

ARMBRUSTER GOLDSMITH & DELVAC LLP
LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

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WILLIAM F. DELVAC
DIRECT DIAL: (310) 254-9050

11611 SAN VICENTE BOULEVARD, SUITE 900
LOS ANGELES, CA 90049

Tel: (310) 209-8800
Fax: (310) 209-8801

E-MAIL: Bill@AGD-LandUse.com

WEB: www.AGD-LandUse.com

April 22, 2013

VIA HAND DELIVERY

Honorable Members of
Trade, Commerce and Tourism Committee
& Budget and Finance Committee
City of Los Angeles
200 N. Main St. Suite 1500
Los Angeles, CA 90012-4137

Date: 4-22-13
Submitted in TP/BF Committee
Council File No: 12-0692
Item No.: 6
Deputy: Espinosa
From Public

RE: Request For Proposal for Management and Operation of the Los Angeles Convention Center; Council File 12-0692

Dear Honorable Council Members:

I am writing on behalf of Anschutz Entertainment Group, Inc. (AEG) and its affiliate, AEG Facilities, in reply to the City's letter of March 18, 2013, and the report from the City Administrative Officer to your Committees dated April 16, 2013. As you know, AEG Facilities submitted a proposal (Proposal) in response to the Request for Proposal for the Management and Operation of the Los Angeles Convention Center (RFP). We were very disappointed in the City's decision to deem AEG's Proposal non-responsive to the RFP. This determination is in no way mandated by the City Charter, the Administrative Code or the RFP itself. In fact, the Council has full discretion to act in the City's best interest.

As described in detail in this letter, we believe the City's determination is flawed for a number of reasons and is not in the best interest of the City. The RFP itself was far from perfect. For example, the failure of the RFP to attach the correct City Ethics Commission Form is a plain defect in the RFP. Further, the disqualification of AEG merely over the method of delivery of financial information is not appropriate or to the City's advantage. The Proposal clearly indicated a willingness to provide the relevant financial information. Moreover, the City's direction regarding the scope of financial information was ambiguous at best and read literally was unreasonable, extremely burdensome and would have produced mountains of paper unrelated to the purpose of the RFP.

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We respectfully suggest that it is in the City's best interest to maintain a competitive bid process. Having at least two competitive bids will allow the City to determine which is the lowest responsive and responsible bidder, which is to the advantage of the City. (City Charter Section 371(a)). The City should exercise its discretionary authority under the RFP and the Charter and provide a short period (such as one week) to allow technical corrections regarding the correct CEC Form and financial information from affiliates.

We want to underscore the fact that as to the financial sustainability information, AEG has *always* been willing to provide that information to the City. The issues were with delivery method and scope:

- AEG's Proposal attempted to offer a mechanism to provide relevant information in a manner which would avoid excessive disclosure and protect the confidentiality of the relevant information that would necessarily be requested.
- The delivery method is a technical, immaterial RFP provision, which the City has the discretion to waive. (City Charter Section 371(c) discretion to waive any informality or proposal when to do so "would be to the advantage of the City.")
- Financial information has not changed since the time proposals were submitted.
- The delivery method in no way affects that amount of the Proposal. As such, providing the financial information through a different delivery method is not an improper "enhancement" as the City initially determined.
- The RFP allows the City to request additional financial information. Therefore, allowing AEG to submit financial statements now is not an improper enhancement.
- The City's later defined scope of financial information (parent and all affiliates) is ambiguous and excessively burdensome.

The scope of the financial information, as set forth in RFP Addendum No. 1, Response 37 was extreme, if literally applied. Response 37 stated that financial information was to be provided not just for the proposer, but also for the parent company and all affiliates of the proposer. For a company like AEG, there are over 100 affiliates and, therefore, seven sets of financial statements would total tens of thousands of pages. Further, the vast majority of reports from AEG's wide ranging affiliates would be of no utility to the City in evaluating the financial sustainability of the proposer. The sheer volume of paper and the lack of relevance of information for most of AEG's affiliates demonstrate the ambiguity of Response 37. Clear

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direction from the City should be provided as to relevant financial information with a focus on the small set of relevant affiliates.

The City has the discretion to waive any informality or proposal when to do so “would be to the advantage of the City” (City Charter Section 371(c)) and to request additional financial sustainability information (RFP, page 20) The City has the discretion to either deem the AEG Proposal responsive or waive the informal requirement as to how financial information is to be transmitted. In balancing the issues, it is clear that the advantage to the City of having two proposals to consider at this time far outweighs the minor issue of how and when financial information is delivered to the City.

Aside from the RFP’s deficiencies noted above, the RFP contains additional inconsistencies, ambiguities and incorrect information which call into question the RFP as a whole, including:

- RFP Section E.11 calls for bidders to submit CEC Form 55 which is “provided in Attachment I, Appendix I.” Appendix I contains CEC Form 50. The City only now admits this error.
- Failure to provide CEC Form 55 could result in disqualification. The City’s failure to provide the correct form is not a “minor defect” the City could waive. (RFP Section E.5.g.)
- The RFP was subject to three addenda. Each addendum contains, in part, substantive changes to the RFP requirements. Failure to comply with changes could result in disqualification.

We note that AEG discovered the defect in the RFP regarding the CEC form and on March 13, 2013, submitted the correct CEC Form. For the record, we disagree that both CEC Form 50 and CEC Form 55 should be submitted.

It is not in the best interest of the City to put the form of submission over consideration on the merits. As such, we respectfully propose that the City exercise its discretion and provide the proposers clear information requests and a short period of time (e.g., one week) to provide the requested submissions. Of course, substantive changes to proposals such as the enhancement of the economic benefits to the City should be expressly prohibited. Alternatively, the City could reissue the RFP finding that an inadequate number responsive proposals were received. (RFP, General City Reservations 5.c) This option, however, would result in a large amount of wasted effort both on the part of the City and the proposers.

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We respectfully request that the City review its options regarding the RFP and elect to resume a competitive bid process.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Delvac". The signature is fluid and cursive, with a long horizontal stroke at the end.

William F. Delvac

cc: Mayor Antonio Villaraigosa
Carmen A. Trutanich, City Attorney
Miguel Santana, CAO
Ted Fikre, AEG