



Agenda Report

21-131

Agenda Date: 1/26/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Report from the Stadium Authority Regarding the Stadium Manager's Request for Delegated Authority to Execute Agreements with FedEx and USPS for Mailing Stadium Builder License (1) Notice of Default and/or Notice of Termination and (2) Request for Payment for 2021 Invoices

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

On September 17, 2019, the Stadium Authority Board (Board) approved the introduction of Ordinance No. 2005, which rescinded the Executive Director's delegated purchasing authority and requires Board approval for all contracts or agreements to acquire supplies, materials, equipment and services, by amending Chapter 17.30 ("Stadium Authority Procurement Policy") of the City of Santa Clara City Code. On October 8, 2019, the Board adopted Ordinance No. 2005, which became effective on November 8, 2019.

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. Section 2.1 of Amendment 1 to the Management Agreement provides that the Stadium Manager has full authority to procure on behalf of the Stadium Authority related to the Stadium and its operations *to the extent that the Executive Director has authority to enter into such contracts pursuant to Santa Clara City Code Section 17.30.010 through 17.30.180.*

As result of the City's revocation of the Executive Director's authority to procure good and services on behalf of the Stadium Authority as of November 8, 2019, the Stadium Manager must now seek approval from the Board and demonstrate that it has properly and legally procured goods and services before contracts may be executed.

Section 2.6.18 in Amendment 4 to the Management Agreement states that the Stadium Manager is responsible for the following SBL Management Services:

- (i) maintain appropriate records of the holder of each SBL,
- (ii) monitor transfers of SBLs, and, where Stadium Authority approval is required, make recommendations to the Stadium Authority with respect thereto,
- (iii) oversee the marketing of any unsold or defaulted SBLs in accordance with the direction of the Stadium Authority,
- (iv) administer and enforce the terms and conditions of the SBLs,

- (v) manage the provision of services specified in the SBLs,
- (vi) *invoice, collect, account for and distribute the amounts payable under SBL agreements*, and
- (vii) provide information to StadCo, the Team and the sponsors of any Non-NFL Events as reasonably required to enable each of them to fulfill their obligations to the holders of SBLs.

The Stadium Manager has shared that it used an outside printing company to print and mail notices of defaults in prior years. According to the Stadium Manager, it has done this in the past to allow the sales and service team to work on generating sale leads and servicing the needs of over 10,000 SBL Holders.

The Stadium Manager is now requesting authorization to execute agreements with FedEx and the United States Postal Service (USPS) in an amount not-to-exceed \$16,400 to mail up to 1,200 notices of default and termination (up to 600 notices for each type of notice) to SBL Holders who are financing their SBLs and owe payments from March 1, 2020.

DISCUSSION

On January 11, 2021, the Stadium Manager sent an email to the Stadium Authority outlining their request for authority to execute agreements with unidentified vendors in an amount not-to-exceed \$20,000 to print and mail SBL invoices, notices of default and termination. At the Stadium Manager's request, a meeting between the Stadium Authority and Stadium Manager was scheduled on January 14, 2021 to discuss confidential SBL issues: however, prior discussions on this topic date back to late -2020. **There are two categories of noticing that are required: (1) 2020 SBL payments that are now a year behind and (2) 2021 SBL payments due March 1, 2021.**

The Stadium Manager's request was brought up during the meeting and Stadium Authority staff requested additional information about the vendors, services that would be provided, breakdown of costs, and the procurement processes implemented. Stadium Authority staff made this informational request because this type of information is normally included in staff's reports to the Board requesting authority to procure supplies, equipment, materials, and services for transparency and to ensure that the goods and services were properly procured. At the January 14 meeting, it was communicated to the Stadium Manager that its request would go to the Board on January 26, 2021 for approval to align to their interest of getting notices out in early February: Stadium Manager agreed to the January 26 date as reasonable to meet the planned schedule of releasing notices in early February.

Staff sent a subsequent email later that day to document the Stadium Authority's request for additional information and communicated the urgency of having that information as soon as possible to complete the agenda report by January 21, 2021, which is when the January 26, 2021 agenda packet will be published. Staff sent the Stadium Manager additional questions from the Board regarding the request for printing and mailing services on the morning of January 20, 2021.

On January 20, 2021, the Stadium Manager responded to the questions outlined in the two emails from staff after business hours and communicated a significantly revised request. In the revised request, the Stadium Manager stated that:

- (1) 2020 SBLs** -- It will now print the notices of default and termination in-house and is requesting for Board authority to execute agreements with FedEx and USPS for postage and mailing services for up to 1,200 notices of default and termination in a total amount not-to-exceed

\$16,400. The Stadium Manager does not have a breakdown of the actual costs for each vendor since its staff is still actively collecting payments until the notices are issued. It plans on using FedEx to ship most of the notices because that company's online tracking system is preferred over USPS and will result in less labor to prepare the return receipts. USPS will be used to ship notices to SBL Holders who have P.O. Box addresses. The Stadium Manager provided some calculations in its email to support its requested not-to-exceed amount of \$16,400 (\$8,200 estimated for each vendor). It also noted that each vendor is less than \$10,000 based on published rates.

- (2) 2021 SBLs --** Stadium Manager advised, despite no Board approval to expend public funds, that it decided to expedite the mailing for 2021 SBL invoices to maximize the timely collection of SBL revenues. Stadium Manager advised staff via email that the 2021 SBL invoices were sent out on January 15, 2021 and the costs for printing and mailing the invoices totaled less than \$10,000. The Stadium Manager did not share their changed plans to mail the invoices out at the January 14 meeting, nor did it communicate this changed action until January 20.

On January 21, 2021, the Stadium Authority and Stadium Manager had their monthly coordination meeting and the Stadium Manager's revised request was discussed. Stadium Manager acknowledged that they did not communicate to the Stadium Authority about the plan to print and mail out the 2021 SBL invoices during the January 14, 2021 meeting and their plans changed and a decision was made to print and mail out the invoices. However, upon review of the vendor invoice (from Almaden Press), the invoice is dated January 5, 2021 which means that there was a misrepresentation made by the Stadium Manager to the Stadium Authority staff at both the January 14 and 21 meetings. It is reasonable to expect the Stadium Manager to relay the accurate status of SBLs billing efforts when seeking Board approval of a particular action. In other words, by 9-20 days after the invoice was issued (which likely means the work was ordered before), the Stadium Manager should have been sufficiently prepared to accurately disclose the current state of SBL payment/invoicing to the Stadium Authority.

The Stadium Authority's Executive Director (Executive Director) stated that the Stadium Manager would now need retroactive approval for this unauthorized action. The Stadium Manager has submitted a copy of the January 5, 2021 Almaden invoice for printing the 2021 SBL invoices totaling \$4,606 and explained that the mailing was handled in-house by staff. The Stadium Manager estimated the cost of postage to be approximately \$4,500 and also anticipates expending an additional \$1,000 on pre-paid return postage (\$5,500 total). Without complete supporting documentation, the Executive Director is not authorized to recommend approval of expenditures.

SCSA Staff's Concerns

During the January 21 meeting, Stadium Authority staff also communicated many of the following concerns with the Stadium Manager.

Poor Planning and Lack of Communication

The mailing of SBL invoices and notices of default and termination is an annual process that the Stadium Manager is responsible for as required by the Management Agreement. The Stadium Manager began engaging the Stadium Authority on various SBL issues, including defaults, in August 2020. However, the Stadium Manager did not request advanced Board authority to establish open Purchase Orders (POs) to print or mail 2020 SBL invoices in 2020, nor did it bring up the need to print and mail the 2021 invoices and 2020 default notices to the Stadium Authority until January

2021. Stadium Manager had months to prepare for this basic administrative function.

Additionally, the Almaden Press invoice was dated January 5, which is well in advance of the Stadium Manager's January 11 email request and the January 14 meeting between the Stadium Authority and Stadium Manager. Both original and revised requests, including significant last-minute changes to the request, and the January 5 invoice date demonstrate poor planning and a continued lack of communication and sharing of accurate information from the Stadium Manager on key decisions.

Violation of Board Direction and Stadium Authority Procurement Policy

In the January 20, 2021 email, the Stadium Manager disclosed that it had already printed and mailed the 2021 SBL invoices were sent out on January 15, 2021 for a total cost less than \$10,000.

This action goes directly against the Board's direction and the Stadium Authority Procurement Policy, which states that the Executive Director has no authority to execute contracts with third parties for services provided to the Stadium Authority and that all Stadium Authority contracts need to be approved by the Stadium Authority Board prior to execution by the Executive Director.

Based on the Stadium Manager's response about how it has handled printing and mailing notices through an outside vendor in prior years and its mailing of the 2021 SBL invoices, Stadium Authority has reason to believe that the Stadium Manager also procured similar services to print and mail out the 2020 SBL invoices without Board approval. This calls into question *what else the Stadium Manager may be procuring on the Stadium Authority's behalf without Board approval*.

Demonstrated Lack of Procurement Expertise

The Stadium Manager was selected to manage the Stadium in part because it represented itself as an organization whose principals have substantial experience and expertise in the management and operation of public assembly facilities. In order to effectively manage and operate a public facility, one would require expertise in public procurement. Printing and mailing services is a simple/basic administrative task that is expected of any billing function. As an organization that prints and mails SBL invoices and notices on an annual basis, the Stadium Manager would have demonstrated skill in the management of public facilities by putting in place widely-used blanket POs for printing and mailing services as needs come up during the year as part of its normal business operations.

Since Ordinance No. 2005 became effective on November 8, 2019, the Stadium Authority has provided the Stadium Manager with sample Board and Council procurement reports and procurement template forms and met separately with the Stadium Manager's procurement team in May and August 2020 to discuss the Stadium Authority's procurement expectations and answer their questions about how procurements should be conducted. However, the Stadium Manager's original January 11, 2021 request demonstrates its continued lack of procurement expertise by submitting an incomplete request that contained no information about vendors and cost breakdown for a public board's approval.

Lack of Truthfulness or Proper Representation

The Stadium Authority should be concerned that the Stadium Manager requested a meeting to discuss its SBL needs on January 11 and which was quickly scheduled on January 14. Upon the January 14 meeting and written request, Stadium Authority staff began to work on their request as it had been presented (e.g., review and report writing). However, we now know that that the Stadium

Manager was engaged in a completely different set of actions, such as:

- (1) Not requiring a vendor for 2020 SBL notices, as represented weeks before and on January 14, but rather completing the work in-house and
- (2) Representing that there was a need to hire a vendor for 2021 SBL invoices and obtain the Board's approval, when the Stadium Manager had already engaged a vendor to print invoices as early as January 5, or before, and in direct violation of the Board's directive.

The Stadium Manager had ample opportunity to provide truthful or accurate statements and information to the Stadium Authority of exactly how it was going to proceed with upholding their SBL Management Agreement obligations; however, it was not until after hours the day before that they were truthful with the Stadium Authority after several regular monthly meetings and a quickly schedule special meeting. Additionally, the Stadium Manager committed to provide invoices for the vendors used for the 2021 SBL invoice mailing, but the information provided regarding postage remains incomplete.

Given that the Stadium Authority does not have complete supporting documentation for the 2021 SBL invoice mailing, it is not possible to recommend retroactive approval of the public funds expended to the Board. However, for efficiency sake, the Board can consider delegating approval authority to the Executive Director upon receipt of the documentation that the Stadium Manager stated it would timely provide. The concerns outlined above are significant and continue to pose a challenge to staff's ability to work efficiently with the Stadium Manager to ensure that the supplies, equipment, and services required to keep the Stadium well maintained and operating are properly and legally procured. It also damages trust in an environment where the Stadium Manager seeks a more collaborative and positive relationship with the Stadium Authority.

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 Stadium Authority is responsible for these costs. Savings is available in the FY 2020/21 budgeted SBL Sales and Service allocation.

COORDINATION

This report has been coordinated with the Stadium Authority Counsel 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 <<mailto:clerk@santaclaraca.gov>>.

ALTERNATIVES

Acknowledging that these invoices and notices of defaults and termination are pertinent to collecting SBL revenues and continuing SBL operations, the following policy options are available to the Board:

1. Approve the Stadium Manager's request to execute agreements with FedEx and USPS for mailing up to 1,200 SBL notices of defaults and termination in a total amount not-to-exceed \$16,400 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. Do not approve the Stadium Manager's request to execute agreements with FedEx and USPS for mailing up to 1,200 SBL notices of defaults and termination in a total amount not-to-exceed \$16,400 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 retroactively the costs associated with postage, printing and mailing the 2021 SBL invoices, in an amount not-to-exceed \$10,100, and delegate approval to the Executive Director upon receipt of invoices that the Stadium Manager committed to the Stadium Authority and all supporting documentation;
4. Deny retroactive approval of the costs associated with postage, printing and mailing the 2021 SBL invoices, in an amount not-to-exceed \$10,100, and delegate approval to the Executive Director upon receipt of invoices and all supporting documentation from the Stadium Manager; or
5. Any other direction from the Board.

RECOMMENDATION

Alternatives 1 and 4:

1. Approve the Stadium Manager's request to execute agreements with FedEx and USPS for mailing up to 1,200 SBL notices of defaults and termination in a total amount not-to-exceed \$16,400 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. Deny retroactive approval of the costs associated with postage, printing and mailing the 2021 SBL invoices, in an amount not-to-exceed \$10,100, and delegate approval to the Executive Director upon receipt of invoices and all supporting documentation from the Stadium Manager.

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Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

N/A