

REPORT OF GENERAL MANAGER

APPROVED
APR 18 2012

NO. 12-115

DATE April 18, 2012

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 6

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SEPULVEDA GOLF COMPLEX PROFESSIONAL CONCESSION - RECOMMENDATION THAT THE BOARD OF RECREATION AND PARK COMMISSIONERS CANCEL THE REQUEST FOR PROPOSALS (RFP) APPROVED BY THE BOARD ON APRIL 5, 2007 (BOARD REPORT NO. 07-86) AND RELEASED ON APRIL 30, 2007; REJECT ALL PROPOSALS SUBMITTED ON JULY 5, 2007 IN RESPONSE TO THE RFP PURSUANT TO CHARTER SECTIONS 371(c) AND 372; AND, RETURN THE PROPOSAL DEPOSITS BECAUSE THE INSTRUCTIONS OF THE BOARD CONTAINED IN BOARD REPORT NO. 08-37 AS AMENDED WERE NEVER COMPLIED WITH

R. Adams _____
H. Fujita _____
V. Israel _____

K. Regan _____
M. Shull _____
*N. Williams **NOW** _____



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Cancel the Request For Proposals (RFP) for Sepulveda Golf Complex Professional Concession approved by the Board on April 5, 2007 (Board Report No. 07-86) and released on April 30, 2007, because the instructions of the Board contained in Board Report No. 08-37 as amended were never complied with;
2. Reject all proposals submitted on July 5, 2007 in response to the RFP pursuant to Charter Section 371(c) and 372; and,
3. Direct staff to return the proposal deposits.

SUMMARY:

The Sepulveda Golf Complex is located at 16821 Burbank Blvd., Encino CA 91436 and includes two 18-hole golf courses: Encino Golf Course and Balboa Golf Course. The Department

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operates and maintains both courses. The Sepulveda Golf Complex Concession (Concession) provides professional golf lessons to patrons, and maintains and operates the golf professional shop, range shop and the golf driving range. This Complex is on Army Corps of Engineer (ACOE) property that is leased to the Department of Recreation and Parks (RAP). The ACOE must approve all contracts between RAP and other entities when the contract involves use of ACOE property. The Concession has been operated by Ready Golf Centers (Ready Golf) on an expired month-to-month permit since February 17, 2004 while RAP conducted several Request for Proposals processes to select a concessionaire for this concession. Ready Golf was assigned this permit as the result of a "mini-bid" in which other RAP Golf Concessionaires (in 2001) declined to assume the management of the Sepulveda Golf Complex Concession.

On April 30, 2007, a Request for Proposal (RFP) was released (Board Report No. 07-86) to the public to solicit proposals for the operation of the Concession. On May 23, 2007, a Pre-Proposal conference was held and on July 5, 2007, three proposals were received from:

- Emerald Management, Incorporated (Inc.)
- Pacific Highland, Limited Partnership (L.P.)
- Michael Leslie Productions, Inc. dba Ready Golf Centers

A three-level review was done of the proposals. Level I reviewed the compliance and submittal documents, Level II analyzed the proposer's ability to finance the operation and Level III was a comprehensive evaluation of the proposals by an expert panel. Two of the proposers failed the Level I review (Emerald Management, Inc and Pacific Highland, L.P.). Ready Golf passed all three levels. Ready Golf was recommended by Department of Recreation and Parks (RAP) staff to be the Concession operator (Board Report No. 08-37 as amended).

Ready Golf had included two options as part of its proposal. Option I proposed 25% annual rent for gross sales of Driving Range services up to \$600,000 and 60% annual rent for sales above the \$600,000 level, and additional capital improvements (with a total value of \$1,306,000). Option II offered a flat 36% rate on all driving range sales with the minimum \$1,000,000 in capital improvements. Both proposals offered 5% annual rent for merchandise and lesson sales. RAP staff prepared a report recommending that the Board adopt Option II. The term of the contract would be for ten years with two (2) five-year options to renew at the sole discretion of the General Manager.

On February 6, 2008, staff's recommendation was presented to the Board of Recreation and Park Commissioners (Board) in Board Report No. 08-37. Per the Board's direction, Board Report No. 08-37 was amended to include the following:

"To instruct the City Attorney to add a provision to the contract that would accomplish allowing the parties to continue their discussion and upon a mutual agreement propose an amendment to

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the Board and to Council with a suggested time limitation for these discussions of December 31.”

RAP staff subsequently met with Ready Golf as directed by the Board. In these discussions with Ready Golf, RAP staff misinterpreted the Board’s direction and negotiated substantial changes to the proposed contract that were not approved by the Board and varied significantly from the proposal originally submitted by Ready Golf. These included but are not limited to:

- Accepting Option I instead of Option II to be included into the contract
- Changing the reimbursement for utilities from \$750 per month to \$335 per month
- Reducing the performance bond from \$40,000 to \$25,000

Subsequent to RAP staff negotiations with Ready Golf, the unapproved (unapproved by the Board), revised and proposed contract was forwarded to the Board Office for processing through the City’s standard contract review and approval procedures. Detailed below are the various dates, the unapproved, revised and proposed contract was sent to the various entities involved in the approval process:

- June 8, 2009 - Proposed contract forwarded to Office of the Mayor (Mayor)
- June 15, 2009 - Proposed contract forwarded to ACOE
- November 2, 2009 - City Administrative Officer (CAO) completes report on proposed contract and forwards to the Mayor
- November 9, 2009 - Mayor forwarded proposed contract to City Clerk
- November 10, 2009 - Office of the City Administrative Officer report referred to Arts, Parks, Health and Aging Committee (APHA)
- November 24, 2009 - APHA approves the proposed contract
- December 4, 2009 - City Clerk schedules proposed contract for City Council review
- December 11, 2009 - City Council adopted proposed contract
- December 14, 2009 - Mayor returns proposed contract to RAP
- July 13, 2011 - ACOE approved the unapproved, revised and proposed contract sent by RAP on June 15, 2009

While the unapproved, revised and proposed contract was under Office of City Attorney (City Attorney) preliminary review due to threatened litigation and legal claims filed by Ready Golf, it was discovered that the Board had never reviewed nor approved the proposed, revised contract that was submitted to and subsequently approved by the CAO, Mayor, Council and ACOE.

The action taken by the Board on February 6, 2008 in the amended Board Report No. 08-37 clearly requires that any amendments to the contract be brought back before the Board for review and approval prior to transmission to the CAO, Mayor, Council and ACOE. The contract submitted for approval to the other entities, was *never reviewed nor approved by the Board of*

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Recreation and Park Commissioners and therefore is invalid.

Due to threats of and filed litigation by Ready Golf regarding this and other matters, the Board met in Closed Session on December 14, 2011 to confer with its legal counsel. At that meeting, the Board voted to “cancel the Request for Proposal (RFP) approved by the Board on April 5, 2007 (Board Report No. 07-86) and released on April 30, 2007, reject all proposals submitted on July 5, 2007 in response to the RFP pursuant to Charter Section 371 and 372; and return the proposal deposits.”

Staff recommends that the Board cancel the Request For Proposals (RFP), reject all proposals submitted in response to the RFP and return the proposal deposits based upon the following facts: 1) The Board never approved a contract;¹ 2) Staff has spent more than four years trying to negotiate mutually agreeable terms with Ready Golf but Ready Golf has never accepted City proposals and, instead, continually presses for new and substantially different terms; 3) The new terms proposed by Ready Golf are so substantially different from those requested in the RFP and from the two options proposed by Ready Golf that if RAP were to enter into a contract with Ready Golf, the City might be sued by others who either submitted or might have submitted proposals; 4) RAP would be better served issuing a new RFP or pursuing self operation; and, 5) Ready Golf is presently suing RAP for alleged overpayment of utility fees and interests arising out of a dispute over the terms of Ready Golf’s month-to-month operation of a Golf Professionals Concession².

FISCAL IMPACT STATEMENT:

There may be impacts to the RAP General Fund, however at this time the cost of those impacts are unknown.

Report prepared by Noel D. Williams, Chief Management Analyst, Finance Division.

¹ The Board was presented with two options as part of Ready Golf’s proposal to the Request For Proposals (RFP). A reasonable interpretation of the Board’s instruction to the City Attorney and to staff was to amend the proposed contract, to continue their discussions and upon mutual agreement propose an amendment on specific terms to the Board and to Council by December 31, 2008. This never occurred.

² Ready Golf was awarded an Interim Permit in 2001 to operate a Golf Professionals Concession. The Permit expired in 2004. Ready Golf has continued to operate the concession under the terms of the expired permit on a month-to-month basis since 2004. Staff has spent the past eight years trying, unsuccessfully, to resolve an ongoing dispute with Ready Golf over the utility and interest terms of his continued operations.