



Agenda Report

20-259

Agenda Date: 3/24/2020

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Acceptance of the Stadium Authority Fiscal Year 2019/20 Contracts per Santa Clara City Code Chapter 17.30 Stadium Authority Procurement Policy [Board Pillar: Enhance Compliance with J and Manage Levi's Stadium]

BACKGROUND

Santa Clara City Code (Code) Chapter 17.30 Stadium Authority Procurement Policy formalizes the policies and procedures with respect to procurement for the Stadium Authority, with the intent to: (1) Establish efficient, equitable and effective procedures for the procurement activities of the Stadium Authority; (2) Ensure the integrity and equity in the procurement activities of the Stadium Authority and provide safeguards for the impartial application of the procurement policies; and, (3) Enable the Stadium Authority to operate and maintain equipment and facilities responsibly and to complete projects on time and on budget.

The Code applies to all purchases and contracts for supplies, goods, materials, and equipment by and on behalf of the Stadium Authority and establishes the Executive Director as the purchasing officer of the Stadium Authority.

Under Code 17.30.160(b), the Executive Director shall prepare, and submit to the Stadium Authority Board a report at the end of the fiscal year summarizing the total number of contracts let, the number of contracts approved under an exception, the number of contracts approved under best value procedures and the number of contracts approved under formal bidding procedures, and to the extent possible listing information related to application and outreach efforts conducted to implement the Disadvantaged Business Enterprise (DBE) program.

Through the Stadium Management Agreement (Management Agreement), the Stadium Authority has engaged the Forty Niners Stadium Management Company LLC (Stadium Manager) to provide management services for the Stadium, including overseeing the day-to-day operations and maintenance of the Stadium as well as the marketing and booking of Non-NFL Events.

The First Amendment to the Management Agreement provides the Stadium Manager with the full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations, as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code.

On September 17, 2019, the Stadium Authority Board (Board) approved the introduction of Ordinance No. 2005, which would rescind the Executive Director's blanket delegation by amending

Chapter 17.30, Stadium Authority Procurement Policy. On October 8, 2019, the Board adopted Ordinance No. 2005, which became effective on November 8, 2019. As of November 8, 2019, all contracts and agreements to acquire services, supplies, materials, and equipment require approval of the Stadium Authority Board.

DISCUSSION

The Stadium Authority staff entered into 17 contracts during Fiscal Year (FY) 2019/20. Eight were awarded under the Stadium Authority Counsel authority to contract for legal services, which are exempt from competitive bidding per Code 17.30.110(d). Table 1 summarizes the contract activity and, as part of this report, there is no information to report related to application and outreach efforts conducted to implement the DBE program:

Table 1: Stadium Authority Board/Staff Contract Activity for FY 2019/20

Contract Award Authority	Qty	Contracted Service
State law and Santa Clara City Code Section 17.30.110(d) - Exclusion of Contracts from Procurement Policies and Procedures	8	Contracts for legal services
Santa Clara Code Section 17.30.120 Service Contracts - Signature Authority prior to Ordinance No. 2005 becoming effective	1	Public Affairs and Media Relations Contract Amendment (Singer Associates) to extend the term
Santa Clara Code Sections 2.105.330 (e) (1) General Service - Contracting Procedures Exceptions and 17.30.120 Service Contracts - Signature Authority prior to Ordinance No. 2005 becoming effective	3	• Annual Financial Audit (KPMG) • Non-NFL Events, Construction Fund, and Procurement Audits Contract Amendment (HSNO) to extend the term, add funding, and expand the scope of services • Assignment Agreement for HSNO Services (J.S. HELD)
Authorized by Stadium Authority Board on December 17, 2019 for the 2019 Redbox Bowl	5	• Game Official Services Agreement Approval • Banquet Order (Grand Hyatt) • Football Replay (DVSport) • Practice Facility (Laney College) • Practice Facility (City College of San Francisco)

Specifically, the Executive Director executed four agreements prior to the revocation of her delegated authority as discussed above:

- An amendment to extend the term of an agreement that was competitively bid and awarded in FY 2017/18 under the Executive Director's signature authority per Code 17.30.120.
- An amendment to extend the term, add additional funding, and expand the scope of services for an agreement for specialized services from licensed professionals that was originally executed in FY 2018/19 and awarded under Santa Clara Code Sections 2.105.330 (e) (1) and 17.30.120 (a).
- Two new agreements were for specialized services from licensed professionals that were awarded under Santa Clara Code Sections 2.105.330 (e) (1) and 17.30.120 (a).

Stadium Manager Activity

As reflected in Table 1, once Ordinance No. 2005 became effective on November 8, 2019, the Stadium Manager has only requested the Board's approval for one set of agreements to acquire

services, supplies, materials, and equipment to support the Redbox Bowl event held on December 30, 2019. On December 17, 2019, the Board authorized the Executive Director to execute agreements if the Stadium Manager provided proper proof that the procurements were free of any conflict of interest. The Executive Director executed five agreements for the Redbox Bowl.

The Stadium Manager has executed a much larger number of agreements in relation to the Stadium and its operations. Attachment 1 is a list of 45 agreements that the Stadium Manager submitted in December 2019. The agreements were executed by the Stadium Manager for services, supplies, materials and equipment. At the time of writing this report, the Stadium Manager has provided copies of 43 agreements out of the 45, along with some backup documentation demonstrating if and how the agreement was competitively solicited.

Staff reviewed the agreements and prepared a table that summarizes the agreements and their compliance with public sector best practices procurement procedures (Attachment 2). Key findings include:

- Most of the agreements appear to have followed a competitive process or leveraged a cooperative agreement. *Note: However, most of the agreements that were competitively bid had processes that were rushed with less than ten days to respond. This is a short period of time for vendors to respond to multi-year agreements totaling hundreds of thousands of dollars of the life of the agreement.*
- Most of the agreements include termination for non-funding language; however, all the agreements have either multi-year terms or no end date, and most (28 out of 43) have total maximum compensation amounts that are equal to or greater than \$400,000. *Note: Multi-year contracts exceeding \$250,000 should have been presented to the Board for approval.*
- Many agreements have at least one signature that is missing a date, which makes it unclear whether they were executed prior to the revocation of the Executive Director's delegated authority. *Note: Concern is raised about why the agreements were not provided immediately following November 8. Rather, agreements from the Stadium Manager have trickled in over the past months at a slow pace (2 or 3 per week). If they were executed by November 8, it is reasonable for the Stadium Authority to expect for them to come in all at once upon execution. It is unknown why the Stadium Manager has not been able to provide them all at once if they were all executed before November 8.*
- There were several agreements that had no maximum compensation amount and/or no end date.
- At least five agreements have effective dates that fall within the next fiscal year, which may be problematic if funding is not secured through the budget process.

Prior to the Board's action to rescind procurement action, the Santa Clara City Code, Section 17.30 provided provisions for procurement practices and policy. Listed below are key provisions that staff used to review the Stadium Manager's procurement authority prior to the November 8 Board action:

Any of the Executive Director's authority may be delegated to contractors with the Stadium Authority; **provided, that the contract delegating such authority is approved by the Stadium Authority Board 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. With respect to

contracts for materials and supplies, the contract amount includes the costs of the materials and supplies as well as any installation and servicing costs including in the acquisition of the materials and supplies. **In determining the contract amount, (1) multiple contracts with a single vendor for similar materials and supplies shall be considered a single contract, 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 17.30.20]

(b) **The contract amount** involved is less than two hundred fifty thousand dollars (\$250,000.00) for supplies, goods and equipment **if said expenditure has been included in the Stadium Authority's approved annual budget;** [Section 17.30.50]

The Executive Director shall conduct all purchasing procedures for acquisition of supplies, materials, and equipment for users as authorized by the Stadium Authority by adoption of the annual budget. **No award of contract shall be made for a cost in excess of the authorized budget** amount through the Executive Director **without first obtaining approval of the Stadium Authority Board for a budget amendment by addition, cancellation, or transfer; provided, however, that the foregoing shall not preclude award of multi-year contracts covering years for which a budget has not yet been adopted so long as the contract is within the limits of a budget approved by the Stadium Authority Board for the year in which the contract is awarded and subsequent years are conditioned on approval of the appropriate year's budget.** [Section 17.30.100] The Code that the Stadium Manager relied upon to execute contracts prior to November 8 is clear that there are restrictions on contract amounts (less than \$250,000) and that multi-year contracts require Board action. The Stadium Manager has included the following termination for non-funding language in many of the agreements: "The term of this Agreement (the 'Term') shall begin on the Effective Date and terminate on X date, provided however, if this Agreement extends beyond a single fiscal year, the Term for subsequent fiscal years shall be conditioned upon approval of the Authority budget for the applicable fiscal year that includes the amounts due under this Agreement." However, given that this provision should have been included and the multi-year agreement should have been presented to the Board based on the above provisions.

The Table in Attachment 2 includes a column that notates which budget expense category the agreement would fall under in the Stadium Authority FY 2019/20 Budget. The Stadium Manager does not provide line item requests when submitting their budget proposal, so staff could only review the agreements against the broad budget expense descriptions on pages 33-34 of the FY 2019/20 Budget when determining the appropriate category. While it is unclear whether the Stadium Manager exceeded the specific budget amounts for some FY 2019/20 categories (e.g. Outside Services, General Supplies and Equipment) because some agreements could fall under more than one category, it is clear that the Stadium Manager exceeded the fiscal year budget amounts for others (e.g. Uniform and Other Costs), for example, Stadium Manager:

- Executed a contract for uniforms (Item #22 on Attachments 1 and 2) that had a total compensation amount of \$600,000, when the total budget amount for this fiscal year for the category was \$190,748.
- Executed four agreements that together totaled \$265,284 for advertising services, which falls under the "Other Costs" category. The total budget amount for Other Costs in FY 2019/20 is \$231,002. The Outside Services, General Supplies, Equipment, Uniform and Other Costs are part of Shared Stadium Expenses.

In a letter dated January 29, 2020, the Executive Director sent the Stadium Manager a letter expressing concern regarding the review of agreements and how they would be considered invalid (Attachment 3). **At the time of writing this report, the Stadium Manager has not provided a**

response to these findings and concerns.

It is unclear whether the Stadium Manager has any additional agreements to report for FY 2019/20. On February 19, 2020, Stadium Authority staff emailed the Stadium Manager to provide information for all procurement activity conducted in FY 2019/20 from April 1, 2019 through November 8, 2019 (effective date of Ordinance No. 2005) as required by the Stadium Authority Procurement Policy, Santa Clara City Code Chapter 17.30. **At the time of writing this report, the Stadium Manager has not provided a response.**

The Board has not received the report referenced above as required by Code 17.30.160(b) for Stadium Authority fiscal years 2014/15 through 2017/18 from the Stadium Manager regarding their contract activity.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no cost to the Stadium Authority to prepare this report other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City’s Finance Department and the Stadium Authority Counsel.

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 <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Accept the Stadium Authority’s Fiscal Year 2019/20 Contracts per Santa Clara City Code Chapter 17.30 Stadium Authority Procurement Policy.

Prepared by: Christine Jung, Acting Assistant to the City Manager (Executive Director)

Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. List of Agreements Executed Prior to November 8, 2019 Submitted by the Stadium Manager
2. Table of Agreements
3. Letter to Stadium Manager Regarding Executed Agreements