



Agenda Report

19-439

Agenda Date: 4/30/2019

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

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

BACKGROUND

On June 8, 2010, the voters of the City of Santa Clara approved Measure J, which authorized the City to move forward with the development of a stadium suitable for professional football and other events. The Santa Clara Stadium Authority (Stadium Authority), a joint exercise of powers entity created through Government Code section 6500 et seq., is a public entity formed to facilitate the development and operation of the Stadium Project and to fulfill the mandates of Measure J. The seven elected members of the City Council serve as the governing board for the Stadium Authority (Board). The Stadium Authority Executive Director (Executive Director) is the chief executive officer of the Stadium Authority and is responsible to the Board for the proper and efficient administration of all affairs of the Stadium Authority.

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

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. Through Board approval of the First Amendment to the Management Agreement, Section 2. Delegation of Contracting Authority, the Board delegated the Executive Director's procurement authority to the Stadium Manager. However, Section 2 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 March 27, 2019, Stadium Authority staff presented an [informational report](https://santaclaralegistar.com/LegislationDetail.aspx?ID=3897765&GUID=DA167A09-40DF-49EF-)
<https://santaclaralegistar.com/LegislationDetail.aspx?ID=3897765&GUID=DA167A09-40DF-49EF->

[8E2A-750FA9ECDA70&Options=&Search=>](#) to the Board regarding a Notice of Breach of the Management Agreement related to the contract with NEx Systems for Stadium Floor Improvements and an audit of Stadium Manager Delegated Procurement Authority. Stadium Authority staff reported on the information and discussions that led to the March 21 Notice to the San Francisco Forty Niners President that the Stadium Manager is in breach of its obligations under the Management Agreement. As reported to the Board, the Stadium Authority issued the Notice due to Stadium Manager's failure to comply with the California Labor Code and Department of Industrial Relations regulations for prevailing wage requirements for contracts paid for in whole or in part by public funds. The Notice of Breach also identified a failure to comply with the Stadium Authority Procurement Policy set forth in Santa Clara City Code Chapter 17.30.

Staff also reported that following the Notice, they advised the Stadium Manager on March 21 that the Stadium Authority will audit 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. As part of this audit, the Stadium Authority directed the Stadium Manager to produce copies of all Stadium Authority contracts issued by the Stadium Manager no later than April 12.

Following discussion regarding the Notice of Breach and the audit, the Board passed the following motion:

Direct the Executive Director and Stadium Authority Counsel to receive copies of all contracts since the opening of the stadium in 2014 led under the delegated procurement authority under the code and in the agreement as well as all contracts that the Stadium Manager has entered into for non-NFL events for both ticketed and nonticketed events by April 12, 2019.

Direct 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.

DISCUSSION

Notice of Breach of Management Agreement

The Stadium Authority Counsel issued, on April 21, 2019, a Notice of Breach of Management Agreement. The period to cure the breach is thirty days (April 26, 2019). At the time of writing this report, the Stadium Manager has not cured the breach. The Stadium Authority Counsel will issue a verbal report or written supplemental report before the April 30, 2019 Stadium Authority Board meeting.

The various communications between the Stadium Authority and Stadium Manager on this topic are included in this report as Attachment 1.

Audit of the Stadium Manager's Delegated Procurement Authority

The Stadium Manager was not in attendance at the March 27 Board meeting, and as of April 22, has not responded fully to the Board's direction to provide copies of all contracts since the opening of the stadium in 2014 led under the delegated procurement authority under the code and in the agreement

as well as all contracts that the Stadium Manager as entered into for non-NFL events for both ticketed and nonticketed events by April 12.

The Stadium Manager did partially respond to the March 21 direction from Stadium Authority staff to produce copies of all Stadium Authority contracts issued by the Stadium Manager. On April 12, the Stadium Manager provided access to over 600 pages of records for Stadium Authority Capital Expenditure Fund expenditures through an online file sharing service. The Stadium Authority has contracted for audit services to review the available records to determine the Stadium Manager's compliance with:

- Stadium Authority procurement policies and procedures as outlined in the Code;
- Limitations of delegated authority when entering into a contract on behalf of the Stadium Authority;
- California's prevailing wage statutes and other state law and regulations.

Other Potential Procurement Issues

On April 17, the Stadium Authority notified the Stadium Manager that the Stadium Manager was not authorized to commence work on two executed contracts for budgeted Stadium Authority Capital Expenditures in an amount greater than \$100,000, but less than \$250,000:

Vendor	Description of Work	Contract Amount
Daniel Larratt Plumbing, Inc.	Install 4 sump pumps and 4 substation water source heat pumps to hose down the sump wells in the sewage system.	\$129,205
RMI Mechanical Contractor Inc.	Maintenance repair & programming of the beverage distribution system, concession stand equipment, repair walk-in coolers and main kitchen equipment	\$225,136

Stadium Authority staff stated that the Stadium Manager's April 12 notice regarding the projects did not provide sufficient records necessary to determine that the contracts were properly procured. The Stadium Manager was directed to notify each vendor immediately that the Stadium Authority may void these contracts and no work should be completed until further notice, and to provide a copy of the notices to the Stadium Authority no later than April 19. Although the Stadium Manager replied that there has been no work started under either of these contracts and no payments have been made, the Stadium Manager did not provide a copy of the notices to the two vendors.

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 other than administrative staff time and expense. The effectiveness of the Stadium Manager to manage Levi's® Stadium has a direct impact on the amount

of Stadium Authority revenue, and the amount paid to the City's General Fund.

COORDINATION

This report has been coordinated with 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

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

Reviewed by: Walter C. Rossmann, Chief Operating Officer

Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. Communications between Stadium Authority and Stadium Manager Regarding Notice of Breach