

REPORT OF GENERAL MANAGER

NO. 05-112

DATE: May 5, 2005

CD _____

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: REVIEW OF STAFF RECOMMENDATIONS IN REPORT NO. 05-34 REGARDING AWARD OF THE ENCINO-BALBOA GOLF PROFESSIONAL AND DRIVING RANGE CONCESSION AND AWARD OF THE CONCESSION TO SEPULVEDA GOLF VENTURES

K. Chan
J. Combs
H. Fujita
R. Jensen



J. Kolb
F. Mok
K. Regan



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Find that the criteria, processes and procedures used by the Department to recommend the award of the concessionaire contract for Encino-Balboa Driving Range and Pro-shop were proper and in keeping with City-wide processes for awarding Requests for Proposals;
2. Find that there is no compelling reason to depart from the evaluation panel's ratings and therefore that this concession should be awarded to Sepulveda Golf Ventures (Sepulveda), as the proposer receiving the highest score from the panel;
3. Receive and file Board Report No. 05-34;
4. Waive the late submission by Sepulveda Golf Ventures of the non discrimination declaration and ethnic composition of work force form as an informality pursuant to Charter Section 371;
5. Award the concession contract for the Encino-Balboa Golf Professional and Driving Range concession to Sepulveda, rated the highest company by the independent evaluation panel, as well as the highest in a financial analysis conducted by the Department's Golf Manager;
6. Approve the ten year concession agreement substantially in the form on file in the Board Office, for the operation of the Golf Professional and Driving Range Concession at the Encino-Balboa

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Golf Course (Sepulveda Golf Complex), subject to approval of the Mayor, City Council, United States Army, Corp of Engineers and approval of the City Attorney as to form;

7. Direct the Board Secretary to transmit the proposed agreement to the Mayor in accordance with Executive Directive No. 16 and concurrently to the United States Army Corp of Engineers, and to the City Attorney for review as to form; and
8. Authorize the Board President and Secretary to execute the agreement upon receipt of necessary approvals.

SUMMARY:

On February 16, 2005, the Board considered recommendations for the award of concession services for the Encino-Balboa Golf Professional and Driving Range concession contained in Board Report 05-34. After public comment and discussion, the Board directed the General Manager to establish an Ad Hoc Committee to look at the selection process for the award. Specifically, the Ad Hoc Committee was instructed to review the criteria and the processes associated with recommending the award. Additionally, the Committee was to review the rental rates and analyze the pro formas to determine if they were realistic. Also, the Committee was to review the materials prepared by Ready Golf, Inc., which protested staff's recommendations contained in Board Report 05-34.

Ad Hoc Committee membership consisted of Robert H. Jensen, the Department's Executive Officer, Faith Mok, the Department's Chief Financial Officer, Kenneth Desowitz, Supply Services Manager, Department of General Services and Director of the City's Purchasing Division.

The Ad Hoc Committee (Committee) reviewed the RFP for services for the Encino-Balboa Golf Professional and Driving Range Concession. The Committee found the Request for Proposal to be structured appropriately. The Committee also reviewed the criteria for evaluating the proposals and found the criteria to be appropriate. Further, the Committee found the rating criterion was related to factors which would predict a vendor's success in operating this concession while maximizing Department revenues and improving operations. Finally, the Committee found that Department staff did a commendable job of solicitation that provided the Department with sufficient and highly competitive proposals for this concession.

As instructed by the Commission President, the Committee reviewed rental rates both internally and externally and pro forma financial statements submitted by the proposers. The Committee was also instructed to compare the financial documents submitted by the proposers against a consultant's (Gene P. Krekorian of Economic Research Associates, ERA) analytical financial review of Encino-Balboa prepared in 2002 (see Attachment A). Finally, the Committee was instructed to review materials provided by Ready Golf in support of their protest.

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As instructed, the Committee looked at internal and external rental percentage rates. The Committee found that rental percentage rates for driving ranges in other RAP driving range concessions varied from 25% to 45%; averaging 35%. Externally, the Committee looked at LA County's rental rates for its 16 driving ranges and found that rental percentage rates ranged from 15% to 33%; averaging approximately 28% (see Attachment B). It should be noted that there were no descriptions of capital improvements to County driving ranges in the narrative portion of the capital improvements section of Attachment B. The County holds back 15% of its share of gross receipts for capital improvements. Also, in the County model, concessionaires operate golf courses, pro-shops, and the driving ranges, making direct comparison difficult.

Highlands' overall rental rate percentage proposal of 38% for the first five years, and 40% for the last five years was high when compared to rental rates for other driving ranges. Sepulveda's rental rate of 33.33% is comparable to other RAP concessions for driving ranges and is approximately equal to the highest rental rate for the County of Los Angeles golf concession driving ranges. Ready Golf's rental rate of 25%, which could increase to 30% based on future revenue, was considered low when compared to the other proposers.

Before looking at pro formas offered by proposers, the Committee reviewed the analysis conducted by Gene Krekorian of ERA in 2002 (Attachment A). Mr. Krekorian reviewed the financial operations of Encino-Balboa for the purpose of providing RFP input regarding economic terms of the agreement including capital improvements, minimum rent, percentage rent, contract term, and other issues affecting the economics of the operation. The analysis, which concluded that a reasonable percentage rent would be in the 20-25% range, was designed for the purpose of crafting a reasonable RFP which would include a minimum rental requirement. Ultimately, the RFP issued did not contain minimum rental terms. Mr. Krekorian confirmed to staff that the purpose of his 2002 memorandum was to assist in finalizing the terms for an RFP. He asserted that in his opinion each proposal needs to be independently analyzed and can not be benchmarked against a single template.

The Committee reviewed pro formas. The Committee interviewed John Mallon, former Golf Manager, who was tasked to perform a "blind" financial review of the pro formas submitted by all proposers during October of last year. He did not know the company names of the six pro formas reviewed. His review found only three proposers who, in his opinion, provided a complete capital plan and comprehensive pro forma such that gross revenues by line of business, expenses, net operating income and proposed dollar rents could be identified. Mr. Mallon found the Sepulveda proposal contained the best combination of capital investment and economic rents as a package to the City. Mr. Mallon's financial analysis considered the total value of capital investment and economic rents over the 10 year term and ranked Sepulveda #1, Highlands #2, and Ready Golf #3. The Committee found no reason to differ from the analysis of Mr. Mallon or his rating (See Attachment C).

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The Committee interviewed the evaluation panel referenced in Board Report 05-34. Their ratings were questioned. All members of the evaluation panel (all professional members of the Southern California golfing community) believed that either Sepulveda or Highlands would do a good job of running this concession. One of the raters stated that he considered Golf LA also to be a good candidate for our concession. Overall, the evaluation panel rated Sepulveda number one. Highlands was rated second, Golf LA was third, Ready Golf was rated fourth, Golf Links fifth, and Valley sixth. (See Attachment D, rating sheets).

As stated in Board Report 05-34, Department staff members who evaluated the panel's evaluations selected a proposer other than the proposer rated highest by the panel because they attributed greater value to some of the criteria. The Committee believes that if staff wanted some criteria to have more value than other criteria, they should have stated so in the RFP. In the Committee's opinion, had the evaluation panel known there were differing weights to be considered for the various criteria their ratings may also have changed. In any event, the Committee believes that the raters' evaluations should be afforded considerable deference. They reviewed the materials contained in the proposals and they conducted the interviews.

The Committee found that the ratings submitted by the panelists were well thought out and valid. Accordingly, the Committee believes that staff's recommendation for award should have supported the panel's evaluation. Arguments against such a finding could be that the rating panel may have overlooked some critical point or that evidence received after the review shed light on facts that were unknown at the time of the evaluation. However, the Committee found no evidence that either of these things had occurred. Accordingly, The Committee believes that the outside rating panel's evaluation was appropriate and should be followed.

The Board also asked the Committee to review other issues related to the materials provided by Ready Golf. All materials were reviewed. The issues are:

- Ball containment incorporating tee dividers;
- Department funded ERA report shows no profit at 30% rental rate;
- Ready Golf's contention that its financials were reviewed incorrectly;
- Differences between the food and golf pro RFPS; and
- Ready Golf's contention that it was the best proposer based upon the criteria used for evaluation.

The Committee could not find any evidence of misconduct, bias, or inaccuracies in investigating any of the allegations provided by Ready Golf.

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Ball Containment - Ball containment is in essence a method or a system used to contain golf balls within the driving range by preventing errant golf balls from flying out of the driving range. This can be accomplished through various techniques such as installing perimeter fencing and mounds, installing tee dividers, and other methods. Because containing golf balls within a driving range can be accomplished in numerous ways, applying a strict design for "ball containment" in an RFP may preclude proposers from offering new, innovative methods or combinations of improvements that may otherwise be appropriate and desirable for this concession. Therefore, the RFP requested a "ball containment system" as one of several required capital improvements, without definition imposed. In response to this requirement, Highlands proposed to enclose the range with fencing and install tee dividers, and Sepulveda's proposal lists the required capital improvements in the same format as listed in the RFP ("Ball containment system incorporating tee dividers"). Staff and the evaluation panel concurred that the proposed use of tee dividers and fencing or netting would sufficiently contain errant golf balls within the driving range area at this particular driving range, and that both Sepulveda and Highlands met the requirement of the RFP in this regard.

ERA Report - According to Mr. Krekorian, the analyst who wrote the report for ERA, the report was written to assist the Department in finalizing the terms for the RFP. The RFP differed in some respects from the model he analyzed. He now asserts that each proposal needs to be reviewed and analyzed independently and cannot be benchmarked against a single template and the Committee agrees. The Committee has reviewed the pro formas and Mr. Mallon's analysis. The Committee agrees with Mr. Mallon's analysis that Sepulveda offers the best combination of capital investment and economic rents as a package to the City. As demonstrated by other concessions both internally (Department courses) and externally (County courses) a rental rate such as Sepulveda's of 33% is supportable. The fact that Sepulveda is self-funding its capital improvements demonstrates that it is in a very a stable cash position. The Committee believes that this rental rate is supportable and will not cause a loss.

Financial Analysis - The Committee could find no evidence that Ready Golf's financials were analyzed incorrectly, inaccurately or differently from any other proposer. Ready Golf was rated fourth in financial ability to perform by the evaluation panel. Ready Golf's contention is that they had the best plan to fund start up costs and capital improvements because they offered a combination of cash, backed up by a line of credit. The evaluation panel did not feel the same way. The three higher-rated proposers indicated they had cash on hand to fund start up costs and capital improvements, with Sepulveda ranked highest in this category, as a financial statement in their proposal lists personal assets belonging to their principal, Jack Friedman, at \$30,324,154, the highest of all proposers. The Committee does not agree that Ready Golf's combination of cash and credit is superior to the other proposers who proposed to fund their proposal only with cash. Ready Golf's proposal did not include a definitive statement indicating whether the intended source of funding would be solely Mr. Bernback's own cash, or solely the line of credit from Alliance Bank, or some combination of both.

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Differences between food and golf RFPs - The Committee agrees that the process of analyzing the food RFP and the golf pro RFP was different. The Department reserves the right to analyze its RFP in any matter that is consistent with providing a fair process that provides the best overall value for the City. The biggest difference between these RFPs was the use of an evaluation panel for golf pro RFP. The outside evaluation panel was used to assist the City in determining the best proposal for this concession from the six viable proposers. Another difference was having Mr. Mallon evaluate the pro formas. The Committee believes great deference should be given to the ratings of the outside panel in their evaluations and supports their recommendation of Sepulveda as the best proposer.

Best Proposer - The Committee could not find an indication that the evaluators believed that Ready Golf had the best proposal. Ready Golf's contention that they had the best proposal is not supported by the rating sheets. The Committee believes that it is not in a position to substitute its judgment for the judgment of the raters since the Committee did not conduct the interviews or participate in the interviews. There is no evidence to support that the outside evaluators were biased or based their evaluations on anything other than the materials provided and the interviews that they conducted. The Committee found no evidence that the raters improperly evaluated any proposer on any criteria or that there is any other reason to disturb the scoring of the award evaluation panel. Ready Golf proposed substantially lower rent to the City than other proposers. The evaluators concluded the City could and would do better with the vendor with the highest point total, Sepulveda. Therefore, the Committee recommends that the Commission award the contract to Sepulveda on that basis.

Proposers were required to submit as part of their proposal package an Affirmative Action Plan, to which all proposers complied. Included among the forms requested, in addition to the Plan, was a nondiscrimination declaration and a table in which proposers were to fill in the ethnic composition of their workforce, for informational purposes. Sepulveda, along with some other proposers, did not submit these forms with their proposal because they were not included on the website where all RFP forms were posted, but have since submitted them to the Department's concessions office. Staff has consulted the City Attorney who has advised that this late submission is a waivable informality pursuant to Charter Section 371. First, it does not allow the proposer to change any competitive terms of the proposal. Second, it does not allow the proposer to use the additional time to comply with the requirements; that is, the ethnic composition of the work force at the time the proposal was submitted is not enhanced by the late submission of this form. The purpose of these documents are to gather statistical information and to acknowledge the nondiscrimination requirement contained City law, and does not have any bearing on choosing the best proposer for this concession. Therefore, staff is recommending that the Board waive as an informality late submission of the nondiscrimination declaration and ethnic composition of workforce form from Sepulveda.

Report prepared by Robert Jensen, Faith Mok and Kenneth Desowitz