



## Agenda Report

19-1666

Agenda Date: 2/19/2019

### REPORT TO STADIUM AUTHORITY

#### SUBJECT

Corrective Action to Cure Violation of Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts by Retroactive Approval of an Agreement for NEx Systems for Stadium Floor Improvements and Stadium Manager Disclosure of Contracts Issued Through Delegated Authority from \$100,000 to \$250,000

#### BACKGROUND

Section 17.30 Stadium Authority Procurement Policy of the City's Municipal Code ("Code") outlines the policies and procedures with respect to procurement for the Stadium Authority. The Code authorizes the Executive Director, or designee, to purchase professional, nonprofessional and personal services required by the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000) per contract, subject to budgetary approval. Contracts with an amount above this dollar limit must be approved by the Stadium Authority Board ("Board").

Section 2 Delegation of Contracting Authority of the First Amendment to the Stadium Management Agreement, requires that the Stadium Manager provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract.

On July 25, 2016, the Board retained the services of Harvey M. Rose Associates, LLC (Auditor) to perform an audit of Stadium operations to ensure compliance with the 2010 voter approved Measure J (Audit). The Auditor's final report, presented to the Board on August 24, 2017, included recommendation 1.O: The Stadium Authority Board should direct the Executive Director and Stadium Authority Counsel to request an amendment to the Management Agreement that would require formal and/or informal bidding procedures for any transactions with Manco affiliates or for transactions above a designated threshold to ensure that goods and services received from an affiliate of Manco are competitively priced.

During the October 29, 2018 report to the Stadium Authority Ad-Hoc Audit Committee, SCSA staff reported that such an amendment would require mutual agreement between both parties, and cited Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts (Section 2.1). This Section states that the Stadium Manager shall have 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. It further states that the Stadium Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The

forgoing constitutes the Executive Director's delegation to the Stadium Manager. SCSA staff further reported the Executive Director would send a letter to the Stadium Manager ensuring compliance with this provision for the past year and going forward.

## **DISCUSSION**

In response to the Audit recommendation referenced above, on November 9, 2018, the Executive Director sent a letter (Attachment 1) to the Stadium Manager noting the requirements of Section 2.1 and directing the Stadium Manager to comply, including retroactive compliance for past procurement actions. The letter acknowledged notification, received via two letters on October 30, 2018 (Attachment 2), from the Stadium Manager regarding the initiation of three projects, but also noted that there had not been any previous notifications. Further, the Executive Director noted that the contract for one project noticed on October 30, 2018 exceeds the contract approval authority outlined in Section 17.30.120 of the City Code (\$250,000), and requires SCSA Board action, in advance of executing the contract.

Per the attached letters from the Stadium Manager (Attachment 3 and 4), acting as the Executive Director's designee, the Stadium Manager solicited bids for epoxy coating and polishing of the concrete flooring in certain areas within Levi's® Stadium and conducted pre-bid due diligence meetings to discuss the scope of the project. Three bids were received from highly qualified contractors. As outlined in the letter from the Stadium Manager, the bids were evaluated and the lowest bidder, Designers Surfaces, LLC, a California limited liability company doing business as NEx Systems Surfaces (NEx Systems), was selected using a variety of criteria, including their stellar reputation in the industry, quality of service, excellent safety record, and their commitment to complete the work within a tight timeframe driven by the busy Stadium event schedule. The proposed cost for these services equals \$643,568 and is included in the FY 2018/19 Capital Budget.

According to the Stadium Manager, as a result of the Levi's® Stadium schedule of events and the urgency of certain elements of the project, the Stadium Manager authorized NEx Systems to begin work at the Stadium on August 6, 2018, with an expected completion date of January 31, 2019. However, due to the oversight of not bringing the agreement (Attachment 5) to the Board for approval as required by the Code, the remaining work associated with this contract has been suspended subject to final approval by the Board.

This report is the corrective action for the Stadium Manager's non-compliance with the Code. The Stadium Manager has now put in place procurement policies and procedures to ensure that all agreements are presented to the Board for approval before any work begins. The Stadium Manager also confirmed via December 21, 2018 letter to the Executive Director (Attachment 4) that there are no outstanding procurement agreements, other than those reported via October 30, 2018 letters (Attachment 2), at this time with a value between \$100,000 and \$250,000 that would require providing information to the Stadium Authority.

## **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(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.

## **FISCAL IMPACT**

The total cost of the agreement with NEx Systems will not exceed \$643,568. Funding for this project is included in the Stadium Authority's Fiscal Year 2018/19 Capital Budget.

### **COORDINATION**

This report was coordinated with the Stadium Manager per the Stadium Management Agreement Section 4.6 Annual Operating Budget as well as the Stadium Authority Counsel'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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **ALTERNATIVES**

1. Corrective Action to Cure Violation of Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts by Retroactive Approval of an Agreement for NEx Systems for Stadium Floor Improvements and Stadium Manager Disclosure of Contracts Issued Through Delegated Authority from \$100,000 to \$250,000.
2. Do not approve the agreement with Designers Surfaces, LLC, a California limited liability company doing business as NEx Systems Surfaces.
3. Any other action the Council deems appropriate.

### **RECOMMENDATION**

Alternative 1:

Corrective Action to Cure Violation of Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts by Retroactive Approval of an Agreement for NEx Systems for Stadium Floor Improvements and Stadium Manager Disclosure of Contracts Issued Through Delegated Authority from \$100,000 to \$250,000

Reviewed by: Angela Kraetsch, Treasurer

Approved by: Deanna J. Santana, Executive Director

### **ATTACHMENTS**

1. November 9, 2019 Letter to Stadium Manager Regarding Procurement Compliance
2. October 30 2018 Letters from Stadium Manager Regarding Project Notification
3. December 3 2018 Letter from Stadium Manager Regarding Procurement Approval Request
4. December 21 2018 Letter from Stadium Manager Response Regarding Procurement Compliance
5. Stadium Services Agreement with Designer Services doing business as NEx Systems Surfaces