



## Agenda Report

19-384

Agenda Date: 3/27/2019

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Informational Report Regarding Notice of Breach of Agreement and Audit of Stadium Manager Delegated Procurement Authority

#### **BACKGROUND**

Santa Clara Municipal Code (Code) Chapter 17.30, Stadium Authority Procurement Policy, outlines the procurement policies and procedures for the Santa Clara Stadium Authority (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).

The First Amendment to the Stadium Management Agreement, Section 2. Delegation of Contracting Authority, 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 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, 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.

On February 19, 2019, Stadium Authority staff presented to the Board corrective action to cure the violation of the Stadium Management Agreement (Section 2.1 of the First Amendment) by retroactive approval of an agreement (with NEx Systems for Stadium Floor Improvements), and Stadium Manager disclosure of contracts issued through delegated authority from \$100,000 to \$250,000.

The Board did not approve the agreement and directed Stadium Authority staff to provide additional information and documents to demonstrate Stadium Manager's adherence to Code and the Management Agreement.

#### **DISCUSSION**

On December 13, 2018, Stadium Authority staff sent notice (Attachment 2) to provide Management Correction Plan to the Stadium Manager, per Stadium Management Agreement Section 3.3.2, and

provided examples of how the Stadium Manager had failed to comply with Section 2.1 of the First Amendment to the Stadium Management Agreement, Stadium Procurement Contracts and is in violation of Section 17.30.120 of the Santa Clara City Code (City Code), Service contracts - Signature Authority. The Stadium Authority received some documents from the Stadium Manager, which we included in the February 19, 2019 report to the Board for corrective action.

Following direction from the Board on February 19, 2019, Stadium Authority staff requested additional information and documents from the Stadium Manager to demonstrate Stadium Manager's adherence to Code and the Management Agreement.

Based on information from and discussions with the Stadium Manager, on March 22, 2019 Stadium Authority Counsel sent notice (Attachment 3) to San Francisco Forty Niners President that Forty Niners Stadium Management Company LLC (Stadium Manager) is in breach of its obligations under Stadium Management Agreement, by and among Santa Clara Stadium Authority (Stadium Authority), Stadium Manager, and Forty Niners SC Stadium Company LLC, dated March 28, 2012 and subsequently amended (Management Agreement).

Following this notice, Stadium Authority Executive Director sent a letter (Attachment 4) to the Stadium Manager to advise that the Stadium Authority will be accelerating an audit of all contracts issued by the Stadium Manager, as the Stadium Authority's agent, to determine compliance with all applicable legal requirements, including but not limited to California Prevailing Wage statutes (See California Labor Code Sections 1720 and 1771) and regulations of the California Department of Industrial Relations.

Until such due diligence on the referenced violation and compliance audit is completed, Stadium Authority staff is not able to bring before the Board consideration of retroactive approval of an agreement for NEx Systems for stadium floor improvements.

On March 21, 2019 the Executive Director advised the Stadium Manager that subject to demonstrating compliance with applicable requirements, including California Prevailing Wage statutes, that there is no authority to release public funds and that the contract had not been validly entered into since it did not have proper Board approval or may not have complied with applicable legal requirements (based on the documents submitted as proof of compliance). The Executive Director also stated that the San Francisco 49ers may want to consider financially curing this matter to at least address NEx Systems' request for payment.

### **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. The fiscal impact to the Stadium Authority as a result of the Audit of Stadium Manager Delegated Procurement Authority is unknown.

### **COORDINATION**

This report has been coordinated with 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.

**RECOMMENDATION**

Note and file this informational report regarding Notice of Breach of Agreement and audit of Stadium Manager delegated procurement authority.

Reviewed by: Brian Doyle, Stadium Authority Counsel

Approved by: Deanna J. Santana, Executive Director

**ATTACHMENTS**

1. November 4, 2018 Stadium Authority Compliance with Management Agreement, Section 2.1 and Muni Code, Section 17.30.120 Letter
2. December 13, 2018 Stadium Authority Notice to Provide Management Correction Plan
3. March 22, 2019 Stadium Authority Notice of Breach of Management Agreement
4. March 22, 2019 Stadium Authority Audit of Stadium Manager Delegated Procurement Authority Letter