



Agenda Report

21-1276

Agenda Date: 9/28/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Report from the Stadium Authority Regarding the Stadium Manager's Request to Award Purchase Orders to Cvent for Event Diagram Software Subscription Services, Palace Business Solutions for Security and Life Safety Partitions/Dividers CapEx Project, and Kelly-Moore Paints and Sherwin Williams Paints for Brand Paints and Related Supplies

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

On October 8, 2019, the Stadium Authority Board (Board) approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval. As result of Ordinance No. 2005, the Stadium Manager is also required to request Board approval before entering into agreements on behalf of the Stadium Authority. As of the effective date of the Ordinance (November 8, 2019), all Stadium Authority agreements for services, supplies, materials, and equipment require the approval of the Stadium Authority Board.

As the Stadium Manager, Forty Niners Stadium Management Company, LLC is responsible for maintaining "the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility" as required by the Management Agreement between the Stadium Authority and Stadium Manager.

The Stadium Manager is requesting approval for the following:

- Award a purchase order to Cvent for event diagram software subscription services which will be used to illustrate floorplans and layout options for special events. The purchase order will have a three-year term with an option to extend two additional years (for a total of five years) and a not to exceed amount of \$26,594 over the initial three-year term (October 1, 2021 through September 30, 2024). The vendor submitted additional confidential terms and conditions to be included with the purchase order. Funding for contract years after FY 2021/22 is subject to the Board's approval as part of the annual budgeting process. Per the Stadium Manager, the cost for this service will be charged to the FY 2021/22 Non-NFL Event Budget, Software/Dues and Subscription line item;
- Award a purchase order to Palace Business Solutions for security partitions, in the amount of \$69,459. The security partitions are listed in the Stadium Authority FY 2021/22 CapEx budget under the Security and Life Safety Partitions/Dividers line item. The line item is budgeted for \$71,400;

- Award purchase orders to two vendors, Kelly-Moore Paints and Sherwin Williams Paints, for brand paint and related supplies. Each purchase order is for a three-year term with an option and have a not to exceed amount of \$50,000 per fiscal year (for a total not to exceed amount of \$200,000 for the three-year term which spans over four fiscal years). Funding for contract years after FY 2021/22 is subject to the Board's approval as part of the annual budgeting process. Per the Stadium Manager, the cost for these services will be charged to the FY 2021/22 Budget, Shared Expenses, Engineering line item.

Chapter 17.30.070 states that, "Except for reserved purchase order numbers assigned by the purchasing officer, the purchasing officer shall not issue any purchase order or award any contract for supplies, materials, or equipment unless there exists an unencumbered appropriation in the proper account of the Stadium Authority to which the purchase is to be charged." The event diagram software subscription services and paint purchase orders span over multiple fiscal years; however the Stadium Manager stated in their Recommendation for Award memo that the purchase orders' terms for subsequent years are subject to the approval of the Stadium Authority approval for the applicable fiscal year that include the amounts due under the agreements.

DISCUSSION

Stadium Authority staff reviewed the Recommendation for Award memo (attached to corresponding report #21-1277) and supporting procurement documentation submitted for the requests, and sent questions to the Stadium Manager for response. While the supporting documents for the requests were in order, staff requested clarification on the event diagram software subscription services and paint purchase orders below. Such exchange of questions is standard practice while reviewing requests for procurement and/or funding.

The Stadium Authority's questions, and Stadium Manager's responses are outlined below:

Event Diagram Software Subscription Services (Cvent)

- **Stadium Authority Q1.** Is this a new service that is being utilized for special events? If not, please let us know which vendor previously provided this service.

Stadium Manager Response to Q1. No. This is not a new service. The Stadium has used "Social Tables" for event diagramming for years. Social Tables was acquired by Cvent in 2018.

- **Stadium Authority Q2.** In the Recommendation for Award memo, the Stadium Manager states that the event diagram software services will be used for 25 unique spaces within Levi's Stadium. The list of spaces wasn't included; however, one of the proposers included the 49ers Museum, along with other spaces, as options for floor plan templates/spaces for development. If the request is approved to be funded by the Non-NFL Event Budget, the services will need to be used for Non-NFL Events only. Otherwise, the funding will come from Shared Stadium Expenses. Please confirm that Cvent's event diagram software services will not be used for Tenant space in the Stadium and will used for only Non-NFL Events.

Stadium Manager Response to Q2. As you know the Tenant has rights under the Lease to

host events throughout the Stadium for a variety of purposes (See for example Lease section 4.3.2 and 4.8.2), not just in Tenant Exclusive Areas. The costs of this particular software will be allocated in the same manner as other similar costs: based on the relative number attendees for events hosted by the SCSA on one hand, compared to the number of attendees for events hosted by the 49ers on the other hand. That cost allocation is done at year end. You will recall that the allocation for the 2019 fiscal year was 84% SCSA and 16% 49ers, but that will change each year. This is the same methodology that is utilized for a number of similar types of expenses.

It would obviously make no economic sense for the SCSA or the 49ers to purchase two duplicate software systems to perform the same function, just as it would make no sense to purchase an entirely duplicate set of table rounds and chairs for the two types of events.

Stadium Authority Response: Stadium Authority staff will review the allocation costs during the year end true up process to ensure that the Stadium Authority and Tenant (Forty Niners SC Stadium Company) are appropriately charged for these services. It is important to note that the Stadium Authority has requested for details or documentation regarding the methodology for the 84/16% split from the Stadium Manager but has not received this information. Further analysis on appropriate methodology may be required upon receiving this information.

Brand Paint and Related Supplies (Kelly-Moore Paints and Sherwin Williams Paints)

- **Stadium Authority Q3.A.** On July 13, 2021, the Stadium Authority Board approved the Stadium Manager's request to award a \$5,935 purchase order to Kelly-Moore for interior paint products needed to maintain the Stadium for the next six months. We understand based on the Stadium Manager's explanation in the Recommendation for Award memo that it was unable to execute the purchase order with Kelly-Moore due to product unavailability.

Stadium Manager Response to Q3.A. Correct. As we have explained before, the process that Manager Santana has created for stadium procurement is needlessly time consuming resulting in a great deal of administrative time and waste - including staff at City Hall and staff at the Stadium. The Kelly-Moore purchase is a good example of that waste. It took almost two months, multiple emails, and pages of paperwork to order \$5,935 worth of paint, and by the time the Board approved the purchase, the availability and pricing had been adversely impacted by various market factors.

We are hopeful that at some point the Board will recognize that many of Manager Santana's policies are purposefully inefficient and designed to make it difficult for us to operate the Stadium. These policies also increase the overhead costs charged to the SCSA, and in this case, cause the SCSA to incur additional costs for routine purchases like paint.

Stadium Authority Response: Staff makes the following clarifications regarding several of the Stadium Manager's misstatements. The current process for obtaining Board approval for all Stadium Authority agreements is set forth by Ordinance No. 2005, not the SCSA Executive Director as Stadium Manager misstates, and was adopted by the Stadium Authority Board. The Board decided to take policy action to eliminate all delegation of procurement authority for

Stadium Authority agreements due to the Stadium Manager's breach of its obligations under the Management Agreement, noncompliance with the California Labor Code and Department of Industrial Relations regulations for prevailing wage requirements and the Stadium Authority Procurement Policy set forth in Santa Clara City Code Chapter 17.30, and failure to achieve compliance after it was issued a Notice of Breach for noncompliance. The Board's action was also taken to restore the public's trust that public funds are being spent properly. The Stadium Manager refers to the current process as the Executive Director's policies and criticizes staff for managing its implementation, however, Ordinance No. 2005 and its requirements are a result of the Board's actions which were in turn prompted by the Stadium Manager's ongoing noncompliance with various public procurement laws and regulations. The Stadium Manager should cease from personal criticism and focus on their need for improvement and compliance with State laws. The Board was wise to take appropriate action to protect the legal use of public funds.

Further, staff consistently expedites review and preparation of agenda reports for the Stadium Manager's requests. It takes time to thoroughly analyze and review requests and prepare the appropriate documents for agenda publication. In order to effectively plan for Board and Council meetings and staff workload, there is an internal agenda report routing timeline that Stadium Authority and City staff adhere to when drafting and routing agenda reports. Staff has shared the timeline with the Stadium Manager, but requests are often submitted several days to a week before the agenda packet is published, leaving staff with little time to review the request and exchange questions with the Stadium Manager about their requests. This is why the Stadium Authority Board also directed the Stadium Manager to provide a procurement plan to improve coordination and plan for their submissions: unfortunately, the Stadium Manager has not complied with the Board's directive and, therefore, staff continues to receive unanticipated work while working on other assignments. Any delays could be addressed by the Stadium Manager submitting a Procurement Plan so that Stadium Authority staff can anticipate and assign capacity to such work: failure to do so, will continue with the ongoing process in place which is not desirable.

Last, the Kelly-Moore Paints purchase order that was approved by the Board on July 13, 2021 was part of a larger request that consisted of eight sub-requests totaling \$54,957. The Stadium Manager submitted the request on June 25, 2021, along with two other requests (one contained four sub-requests) and requested the items to be placed on the July 6 or July 13 agenda. The Stadium Manager also submitted a separate subsequent request on June 30, 2021. Staff timely reviewed the 14 sub-requests (totaling \$759,530), exchanged questions with the Stadium Manager, prepared four sets of corresponding reports (eight total), and placed them on the July 13, 2021 agenda. The requests and their supporting procurement documentation were in order, so staff recommended approval of the requests which the Board approved.

- **Stadium Authority Q3.B.** We also understand that the price of paint has increased, as referenced in the linked article in the Recommendation for Award memo. However, the Stadium Authority would like to better understand the Stadium Manager's anticipated need for interior and exterior paint over the next three years and whether that need aligns with the \$50,000 per fiscal year that is being requested for the two three-year agreements that span over four fiscal years (\$200,000 per agreement).

Stadium Manager Response to Q3.B. This type of interior and exterior paint is primarily used to address particular areas of the Stadium that are impacted by patrons or repairs, along with some preventative maintenance painting. Accordingly it is not possible to predict the amount of paint that will be required in any particular future year.

Historically, paint purchases have averaged in the range of \$15,000 per year for Shared Stadium Expense (StadCo has its own separate paint purchases for its exclusive areas). We would expect to be in that similar range for FY21/22, but we should keep in mind that the stadium is its 7th year. We also anticipate non-NFL event spaces to be used again this upcoming year.

Given the cumbersome process for procurement approval for small purchases such as paint, we recommend a minimum of \$50K per year for each vendor, so we have the flexibility to order paint as needed and to avoid having to potentially take rental space offline that could become unpresentable to clients.

Stadium Authority Response: The current procurement process is required by Ordinance No. 2005 and could easily be resolved by receipt of a Stadium Manager Procurement Plan to anticipate workload demands from the Stadium Manager. As already stated many times, the reduced capacity of the organization, coupled with the lack of ability to anticipate work from the Stadium Manager and tight agenda production deadlines, will continue this pattern unless improved coordination and transparency of their workload needs are revealed. Last, the Stadium Authority has previously recommended blanket purchase orders to the Stadium Manager to expedite the purchase of routine supplies and as such, agrees with their recommendation.

Stadium Authority Q3.C. Please provide a schedule of all anticipated interior and exterior paint work for the next three years including paint supply estimates.

Stadium Manager Response to Q3.C. See above.

Stadium Authority Q4. There was no supporting documentation for the Kelly-Moore and Sherwin William request. Can you clarify if the Stadium Manager plans to issue purchase orders to the two vendors instead of executing agreements? If the Stadium Manager plans to execute agreements, please provide copies of the agreements so they can be reviewed and included with the agenda report.

Stadium Manager Response to Q4. As noted in the RFA sent to you on 9.13.21: "If approved by the Board, individual orders of paint from each vendor will be ordered using the attached Purchase Order form."

A copy of the Purchase Order was included in the package already submitted to you. We have attached another copy for your convenient reference.

Stadium Authority Response: The Stadium Manager referenced both executing agreements and awarding purchase orders on page 5 of the Recommendation for Award memo, which are

two different types of legal documents, so staff sought clarification for this report. It is standard practice for Stadium Authority and City agenda reports seeking approval to execute agreements to include a copy of the draft agreement to the report. The Stadium Manager confirmed that they are planning to award purchase orders to the two vendors upon the Board's approval so there are no agreements to attach, although they did provide a copy of the purchase order template.

There are no additional comments regarding the Stadium Manager's responses and staff recommends approval of the requested purchase orders. The Stadium Authority will require full supporting documentation including compliance with prevailing wage laws, if applicable, before respectively releasing public funds upon procurement of the subscription and supplies. This requirement is consistent with the Stadium Authority Board's March 27, 2019 direction to staff to stop payment of any additional invoices for services unless there is substantial documentation of services rendered which must also be in compliance with State law and City Code.

ENVIRONMENTAL REVIEW

The actions being considered do not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment or pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

The FY 2021/22 Stadium Authority Non-NFL Budget for Catered Events includes \$15,000 for Dues and Subscriptions/Software. There are sufficient funds to cover the cost of Cvent's subscription services for FY 2021/22 (\$8,520 for the first contract year and a cost that will be allocated based on percentage of event attendees based on the Stadium Manager's explanation under the Event Diagram Software Subscription Services section).

The FY 2021/22 Stadium Authority CapEx Budget includes \$71,400 for the Security and Life Safety Partitions/Dividers line item which the security partitions fall under. There are sufficient funds to cover the cost of the security partitions (\$69,459).

The Stadium Authority FY 2021/22 Budget contains a Legal Contingency for Shared Expenses such as Security, Stadium Operations, Engineering, Guest Services, and Grounds. As part of its March 23, 2021 approval of the FY 2021/22 Budget, the Stadium Authority Board delegated budget amendment authority to the Executive Director for Shared Expenses from the Legal Contingency. There are sufficient funds in the FY 2021/22 Stadium Authority Legal Contingency, Engineering line item to cover the amount of \$100,000 for the requested brand paint and related supplies described in this report. The Executive Director will approve a budget amendment to reallocate \$100,000 from the Legal Contingency to the Shared Expenses, Engineering line item upon the Board's approval of staff's recommendations.

The Stadium Manager's entire request totals \$177,979 for FY 2021/22 and it is noted in the Recommendation for Award memo that the purchase orders' terms for subsequent years are subject to the approval of the Stadium Authority approval for the applicable fiscal year that include the amounts due under the agreements.

COORDINATION

This report has been coordinated with the City's Purchasing Manager and Treasurer's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov.

RECOMMENDATION

1. Approve the Stadium Manager's request to award a purchase order to Cvent, with the vendor's additional confidential terms and conditions, to purchase event diagram software subscription services, in the amount of \$26,594 over the initial three-year term, subject to budget appropriations for every fiscal year, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager;
2. Approve the Stadium Manager's request to award a purchase order to Palace Business Solutions for security partitions (Security and Life Safety Partitions/Dividers CapEx line item), in the amount of \$69,459, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager;
3. Approve the Stadium Manager's request to award a purchase order to Kelly-Moore Paints for brand paint and related supplies in an amount not to exceed \$50,000 per fiscal year (for a total not to exceed amount of \$200,000 over the initial three-year term which spans over four fiscal years), subject to budget appropriations for every fiscal year, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager; and
4. Approve the Stadium Manager's request to award a purchase order to Sherwin Williams Paint for brand paint and related supplies in an amount not to exceed \$50,000 per fiscal year (for a total not to exceed amount of \$200,000 over the initial three-year term which spans over four fiscal years), subject to budget appropriations for every fiscal year, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager.

Prepared by: Christine Jung, Assistant to the Executive Director

Reviewed by: Deanna J. Santana, Executive Director