

10/13/2020

item 8.B

Santa Clara Stadium Authority

*Report from the Stadium Authority on Its Concerns with the
Stadium Manager's Request to Execute an Agreement with
LCPtracker, Inc.*



October 13, 2020, Item 8.B

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LCPtracker Agreement Case Study

Stadium Manager's request is a good case study that illustrates long standing performance issues:

- Mismanagement of public contracts;
- Unexplained uses of public funds;
- Strong evidence of non-compliance with prevailing wage law;
- Unwillingness to uphold transparency laws, e.g., Brown Act or Public Records Act;
- Unwillingness to disclose its actions to the Board: removal of "**Subject to the provisions of the California Ralph M. Brown Act and the Public Records Act, and any other federal or state laws that may apply**"
- Inadequate budget planning and lack of fiscal transparency; and,
- Overall lack of knowledge with managing a public facility.



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Background

- Board revoked the Executive Director's authority to procure good and services on behalf of the Stadium Authority as of November 8, 2019, due to Stadium Manager's inability to demonstrate compliance with State and Local laws.
- Stadium Manager must now seek approval from the Board and demonstrate that the Stadium Manager has properly and legally procured goods and services before contracts may be executed.



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LCPtracker, Inc.

- LCPtracker is software for certified payroll reporting, construction site compliance management, and workforce reporting.
- Key elements of reporting to the DIR for compliance with state worker wage laws.
- It is unknown which system(s) was/were previously used since Stadium Manager has always been required to demonstrate compliance.



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Stadium Manager's Request

- Stadium Manager is requesting approval to execute an agreement with LCPtracker for certified payroll tracking software services and has submitted an agenda report outlining their request for the Board's approval.
- Cost of services for the first year is \$13,180, as represented in the report.
- Stadium Manager is requesting authority for \$25,000 for this agreement.



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Stadium Authority's Concerns



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1. Stadium Manager's request for a \$25,000 contract for services priced at \$13,180

- Stadium Manager's request is 90% higher than the actual contract cost.
- No documented scope of work or explanation in the agreement for how the additional funds will be expended.
- Contract contingency is generally in the range of 5-10%.
- Request for 90% contingency is not permitted and unusual.



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2. Mathematical/Typographical Errors in the Agenda Report or Agreement

- Stadium Manager's report states start-up fee is priced at \$5,950 and services for year one total \$13,180.
- Exhibit A: Schedule One prices the start-up fee at \$7,950 and total cost of services for year one at \$15,180.
- Stadium Manager refused to fix mistakes and fill in details where there are gaps in information.



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3. Undocumented Scope of Work

- 5 months later, Stadium Manager's explanation for contract authority for \$25,000 is "***For costs associated with potential integration of the accounting system software.***"
- Accounting system RFP did not contain terms and pricing for integration of systems: scope of work was not part of prior RFP discussions that Stadium Manager participated in.
- Stadium Manager only recently brought up Item V: Development services as an option under Schedule One of Agreement. Item V is not included under Section 6.1, which outlines actual services.
- Integration of systems should be outlined in any scope of work to ensure that it is a required outcome of the contract.

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4. Undefined Extension of Agreement

- Agreement allows for automatic annual renewals, without proper request for Board approval of "option" years to extend.
- Board direction and City Code Chapter 17.30.010 and 17.30.020(a) state:
 - ...and the procurement performed by the contractor is within the limits of a budget approved by the Stadium Authority Board for the year in which the contract is awarded. [Section 17.30.010]
 - (a) "Contract amount" means the value of the entire contract, **including any option...** and (2) in the case of multi-year contracts covering years for which a budget has not yet been adopted **shall not include amounts due in subsequent years that are conditioned on approval of the appropriate year's budget.** [Section 17.030.020]

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5. Inappropriate Removal of Provisions Requiring Compliance with Brown Act, Public Records Act, and Other Applicable Laws

- Stadium Manager had copy of the City's LCPtracker agreement, which contains compliance with State and Local laws.
- Provisions requiring compliance with California's Ralph M. Brown Act, Public Records, and other applicable federal and state laws **were removed from Sections 7.2 and 10.2: "Subject to the provisions of the California Ralph M. Brown Act and the Public Records Act, and any other federal or state laws that may apply"**
- Stadium Manager's lack of disclosure and inappropriate removal of these provisions violates Section 2.2 of the First Amendment to the Management Agreement, requiring Stadium Manager to obtain approval before material changes are made to standard agreement terms.

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6. Undocumented Source of Funding/Failure to Request Budget from Board

- No source of funding identified in the report and LCPtracker was not included in Stadium Manager's request during annual budget process.
- Stadium Manager declined to revise agenda report, stating, **"the preparation of Board Reports is not within the scope of the Stadium Manager's contract. That is the responsibility of City Staff."**
- Stadium Authority disagrees since Stadium Manager is responsible for working with Stadium Authority to develop an accurate budget, conduct legally compliant procurements, and function according to the law.

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7. Misunderstanding of Public Sector “Piggybacking” Procurement Process

- Stadium Manager reached out to Stadium Authority to piggyback the City’s agreement and was advised to enter into its own agreement: they interpreted as uncollaborative or refusal to “piggyback.”
- Stadium Authority was not being uncollaborative. Stadium Manager misunderstood piggybacking: it is for use of another agency’s negotiated terms and costs, not use of another agency’s contract.
- Based on May 21 meeting discussion and misleading statement in report, it does not appear that Stadium Manager understands piggybacking process. Piggybacking always requires a separate agreement.

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Conclusion

- Over a year after significant inadequate contract practices were discovered, major errors and omissions still exist.
- In this low dollar-valued agreement, Stadium Manager demonstrates:
 - Inability or inexperience with public procurement and contracts for the Stadium Authority, despite their representation of experience with public facility management.
 - Further evidence that Stadium Manager has not been complying with State Prevailing Wage Law: unwillingness to comply with State transparency laws, as required for a public agency.
 - Cause for question of how it has issued previous contracts when Board was not performing oversight.

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Recommendation: Alternatives 1 & 3

1. Accept the Stadium Authority's report on its concerns regarding the Stadium Manager's request to execute an Agreement with LCPtracker; and
3. Deny Stadium Manager's request to execute the LCPtracker agreement because of its failure to correct the following errors:
 - (a) Request for \$25,000 contract for services priced at \$13,180 (authorization for expenditure of 90% above contract value);
 - (b) Mathematical/typographical errors in the agenda report or agreement;
 - (c) Undocumented scope of work;
 - (d) Undefined extension of agreement;
 - (e) Inappropriate removal of provisions requiring compliance with Brown Act, Public Records Act, and other applicable federal or state laws;
 - (f) Undocumented source of funding/failure to request budget from Board; and
 - (g) Misunderstanding of public sector "piggybacking" procurement practice.



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