LA GEECS

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Comments to Budget & Finance Agenda No. 8-CF 12-0692 AEG Management LACC LLC-LA Convention Center

Joyce Dillard <dillardjoyce@yahoo.com> Mon, Oct 7, 2013 at 1:35 PM
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Debt service is a General Fund obligation. You have not addressed the debt issue and the City's related cash flow in the discussion.

CAO previously reported that *safe harbor exceptions to tax laws allow for private use subject to a maximum of $15 million (in private security or payments). The City has used virtually all of its private use capacity in accommodating the Staples Center for parking, contracts for LACC services, and other shared uses.*

You need to review the current LA Convention Center Statement of Income and Expenses and particularly the Parking revenue and LA Inc. trade discounts.

Profitability is not a guarantee. You have mentioned no baseline in this discussion to derive comparatives to substantial these poorly designed deal for the Citizens and Taxpayers of the City of Los Angeles.

CAO previously recommended that the *City establish a goal of increasing citywide convention attendees to between 400,000 and 425,000 by the year 2020.*

What is the current attendee count and what is the hotel capacity realistically available for attendee bookings? In eight years, and especially during this five-year contract, is there capacity for this intended growth?

What is the expected loss of parking revenues?

CAO previously reported *the IRS has published rules for "qualified management contracts" that are permitted that in summary, require that the longer the term of a contract, the more that the compensation be based on a fixed fee*

CAO reported that our financial advisors and the CAO recommend that the City seek a five-year contract with up to 50 percent of the private manager's compensation being based on an incentive fee.

CAO, in this report, states:

> *Starting in the Second Agreement Year and each year thereafter, for the entire term of the Agreement, AEG will prepare an Operating Budget and Annual Plan that shall be submitted to the LACC Department and provided to the Board of Los Angeles Convention Center Commissioners ("LACC Board") for reviewand consideration*

Board of Los Angeles Convention Center Commissioners has no authority to approve the Operating Budget and Annual Plan. They may review the plan and consider the plan, but there is no stated authority to reject what is provided to the by AEG. LACC Department receives the plan and has no authority to reject or change what is submitted. LACC Department only provides it to the Board.

Why would you allow an outside firm to have complete authority over an Operating Budget and Annual Plan of city-owned property? How is this in the Public Interest and how does this protect the Taxpayer and Citizen?

CAO also states:

> *Upon approval, the proposed budget shall be submitted for reviewas part of the City's annual budget process. The City shall monitor AEG's performance on a regular basis through reports and periodic audits by the City to reviewthe performance and finances.*

Whose approval as you do not state who has that authority? You, as the City Council, then have the approval over the Budget after submission. Will you also have AEG present and testify at Council Committee and City Council meetings?

How shall the city monitor AEG's performance. What is the definition of regular basis in city terms-once a decade or whenever there is time or when it is budgeted? How can you review performance without a baseline established?

The Basement Management Fee is:

> *An annual fixed fee amount of $175,000 for all services provided pursuant to the Agreement, which shall be adjusted upward annually in accordance with the Consumer Price Index, capped at 2 percent. The fee shall be paid in equal monthly installments in arrears.*

What justifies a CPI index increase?

Incentive Fee is:

> *An annual incentive fee amount of $175,000 increasing yearly at CPI, capped at 2 percent, which includes an*
> *(a) Earned Incentive Fee and a*
> *(b) Discretionary Incentive Fee that is separate from and in addition to the Base Management Fee. The total Incentive Fee (Earned and Discretionary) shall never exceed more than 50 percent of the total fee.*

Incentive Fee equals the Base Management Fee. How does this satisfy the IRS Qualified Management Contract?

Incentive Fee has the following caveat:

> *The incentive fee shall only be paid when actual Total Operating Revenues exceed budget Total Operating Revenues for an Agreement Year*

Earned Incentive Fee, as defined:

> *shall be calculated as 75 percent of the amount by which the actual Operating Revenue for an Agreement Year exceeds the budgeted total Operating Revenue. The Earned Incentive Fee would be paid to AEG after the LACC Department accepts the annual audit report prepared by an independent auditing firm.*

Budget Total Operating Revenues are only estimates, not actual numbers. So, if the estimates, based on AEG;s own Annual Plan is less that the actual, they receive an Incentive Fee? That is insane.

No fee is based on comparatives of realized numbers.

Does this method reflect Public Benefit?

LACC Department is given authority over the Controller's function to accept an annual audit report without any time deadlines. That is against the Charter. The operations of the LA Convention Center should be reflected in the City's Consolidated Annual Report, subject to outside audit and based on GASB principles.

Discretionary Incentive Fee is calculated as follows:

> *If the LACC Department favorably evaluates AEG's performance during the Agreement Year in the categories described below, AEG will be paid a Discretionary Incentive Fee determined by the LACC Board.*
>
> *Categories (1) Implementation of enhanced customer satisfaction, and*
> *(2) Implementation of enhanced facility management, are permanent categories and should be evaluated each year.*
>
> *Category (3) Implementation of enhanced public safety shall be evaluated for the first*

agreement year and may be modified thereafter.

How is *enhanced customer satisfaction* being defined and measured? This is subjective. Only the implementation is recognized for an Incentive Fee?

How is *enhanced facility management* being defined and measured? Only the implementation is recognized for an Incentive Fee?

How is *enhanced public safety* being defined and measured? Only the implementation is recognized for an Incentive Fee?

You have no baseline to measure for Discretionary Incentive Fees. Implementation is not measurable.

CAO reports:

> *The Parties will also annually agree upon the allocation of weight of the three categories. For the First Agreement Year, Categories (1) and (2) are 40 percent and Category (3) is 20 percent.*

So, if the result is under 100%, what is the percentage that counts to authorize the Incentive Fees? Is it just 20%?

Does the LACC also approve payment of these fees?

The deal has changed.

Other Financial Elements, originally set at $500,000 is now agreed as:

> *A commitment to budget $300,000 annually in the LACC Operating Budget, for a total of $1.5 million over a five-year period, to market and solicit events to the LACC. The source of funds is revenue derived from the management and operations of the LACC, which shall be deposited into and managed from the LACC Operating Account.*

This account is not controlled by the City, but by AEG based on regular cash flow and including all revenues. None is designated for Debt Service.

CAO reports on Capital and Working Capital Advances (formerly $1 million CAPITAL IMPROVEMENT COSTS):

> *An advance of up to $1 million loan to fund Capital Improvement Projects or any type of operating expense, "First Capital Advance".*
>
> *A "Second Capital Advance" of up to $1 million to fund certain revenue-generating projects that is mutually selected and agreed upon by the Parties, and is not contingent on the City having requested or accepted any of the First Capital Advance.*

The City shall repay advances with interest based on the City's pool rate and amortized for the term of 5 years. The source of funds for repaying any loan amount received is convention center revenue.

Now AEG holds City debt and short-term city debt. The Voters did not approve this debt obligation. Convention Center Revenue is controlled by AEG, not the City of Los Angeles.

Where is the Public Benefit?

CAO reports:

AEG shall provide the City a corporate guarantee from AEG parent, to protect the City against loss due to the inability or refusal of AEG to perform under this Agreement

This is a limited liability company. What weight does a corporate guarantee have? Where is a Letter of Credit? Bankruptcy is a possibility, always, with a corporation.

The Operating Account will be controlled by AEG with no authorities required by the City Council for expenditures. If revenues fall short, how will the expenditures be paid?

CAO reports:

AEG is required to maintain complete financial and accounting records and reports of all revenues and expenditures in accordance with generally accepted accounting principles.

The LACC Department and the City Controller shall have the right to audit and access all financial records upon request.

AEG is required to provide an annual unaudited financial statement of operations and an annual independent auditor's report at the end of each Agreement year.

Private companies have different accounting standards than governmental entities. AEG is not obligated to report according to the rules around governmental entities.

LACC Department appears to have audit personnel. Is that correct? Why? Is that not the job of the Controller?

What deadlines are imposed? There are none for a private company, not publically traded.

LACC Reserve Fund is set up to require

AEG budget for a 10 percent reserve fund each year in the event there is an unanticipated expense that may not be covered by the Operating Budget, insufficient cash flowto cover an operating expense, or other LACC Department needs as determined by the Executive Director.

> *Any amount drawn from the LACC Reserve Fund must be reimbursed by AEG to the City as soon as funds are available and no later than 30 days prior to the end of the fiscal year.*

Does the Executive Director have authorities that are not approved by the City Council? Does AEG have the authority over a Reserve Fund?

Cash Flow is controlled by the Executive Director, as reported by the CAO:

> *Until that revenue becomes available, the proposed Agreement provides the Executive Director discretion to transfer an amount up to $5,000,000 from the LACC Department Budget to the Operating Account managed by AEG.*
>
> *The source of revenue for the $5,000,000 is convention center revenue.*
>
> *Any sums drawn from the Cash Flow Management Fund for use by AEG shall be reimbursed to the LACC Department as soon as Operating Revenues are available and in no case later than thirty days prior to the end of the Fiscal Year.*
>
> *Any unspent appropriation shall revert back to the General Fund at year-end. The LACC Department is responsible for monitoring whether there is sufficient cash to back the appropriation and will provide updates through the City's financial status reports*

This is a blanket authority, not approved through the City budget process by the City Council. LACC Department has authority for transfers, not an individual.

What does the Board of Convention Center Commissioners do? What is the function of the Controller?

CAO previously reported:

> *Management contracts cannot create private business use of the facility.*

Yet, the CAO reports:

> *In the event an operational matter, either in the City's or AEG's opinion, creates a potential "conflict of interest", the matter shall be referred to LACC personnel or LACC Management Review Staff, who shall be authorized to*
>
> > *(i) receive input from AEG on all management and operation matters,*
> > *(ii) make recommendations to the Executive Director on all input received from AEG and on all booking and contract issues which are beyond the guidelines of the Booking Policy or which the City believes would otherwise create a potential conflict for AEG, and*
> > *(iii) either resolve or make recommendations to the Executive Director for resolution of all disputes brought to it by means of Joint Review Management.*

The LACC Management Review Staff shall review all input provided by AEG and make an independent review or appropriate recommendation to the Executive Director who shall accept, reject or modify the Staff recommendations or make his or her own recommendations to the LACC Board.

The LACC Management Review Staff creates a forum for addressing potential conflicts of interest by adding several levels of independent review for the purposes of removing AEG from making a governmental decision or influencing the final decision maker.

By entering into this agreement, AEG agrees that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement.

You have no Ethics review through the Ethics Commission and/or City Attorney. LACC personnel, who may be in conflict of interest themselves, or a group named LACC Management Review Staff replaces a Board of Referred Powers.

It is not clear what the role fo the LACC Board is. Are they the final governmental decision makers?

Discount Booking Policy and LA Convention Center governance is reported by the CAO:

To be consistent with this initiative, it is recommended that the Executive Director be enabled to execute license agreements consistent with The Code, without having to obtain prior approval from the Board. It is also recommended that if a proposed rate reduction or waiver does not meet the requirements of The Code, the Board be enabled to approve these exceptions without obtaining Mayor and Council approval.

What is the role of the LACC Board? What is the role of the City Council? What is the role of the Mayor? What is the role of the Controller? This is an open-ended authority to operate without accountability to the Public.

This is a Private Operation with Profit Distribution through "Incentive Fees" with no basis of measurable performance or Public Benefit. There is allowance for Interest Income to the Private Operator through this pre-arranged authority to allow the City to borrow from it.

Tax-exempt debt is issued without regard to Debt Service and caps. Short-term borrowing is being designed without Voter approval through a private company.

This ordinance defies governance and the responsibility of our elected officials to protect the assets of the City, maintain serviceable debt and execute City Services.

Please reject this Ordinance.

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