protest. The City of San José issued its Infrastructure Refresh Project RFP on March 26, 2018 and received seven proposals. Proposals were evaluated based on the weightings and criteria specified in Section 13.2 of the RFP. Four vendors scored in the competitive range for their submitted Technical and Cost Proposals and were invited to provide System Demonstrations. Following System Demonstrations, the City conducted a Best and Final Offer (BAFO) and a Second BAFO to further clarify specifications and requirements and to obtain pricing that conforms to the City's budget.

Based on these results, the City recommended the award of contract to SHI International Corp. as the best value proposer by issuing a notice of intent to award on September 28, 2018:

	Points Available	Insight Public Sector	Kovarus, Inc.	Savant Solutions	SHI International Corp.
Experience	5	4	4	3	4
Project Approach / Schedule	15	13	13	12	12
Technical Capabilities	10	7	7	8	7
Second BAFO Cost Proposal	15	13	14	15	14
System Demonstration	45	28	36	33	39
Local Business Enterprise	5	5	0	0	0
Small Business Enterprise	5	0	0	0	0
	100	70	74	71	76

However, Savant Solutions was denied its local business enterprise and small business enterprise points as required by City Ordinance and the RFP. Had the local business preference and small business enterprise been properly applied, Savant Solutions would have acquired another 10 points and would have been the awarded vendor based on the City's best value determination.

As a result of that inappropriate scoring, Savant Solutions is submitting this bid protest under Section 20 of the RFP, which provides that unsuccessful proposers may submit a protest, detailing the grounds, factual basis, and all supporting information for the protest, within ten (10) calendar days after the release date of the notice of intent to award. This protest is being submitted within the 10 calendar days allowed by the RFP, which would require submission on or before October 8, 2018.

The City had previously pointed me to the following link to explain why Savant Solutions was denied a local business enterprise preference in the first BAFO:
https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.12P_RGOSE_PT1DE_4.12.030LOBUEN. The City explained that because the primary purpose of the location listed in the bid is to serve as a residence and not as a business, Savant Solutions did not qualify for the preference. The City stated that this determination was based on the municipal code definitions.

However, I have reviewed the ordinance regarding local business enterprises which provides the definition of a local business enterprise:

4.12.030 - Local business enterprise.

"Local business enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara, California. Evidence of legitimate business presence in San José shall include:

A. Having a current San José business tax certificate; and

B. Having either of the following types of offices operating legally within the County of Santa Clara:

1. The contractor's principal business office; or

2. The contractor's regional, branch or satellite office with at least one (1) full-time employee located in the County of Santa Clara

Similarly, a small business enterprise is defined in City ordinance as:

4.12.060 - Small business enterprise.

As used in this title, "small business enterprise" means a local business enterprise that has thirty-five (35) or fewer total employees. With respect to bids or proposals submitted by partnerships or joint ventures, the number of employees for purposes of qualifying as a small business enterprise shall be determined by the total number of employees of each of the members of the partnership or joint venture combined

Savant Solutions bid as a corporation which has a legitimate business presence in the County of Santa Clara, California. As evidence, Savant Solutions provided a current San José business tax certificate and evidence that Savant Solutions has at least one (1) full-time employee located in the County of Santa Clara. In addition, Savant Solutions provided the location of my satellite office location with the County of Santa Clara at 1259 Rousseau Dr, Sunnyvale, CA 94087. The term "satellite office" is not defined in the City of San Jose's local ordinances. Satellite office is commonly defined as "an office that belongs to and is controlled by a larger organization in another place." Nowhere in the City of San Jose's local ordinances does it state that a satellite office location could not be a residence. In fact, residences are allowed to be used for occupations in the City in every zoning classification and the City has recognized that home businesses are a growing segment of its population. Had Savant Solutions been properly determined to be a local business enterprise, Savant Solutions would have received an additional 5 points in the RFP scoring.

In addition, Savant has less than 35 total employees. As an established local business enterprise with less than 35 employees, Savant should have also been awarded 5 additional points as a small business enterprise. The resulting point adjustments would provide Savant Solutions with a total of 81 points and qualify Savant Solutions as not only the lowest cost, but also the best value for the taxpayers of the City of San Jose.

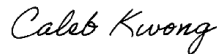
Furthermore, Savant Solutions opened our branch office on Jan 3rd, 2018 before the RFP was even released. Due to the increase of business we are doing with other cities in the bay area we needed a local presence. Here are current local cities we work with:

- City of Cupertino
- City of San Carlos
- City of Belmont
- City of San Mateo
- City of Pleasanton
- City of San Bruno

Under the City of San Jose's interpretation of its ordinance, it would have recognized my local business if I opened my office out of a WeWork location instead of a house. There is no difference between me using an office out of a residence or using an office out of a commercial building. HP and Apple started their business out of a garage in a residence, we all started from somewhere small.

Savant Solutions respectfully requests that the City reconsider its determination that it did not qualify for this bid preference. Savant Solutions is exactly the type of small, local business enterprise that the ordinance seeks to assist in government bidding and should have received local business enterprise and small business enterprise preference as part of the City's review of Savant Solution's RFP response.

Sincerely,



Caleb Kwong



Finance Department
Purchasing Division

October 9, 2018

Mr. Caleb Kwong
Savant Solutions
1007 7th Street, 5th Floor
Sacramento, CA 95814

Subject: City of San José (City) Request for Proposal (RFP) 17-18-19 for the Infrastructure Refresh Project

Reference: Protest letter from Mr. Caleb Kwong of Savant Solutions (Savant) dated October 4, 2018

Dear Mr. Kwong:

This letter is in response to your referenced letter protesting the City's Notice of Intended Award for the Infrastructure Refresh Project.

In your protest letter, you raise the concern that Savant was denied the local business enterprise preference and small business enterprise preference. Pursuant to Section 4.12.060 of the San José Municipal code, a business must first be found to qualify for the local business enterprise preference before it can qualify for the small business enterprise preference. The City acknowledges that if Savant had been determined to be a local business enterprise, it would qualify for the small business enterprise preference based on your current total employee count. Therefore, we will focus this response on Savant's request for the local business enterprise preference.

Savant sought to establish the location of a residential single-family home located at 1259 Rousseau Drive in Sunnyvale, CA 94087 for the local business preference. In following up on this request, City staff confirmed with Savant that this location is primarily used as a residential property, and that the home owner is an employee who may work from home.

The policy rationale for the City's adoption of the local business enterprise preference was to place vendors located in the County of Santa Clara on equal footing with vendors elsewhere due to the higher cost of conducting business in the County. These higher costs typically include sales tax, rent, wage/labor, and other expenses associated with maintaining regional, satellite, and branch offices whose primary purpose is of a commercial nature. This location is not listed on your company's website as a satellite office, and lacks visible signage indicating the presence of a business, both of which would be standard indications of a legitimate business open to receive customers. The higher cost to maintain the residence in Santa Clara County is borne by

the employee and not Savant. If the employee working at that location were to leave the company, Savant could not continue to treat the employee's home as a satellite office. Even under Savant's interpretation of a satellite office, the employee's home is not "an office that belongs to and is controlled by" Savant. In this case, the proposed satellite office would be contingent on the continued employment of the employee.

By contrast, WeWork is a coworking space for commercial purposes, and leasing such space in Santa Clara County as a satellite office is consistent with the rationale for conferring the local business preference. Moreover, the facility includes business signage and other standard amenities such as front desk staff, meeting areas, etc., that are generally expected in a legitimate business office.

Therefore, after careful review, I am upholding staff's recommendation of award to SHI International Corp. as the highest scoring responsive and responsible proposer per the criteria set forth in the RFP. It is my finding that the City's procurement processes were properly followed and that the RFP was conducted in a fair and objective manner.

Thank you for your interest and participation in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Cheng".

Jennifer Cheng
Deputy Director, Finance

From: Cheng, Jennifer
Sent: Wednesday, October 24, 2018 2:57 PM
To: Caleb Kwong <caleb@savantsolutions.net>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Yes, I received a copy of your appeal from the City Clerk's Office.

~Jennifer

From: Caleb Kwong [<mailto:caleb@savantsolutions.net>]
Sent: Wednesday, October 24, 2018 2:29 PM
To: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Ok. Also to confirm you received an updated response in our appeal?

Caleb

From: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Sent: Wednesday, October 24, 2018 2:27 PM
To: Caleb Kwong <caleb@savantsolutions.net>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Hi Mr. Kwong,

The San José City Council meets on Tuesdays at 1:30PM but we have not determined a date for the Infrastructure Refresh RFP yet. That said, it will likely be in December.

We will let you know on the date when it has been determined.

Sincerely,

Jennifer

Jennifer Cheng | City of San Jose | Deputy Director | Finance Department- Purchasing & Risk Management
200 E. Santa Clara Street, 13th Floor | San Jose, CA 95113 | Phone (408) 535-7059 | jennifer.cheng@sanjoseca.gov

From: Caleb Kwong [<mailto:caleb@savantsolutions.net>]
Sent: Wednesday, October 24, 2018 2:02 PM
To: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Ms. Cheng,

I saw a City Council Meeting is upcoming on 10/31 at 1:30PM. Is that the meeting we should be attending?



Caleb Kwong
Your Trusted IT Advisor

1007 7th St, 5th Floor, Sacramento, CA 95814
o (916) 836-8182 x1337 | m (650) 922-7804
Caleb@SavantSolutions.net
www.savantsolutions.net



From: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Sent: Tuesday, October 16, 2018 9:27 AM
To: Caleb Kwong <caleb@savantsolutions.net>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Dear Mr. Kwong,

I have no additional questions at this time. The requested information is not requested as a basis for a written appeal, but for review and clarification.

Please review the Municipal Code section provided regarding the process for submitting a written appeal to the City Clerk by end of day Pacific Time on October 22, 2018.

Thank you,

Jennifer

Jennifer Cheng | City of San Jose | Deputy Director | Finance Department- Purchasing & Risk Management
200 E. Santa Clara Street, 13th Floor | San Jose, CA 95113 | Phone (408) 535-7059 | jennifer.cheng@sanjoseca.gov

From: Caleb Kwong [<mailto:caleb@savantsolutions.net>]
Sent: Monday, October 15, 2018 3:22 PM
To: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Afternoon Ms. Cheng,

All the following can be provided. What do you need in addition to the questions 1-5 for the written appeal? We'll be happy to attend the City Council meeting, I'll keep an eye out for the date on the next council meeting. Thanks.



Caleb Kwong

Your Trusted IT Advisor

1007 7th St, 5th Floor, Sacramento, CA 95814
o (916) 836-8182 x1337 | m (650) 922-7804
Caleb@SavantSolutions.net
www.savantsolutions.net



From: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Sent: Friday, October 12, 2018 3:24 PM
To: Caleb Kwong <caleb@savantsolutions.net>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Dear Mr. Kwong:

Thank you for your email. Please provide the following additional information and clarifications:

1. A copy of the lease agreement between Savant Solutions and the landlord.
2. Documentation (checks, invoices, etc.) substantiating payments made by Savant Solutions for expenses relating to this location, e.g., rent, internet, phone, etc.
3. Is the landlord reporting the rent received from Savant Solutions as rental income?
4. What is the relationship and/or affiliation between Savant Solutions' and the landlord? Is the landlord a contractor, consultant, and/or subcontractor to Savant Solutions either currently, previously, or expected to be so in the future?
5. Please describe who works out of this location, including specific names, affiliations with your company, and how frequently they work out of this location.

You may appeal the City's decision in this matter to the San José City Council by filing a written appeal with the City Clerk by end of business day (Pacific Time) on October 22, 2018 pursuant to [Municipal Code Section 4.12.460](#).

We do not currently have a set City Council meeting date for this item. We will provide you a courtesy notice of the meeting date when it has been determined.

Sincerely,

Jennifer Cheng

Jennifer Cheng | City of San Jose | Deputy Director | Finance Department- Purchasing & Risk Management
200 E. Santa Clara Street, 13th Floor | San Jose, CA 95113 | Phone (408) 535-7059 | jennifer.cheng@sanjoseca.gov

From: Caleb Kwong [<mailto:caleb@savantsolutions.net>]
Sent: Thursday, October 11, 2018 9:49 AM
To: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: RE: Response to Protest Letter from Savant Solutions

Afternoon Ms. Cheng,

This email is to address a number of inaccuracies in your letter. Pursuant to the local business preference the current residence is not a Savant employee's home. I pay a monthly fee to use one of their rooms as an office. I am currently paying sales tax, rent, wage/labor, and for internet in retaining this office. The reason why this satellite office is not listed on our company's website is because I am a bit embarrassed about our Sunnyvale home office and not something that I want to advertise. This could affect our brand image, I'm sure you could understand that. When we need a conference room for meetings in the area, we have customers meet with us out of a conference room we find on LiquidSpace. (<https://liquidspace.com>) As a small business we make sure we keep our expenses as low as possible, which is going to give us the capability to open up a satellite office in SF in November. Here's a comparison of the services offered at both facilities.

Business Offering	Satellite Home Office	WeWork
Paying Rent	Yes	Yes (\$380/month)
Printer available	Yes, owned	Yes, pay per page
VOIP Phone	Yes	No
High Speed Internet	Yes	Yes
Front Desk	No	Yes
Signage Outside	No	No
Meeting Space	Yes, hrly through LiquidSpace	Yes, hrly
Tea, Coffee, Snacks	Yes	Yes

If I paid a little bit more for WeWork I don't gain much more than someone sitting at the front desk doing nothing for me. Also their meeting space cost is higher compared to what I can find on LiquidSpace. The City of San Jose is setting precedence that a local business can not be out of a home office. There are tons of startup incubators throughout San Jose that are out of people's homes and they are considered a legitimate business. I believe the City of San Jose is one of the leading cities in setting an example to other cities of what innovation and technology changes are coming. We are a hot and upcoming firm we'll have nicer office space as we grow, our Sacramento headquarters is a prime example. Our satellite office appearance in Sunnyvale is not a great perception of the work we have done.

How many can say they have done the following?

- Helped NASA Dryden build their control systems to man the civilian UAV's
- Architect Boeing's classified SAN environment for 3 sites and DR.
- Architect CA Department of General Services Firewall Security for 69 sites including their NSX environment

In conclusion when we compare differences between what WeWork offers compared to our Satellite office there is no much of a difference. Based upon these reasons, Savant Solutions should qualify as a local business.

Caleb Kwong

Your Trusted IT Advisor

1007 7th St, 5th Floor, Sacramento, CA 95814
o (916) 836-8182 x1337 | m (650) 922-7804
Caleb@SavantSolutions.net



www.savantsolutions.net



From: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Sent: Tuesday, October 9, 2018 6:49 PM
To: Caleb@SavantSolutions.net
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>
Subject: Response to Protest Letter from Savant Solutions

Hi Caleb,

Please find the City's response to Savant's protest letter attached.

Thank you,

Jennifer

Jennifer Cheng | City of San Jose | Deputy Director | Finance Department- Purchasing & Risk Management
200 E. Santa Clara Street, 13th Floor | San Jose, CA 95113 | Phone (408) 535-7059 | jennifer.cheng@sanjoseca.gov



SAVANT SOLUTIONS

Your Trusted IT Advisor

Date: 10/21/18

To the City Council of San Jose,

This letter serves as our formal protest. The City of San José issued its Infrastructure Refresh Project RFP on March 26, 2018 and received seven proposals. Proposals were evaluated based on the weightings and criteria specified in Section 13.2 of the RFP. Four vendors scored in the competitive range for their submitted Technical and Cost Proposals and were invited to provide System Demonstrations. Following System Demonstrations, the City conducted a Best and Final Offer (BAFO) and a Second BAFO to further clarify specifications and requirements and to obtain pricing that conforms to the City's budget.

Based on these results, the City recommended the award of contract to SHI International Corp. as the best value proposer by issuing a notice of intent to award on September 28, 2018:

	Points Available	Insight Public Sector	Kovarus, Inc.	Savant Solutions	SHI International Corp.
Experience	5	4	4	3	4
Project Approach / Schedule	15	13	13	12	12
Technical Capabilities	10	7	7	8	7
Second BAFO Cost Proposal	15	13	14	15	14
System Demonstration	45	28	36	33	39
Local Business Enterprise	5	5	0	0	0
Small Business Enterprise	5	0	0	0	0
	100	70	74	71	76

However, Savant Solutions was denied its local business enterprise and small business enterprise points as required by City Ordinance and the RFP. Had the local business preference and small business enterprise been properly applied, Savant Solutions would have acquired another 10 points and would have been the awarded vendor based on the City's best value determination.

As a result of that inappropriate scoring, Savant Solutions is submitting this bid protest under Section 20 of the RFP, which provides that unsuccessful proposers may submit a protest, detailing the grounds, factual basis, and all supporting information for the protest, within ten (10) calendar days after the release date of the notice of intent to award. This protest is being submitted within the 10 calendar days allowed by the RFP, which would require submission on or before October 22, 2018.

The City had previously pointed me to the following link to explain why Savant Solutions was denied a local business enterprise preference in the first BAFO:

https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.12P_RGOSE_PT1DE_4.12.030LOBUEN. The City explained that because the primary purpose of the location listed in the bid is to serve as a residence and not as a business, Savant Solutions did not qualify for the preference. The City stated that this determination was based on the municipal code definitions.

However, I have reviewed the ordinance regarding local business enterprises which provides the definition of a local business enterprise:

4.12.030 - Local business enterprise.

"Local business enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara, California. Evidence of legitimate business presence in San José shall include:

- A. Having a current San José business tax certificate; and
- B. Having either of the following types of offices operating legally within the County of Santa Clara:
 - 1. The contractor's principal business office; or
 - 2. The contractor's regional, branch or satellite office with at least one (1) full-time employee located in the County of Santa Clara

Similarly, a small business enterprise is defined in City ordinance as:

4.12.060 - Small business enterprise.

As used in this title, "small business enterprise" means a local business enterprise that has thirty-five (35) or fewer total employees. With respect to bids or proposals submitted by partnerships or joint ventures, the number of employees for purposes of qualifying as a small business enterprise shall be determined by the total number of employees of each of the members of the partnership or joint venture combined

Savant Solutions bid as a corporation which has a legitimate business presence in the County of Santa Clara, California. As evidence, Savant Solutions provided a current San José business tax certificate and evidence that Savant Solutions has at least one (1) full-time employee located in the County of Santa Clara. In addition, Savant Solutions provided the location of my satellite office location with the County of Santa Clara at 1259 Rousseau Dr, Sunnyvale, CA 94087. The term "satellite office" is not defined in the City of San Jose's local ordinances. Satellite office is commonly defined as "an office that belongs to and is controlled by a larger organization in another place." Nowhere in the City of San Jose's local ordinances does it state that a satellite office location could not be a residence. In fact, residences are allowed to be used for occupations in the City in every zoning classification and the City has recognized that home businesses are a growing segment of its population. Had Savant Solutions been properly determined to be a local business enterprise, Savant Solutions would have received an additional 5 points in the RFP scoring.

In addition, Savant has less than 35 total employees. As an established local business enterprise with less than 35 employees, Savant should have also been awarded 5 additional points as a small business enterprise. The resulting point adjustments would provide Savant Solutions with a total of 81 points and qualify Savant Solutions as not only the lowest cost, but also the best value for the taxpayers of the City of San Jose.

Furthermore, Savant Solutions opened our branch office on Jan 3rd, 2018 before the RFP was even released. Due to the increase of business we are doing with other cities in the bay area we needed a local presence. Here are current local cities we work with:

- City of Cupertino
- City of San Carlos
- City of Belmont
- City of San Mateo
- City of Pleasanton
- City of San Bruno

Under the City of San Jose's interpretation of its ordinance, it would have recognized my local business if I opened my office out of a WeWork location instead of a house. There is no difference between me using an office out of a residence or using an office out of a commercial building. HP and Apple started their business out of a garage in a residence, we all started from somewhere small.

Pursuant to the local business preference the current residence is not a Savant employee's home, it is owned by Layla Jahromizadeh. I went to school with Layla's daughter at Foothill College and her kids have mostly moved out of the 4 bedroom house. Since 2 of her bedrooms are unused she was willing to rent it out cheap to me and she's retired. Savant Solutions pays a monthly fee to use one of their rooms as an office which includes utilities, internet, coffee, and b/w printer. Snacks and other supplies are out of pocket and reimbursed. We are currently paying sales tax, rent, wage/labor, and for internet in retaining this office. The reason why this satellite office is not listed on our company's website is because I am a bit embarrassed about our Sunnyvale home office and not something that I want to advertise. This could affect our brand image, I'm sure you could understand that. When we need a conference room for meetings in the area, we have customers meet with us out of a conference room we find on LiquidSpace. (<https://liquidspace.com>) As a small business we make sure we keep our expenses as low as possible, which is going to give us the capability to open up a satellite office in SF in November. Here's a comparison of the services offered at both facilities.

Business Offering	Satellite Home Office	WeWork
Paying Rent	Yes	Yes (\$380/month)
Printer available	Yes, owned	Yes, pay per page
VOIP Phone	Yes	No
High Speed Internet	Yes	Yes
Front Desk	No	Yes
Signage Outside	No	No
Meeting Space	Yes, LiquidSpace	Yes, hrly
Tea, Coffee, Snacks	Yes	Yes

If I paid a little bit more for WeWork I don't gain much more than someone sitting at the front desk doing nothing for me. Also their meeting space cost is higher compared to what I can find on LiquidSpace. The City of San Jose is setting precedence that a local business can not be out of a home office. There are tons of startup incubators throughout San Jose that are out of people's homes and they are considered a legitimate business. I believe the City of San Jose is one of the leading cities in setting an example to other cities of what innovation and technology changes are coming. We are a hot and upcoming firm we'll have nicer office space as we grow, our Sacramento headquarters is a prime example. Our satellite office appearance in Sunnyvale is not a great perception of the work we have done.

In response to Ms. Cheng's questions:

1. A copy of the lease agreement between Savant Solutions and the landlord.

A formal lease was not required, a gentlemen's agreement was sufficient. She was not stressed if payment was on time, there were times where I didn't get Layla the money till the following month. This was a one-year agreement with options to renew at the end of the yr. We'll be looking to possibly move into a bigger office next year since we are looking to add couple more bodies in the area.

2. Documentation (checks, invoices, etc.) substantiating payments made by Savant Solutions for expenses relating to this location, e.g., rent, internet, phone, etc.

See exhibit A attached, all cash payment.

3. Is the landlord reporting the rent received from Savant Solutions as rental income?

Layla does not currently need to report the additional income because she currently makes less than what the IRS requires to pay taxes. If her income for the year increases and surpasses the IRS' threshold then she will include it in her 2018 taxes.

4. What is the relationship and/or affiliation between Savant Solutions' and the landlord? Is the landlord a contractor, consultant, and/or subcontractor to Savant Solutions either currently, previously, or expected to be so in the future?

I went to school with Layla's daughter at Foothill college. I am close to the family and her kids have mostly moved out. She has 2 bedrooms that were not in use anymore so she provided it to Savant Solutions cheap. Layla has never been a contractor, consultant, or has ever worked for Savant Solutions, nor does she plan to work for us in the future. She's retired and enjoying life.

5. Please describe who works out of this location, including specific names, affiliations with your company, and how frequently they work out of this location.

Kim Wagner works full time out of this location and does marketing for our team. I also occasionally work out of this satellite office since I'm in the bay area quite frequently for meetings.

Savant Solutions respectfully requests that the City reconsider its determination that it did not qualify for this bid preference. Savant Solutions is exactly the type of small, local business enterprise that the ordinance seeks to assist in government bidding and should have received local business enterprise and small business enterprise preference as part of the City's review of Savant Solution's RFP response.

Sincerely,

Caleb Kwong

Caleb Kwong

Exhibit A – Payments made

Bank of America 

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 01/02/2018

Amount: -300.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 12/31 #000006630
WITHDRWL 29TH AND MISSION SAN
FRANCISCO CA CKCD [REDACTED]

Bank of America 

On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 03/15/2018

Amount: -600.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 03/15 #000008308
WITHDRWL HALE BUILDING SACRAMENTO CA
CKCD [REDACTED]

Bank of America 

On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 04/02/2018

Amount: -300.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 04/02 #000003305
WITHDRWL HALE BUILDING SACRAMENTO CA
CKCD [REDACTED]

Bank of America 

On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 05/08/2018

Amount: -360.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 05/07 #000002652
WITHDRWL HALE BUILDING SACRAMENTO CA
CKCD [REDACTED]

Bank of America 

On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 05/25/2018

Amount: -100.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 05/24 #000006186
WITHDRWL HALE BUILDING SACRAMENTO CA
CKCD [REDACTED]

Bank of America 

On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 07/09/2018

Amount: -320.00

Type: Withdrawal

Name on card: CALEB R KWONG

Description: BKOFAMERICA ATM 07/08 #000007275
WITHDRWL HALE BUILDING SACRAMENTO CA
CKCD [REDACTED]



Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 08/17/2018
Amount: -600.00
Type: Withdrawal
Name on card: CALEB R KWONG
Description: BKOFAMERICA ATM 08/17 #000004881
WITHDRWL SFO INTL AIRPORT SAN
FRANCISCO CA CKCD [REDACTED]

Payment for October has not been made yet. Anything over \$300 was reimbursement for supplies in the satellite office. Payment below is for VOIP.



On

Business Advantage Chk [REDACTED] Account Activity Transaction Details

Post date: 07/23/2018
Amount: -1,281.38
Type: Debit card
Purchaser: CALEB R KWONG
Description: RINGCENTRAL, INC PURCHASE 650-4724100
CA
Merchant category: Telecommunications Services, including Local
and Long Distance Calls, Credit Card Calls,
Calls Through Use of Magnetic-Stripe-
Reading Telephones, and Fax Services

From: Jim Cunneen [mailto:jfcunneen@comcast.net]
Sent: Saturday, October 13, 2018 2:58 AM
To: Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov>
Cc: Davis, Vickie <Vickie.Davis@sanjoseca.gov>; Zaki Barzinji <zaki.barzinji@hpe.com>
Subject: Re: HPE Support for Savant Solutions

Jennifer,

Further to my note, I have include HPE Government Relations executive Zaki Barzinji as well. I'm their contract lobbyist.

HPE's position is only that their partner is treated fairly given their initial highest score, and that a more detailed policy clarification be provided as to Savant's disqualification relative to their status as a local home-based small business. I was unaware that the City did not consider a home-based business as qualified under the definition of "local business" for purposes of procurement benefit. We would be very grateful for a detailed clarification from staff and Council on that issue. Thank you so much.

Kind regards,

Jim Cunneen
408.895.0100
www.calstrat.com

On Oct 13, 2018, at 10:09 AM, Jim Cunneen <jfcunneen@comcast.net> wrote:

I represent HPE as their long time lobbyist. My note is on behalf of HPE's support for the protest. Thank you for your response.

Jim Cunneen
www.calstrat.com

On Oct 13, 2018, at 2:29 AM, Cheng, Jennifer <Jennifer.Cheng@sanjoseca.gov> wrote:

Dear Mr. Cunneen,

Your email dated October 10, 2018 regarding the City's Infrastructure Refresh RFP was forwarded to me. As the Purchasing Officer for the City, it is my responsibility to investigate and respond to vendor protests. I received Savant Solutions' protest letter (which was attached to your email) prior to the October 8, 2018 protest submittal deadline and provided a response to Savant. That information, along with your email, will be included when this item is reviewed by City Council.

As a point of clarification, can you please explain your relationship/affiliation with Hewlett-Packard Enterprise and Savant?

Thank you,

Jennifer

Jennifer Cheng | City of San Jose | Deputy Director | Finance Department- Purchasing & Risk Management
200 E. Santa Clara Street, 13th Floor | San Jose, CA 95113 | Phone (408) 535-7059 | jennifer.cheng@sanjoseca.gov

From: Jim Cunneen [<mailto:jfcunneen@comcast.net>]
Sent: Wednesday, October 10, 2018 5:15 PM
To: Lloyd, Rob <Rob.Lloyd@sanjoseca.gov>
Cc: 'Barzinji, Zaki' <zaki.barzinji@hpe.com>; jfcunneen@comcast.net
Subject: HPE Support for Savant Solutions
Importance: High

Rob,

I'm writing on behalf of Hewlett-Packard Enterprise (HPE) to convey their strong support for the appeal to the recent Infrastructure Refresh Program RFP by its strategic partner Savant Solutions. For reference, please *see attached protest letter* sent to the City by Savant. Headquartered in San Jose, HPE is proud to partner with Savant to address the City's infrastructure refresh program needs.

Here's our main concern: *Savant won the first Best and Final Offer (BAFO) round, but without notice nor the opportunity to address any specific concerns, the City announced that points would be deducted from Savant's bid as it will not recognize their satellite office as a local business. The City then solicited a second BAFO and the award was granted to a competitor within the margin of points deducted from Savant (5 points).* Furthermore, Savant also qualifies as a small business under San Jose code which should provide an additional 5 points.

Savant has provided the necessary business and tax credentials to the city. The City explained that because the primary purpose of the location listed in the bid is to serve as a residence and not as a business, Savant would not qualify for the preference. I'm certain that this interpretation would come as quite a surprise to thousands of home based businesses with legitimate business licenses in Santa Clara County.

Savant clearly qualifies as a legitimate business presence in the County of Santa Clara. We would be grateful for the clarification of the City's position on the qualification of home-based businesses in general and the disqualification of our business partner as a local business.

HPE is proud to be a new part of North San Jose's business community and only seeks to ensure our business partner Savant is treated fairly. In this case, we are concerned to learn that RFP's are structured in a way that disqualifies small home-based business from being awarded their due point advantage. Hence, on behalf of HPE, I would ask the City to reconsider its determination that Savant does not qualify for this bid preference as We would be grateful for your review as the City finalizes its position on Savant's protest.

Jim Cunneen
www.calstrat.com
@cunneenmachine



CALIFORNIA STRATEGIES, LLC

October 25, 2018

The Honorable Sam Liccardo
Mayor
City of San Jose
200 E Santa Clara Street
San Jose CA 95113

Re: Bid #RFP 17-18-19 - Infrastructure Refresh Project – HPE Support for Savant Solutions Inc Bid Protest

Dear Mayor and Members of the City Council,

On behalf of Hewlett Packard Enterprise (HPE), we wish to share our strong support for a formal protest filed by our local business partner, Savant Solutions, regarding the City's infrastructure refresh contract award. Our aim is to ensure our partner is treated fairly and to raise an important policy consideration for the City Council. In fact, the concerns raised by Savant's protest could have broader policy implications for the City's community of innovators and entrepreneurs. *At the center of their protest is the definition of what constitutes a local business in San Jose, and the danger of setting the wrong precedent on that front deserves close attention from the City's top leadership.*

In March, the City began soliciting proposals for its [Infrastructure Refresh Project](#) to revamp its data centers and support San Jose's drive to become one of the most innovative cities in the nation. As is commonly applicable, the original RFP indicated that businesses with "an office in Santa Clara County and a valid City of San Jose Business Tax Certificate" would qualify for a Local Business Enterprise/Small Business Enterprise (LBE/SBE) Preference. Savant Solutions, which fulfills both requirements, indicated this in its bid and was accordingly granted the LBE/SBE Preference by the City. At the end of the initial bidding process, the City went on to recognize Savant Solutions as the intended awardee of the contract.

However, the City abruptly reversed course. On September 6th, the City retracted its Notice of Intended Award and reopened the bidding process. The City informed Savant Solutions that the LBE/SBE Preference it had been awarded would no longer apply, apparently because the City ruled that the company's home-based office would no longer count as a local business enterprise. This decision is particularly troubling given that the municipal code makes no distinction between home-based offices or other types of offices in the definition of local business enterprise. By way of explanation for this reversal, the City referred Savant Solutions back to the municipal code, which offers only the following criteria for determining what constitutes a local business enterprise:

"Local business enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business

presence in the County of Santa Clara, California.

Evidence of legitimate business presence in San José shall include:

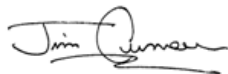
- A. Having a current San José business tax certificate; and
- B. Having either of the following types of offices operating legally within the County of Santa Clara:
 - 1. The contractor's principal business office; or
 - 2. The contractor's regional, branch or satellite office with at least one (1) full-time employee located in the County of Santa Clara”¹

It is our understanding that Savant Solutions has rented office space for a full-time employee from a homeowner not affiliated with the company since well before the RFP was issued. This fulfills all of the stated criteria in the Code and in the RFP as Savant Solutions furnished a San Jose business tax certificate and evidence of a full-time employee in its original winning bid. After the City's reversal, Savant Solutions shared these concerns and requested clarification from the City before filing a formal appeal. We are unaware of any detailed response from the City that identifies precisely in the municipal code where home-based offices are excluded from the definition of a local business enterprise.

As this matter is now coming before the City Council, you will be able to set an appropriate standard beyond this specific bid cycle. *Our hope is that the City Council will clarify whether a home-based business in Santa Clara County is entitled to a bid preference as a local business enterprise. If the City Council rejects this appeal and provides no clarification, the Council might set a broader precedent that home-based offices in San Jose cannot be considered a local business. We imagine this will have a thoroughly unintended consequence on San Jose's ever-growing community of entrepreneurs who may start small but still dream big. Your leadership in clarifying this policy matter, both in the case of this specific protest and for future issues that may arise, would be greatly appreciated.*

After 77 years in Palo Alto (where our parent company began as a home-based office working out of a garage), HPE is thrilled to be moving our headquarters to the San Jose community in early 2019. Regardless of the outcome of this matter, HPE looks forward to contributing to the City's aspirations of serving as the Bay Area's hub for innovation, diverse talent, and better delivery of government services for its citizens. Thank you.

Sincerely,



Jim Cunneen
Registered Lobbyist for Hewlett Packard Enterprise

Cc: Zaki Barzinji, U.S. State and Local Government Affairs
City Council and Staff

¹ Municipal Code § 4.12.03D.

Appendix B



Kovarus, Inc. | 1303 J Street, Suite 410 | Sacramento CA, 95814
Tel: (650) 392-7848 | Fax: (916) 248-8509 | sales@kovarus.com | www.kovarus.com

Kovarus, Inc.
1303 J Street, Suite 410
Sacramento, CA 95814

October 5th, 2018

City of San José
Attention: Purchasing Officer
200 East Santa Clara Street, 14th Floor
San José, CA 95113
RE: RFP 17-18-19 - Infrastructure Refresh Project

Dear Sir or Madam,

Kovarus would like to formally protest the scoring of the City of San Jose RFP 17-18-19 Infrastructure Refresh Project.

1. **Cost Proposal:** In the original intent to award notification released on August 31, 2018, Kovarus had 75 points. During the 2nd Best and Final Offering (BAFO), Kovarus was able to reduce our overall price, while increasing the overall value of our proposal.

In our response to the first BAFO the total solution pricing was \$1,868,747.48. In our response to the 2nd BAFO the total solution price was \$1,643,197.94. With this reduction in overall solution cost we were expecting to earn additional points. However, on receipt of the most recent Intent to Award we found that we had lost 1 point.

In addition to reducing the overall solution price, Kovarus was also able to reduce pricing for many items listed in the "Add-ons" portion of Attachment D. Considering all of the pricing reductions provided in the 2nd BAFO, Kovarus is curious why we lost points. We expected to earn points with lower pricing.

We request scoring documentation to back up the lost point and lack of new points. Kovarus is also requesting the pricing document (Attachment D) for all 4 BAFO finalists.

2. **System Demonstration:** A large portion of the RFP scoring was based around the system demonstration. Kovarus prepared and rehearsed diligently for this presentation. We believe that we demonstrated every requirement listed in the RFP regarding the System Demonstration. We were surprised to learn that we scored 3 points behind SHI.

Kovarus is requesting the individual scoring sheets used to score the bidders.

3. **Technical Capabilities:** In regard to Technical Capabilities, Kovarus would like to understand the criteria the City used to score us a 7. Kovarus holds the highest level of certifications for the OEM's represented in our proposal. VMware is a strong example. While VMware is not the only technology involved in the solution we proposed, based upon

the requirements in the RFP many VMware technologies are listed as requirements. To properly deliver VMware based solutions, organizations need a partner who is trusted and proven. Kovarus has been a top tier sales and delivery partner for VMware. We hold many VMware certifications and credentials. In fact, Kovarus is one of 8 partners nationally to have earned the VMware "Master Services Competency".

In comparison, all respondents received a 7 except Savant Solutions, Inc. Kovarus would like to see the criteria used to score us a 7, and Savant Solutions an 8.

As a part of this protest, Kovarus is requesting a copy of all 4 finalists proposals, final scoring, and all scoring documentation.

Sincerely,



Alex Weeks
Regional Director of Consulting, Public Sector
Kovarus, Inc.

October 12, 2018

Mr. Alex Weeks
Kovarus, Inc.
1303 J Street, Suite 410
Sacramento, CA 95814

Subject: City of San José (City) Request for Proposal (RFP) 17-18-19 for the Infrastructure Refresh Project

Reference: Protest letter from Mr. Alex Weeks of Kovarus, Inc. (Kovarus) dated October 5, 2018

Dear Mr. Weeks:

This letter is in response to your referenced letter protesting the City's Notice of Intended Award for the Infrastructure Refresh Project.

In your protest letter, you raise concerns regarding the City's scoring in three areas of the RFP: (1) Cost Proposal, (2) System Demonstration, and (3) Technical Capabilities. The City's Selection Process and Evaluation Criteria were specified in Section 13 of the RFP and were the basis on which proposals were scored.

(1) Cost Proposal

The maximum available points for Cost is 15 points. The proposer with the lowest total base bid is allocated the maximum 15 points and all other proposers' scores receive a smaller number of points as determined by the ratio of their costs to the least expensive. Once a Best and Final Offer (BAFO) is conducted, cost points for each proposer are recalculated based on the new cost information. Therefore, previous cost submissions and scores have no bearing on the new cost point allocation resulting from a BAFO.

During the Second BAFO process, the City explained to all finalists that cost points were allocated based on the City's budget and relative to other cost proposal submissions (reference the City's response to Question 9 of Addendum 3). All finalists submitted Second BAFO costs that were within the City's stated not-to-exceed budget so final cost points were allocated based on each finalist's cost as it related to the lowest priced base bid received.

Cost results for the Second BAFO are summarized below:

	Total Base Bid	Available Points	Allocated Points
Insight	\$1,781,819.92	15	13
Kovarus	\$1,643,197.94	15	14
Savant Solutions	\$1,554,998.00	15	15
SHI	\$1,686,829.97	15	14

Cost responses for all finalists (Attachment D) are provided on the shared drive indicated below. Note that both Kovarus' and Savant Solutions' responses were adjusted, in coordination with the applicable vendor, to make corrections as follows: (1) VMware costs for ongoing support/subscriptions were added to Kovarus' base bid, and (2) optional services and software were removed from Savant Solutions' base bid.

(2) System Demonstration

It is unclear what the basis for this portion of the protest is. While I am sure your statement that "Kovarus prepared and rehearsed diligently for this presentation" is accurate, it is almost certain that all other finalists did the same. The act of simply demonstrating every requirement does not guarantee a perfect score nor did the City represent that system demonstrations would be scored based on a pass/fail methodology. Instead, evaluators scored the system demonstrations based on the System Demonstration Script that was provided to all finalists with the goal of determining which proposed solution will best meet the City's technical, functional, and business requirements.

Final scores were disclosed in the City's Notice of Intended Award. The City will not disclose individual evaluator scores but has provided a copy of the System Demonstration Evaluation Worksheet and System Demonstration Script on the shared drive noted below.

(3) Technical Capabilities

Evaluators considered and scored the information submitted in each vendor's Technical Proposal during the evaluation process. Evaluation scores were not based on just one factor, such as VMware affiliation. Technical Capabilities were scored based on the information specified in Section 11.3 of the RFP, and final scores for Technical Capabilities were disclosed in the City's Notice of Intended Award. A copy of the Technical Proposal Evaluation Worksheet is available on the shared drive noted below.

Protest Letter Response to Mr. Alex Weeks, Kovarus, Inc.
October 12, 2018
RFP 17-18-18 Infrastructure Refresh Project
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While your protest is submitted based on Kovarus' dissatisfaction with the evaluation scoring, I found no indication that the evaluation team evaluated and scored on anything other than what was clearly specified by the City during the RFP process. Therefore, after careful review, I am upholding staff's recommendation of award to SHI International Corp. as the highest scoring responsive and responsible proposer per the criteria set forth in the RFP. It is my finding that the City's procurement processes were properly followed and that the RFP was conducted in a fair and objective manner.

You may appeal this decision to the San José City Council by filing a written appeal with the City Clerk by end of day (Pacific Time) October 22, 2018 pursuant to [Municipal Code Section 4.12.460](#).

You requested a number of documents related to the RFP in your protest letter. City staff have set up a shared drive where you may download the Evaluation Worksheets, the Notice of Intended Award, and copies of finalist proposals (including Kovarus' proposal as requested). Please click [here](#) to access.

Thank you for your interest and participation in this process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Cheng".

Jennifer Cheng
Deputy Director, Finance