

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: April 16, 2013

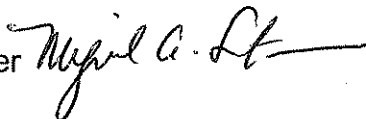
CAO File No. 0110-00800-000

Council File No. 12-0692

Council District: 9

To: The Mayor
The Council

From: Miguel A. Santana, City Administrative Officer



Reference: Council File No. 12-0692

Subject: **REQUEST FOR PROPOSAL FOR THE MANAGEMENT AND OPERATION OF
THE LOS ANGELES CONVENTION CENTER -- AEG LETTER TO NON-
RESPONSIVENESS DETERMINATION**

SUMMARY

On December 12, 2012, the Mayor and Council instructed the City Administrative Officer (CAO) to release a Request for Proposal (RFP) for the Management and Operations of the Los Angeles Convention Center (LACC). The Council also approved an enhanced governance structure for the LACC, a new Executive Director position to supervise the management of the facility, Citywide Convention strategies and the sales and marketing contracts, and two new policies, Booking and Discount.

On December 21, 2012, the CAO released a RFP and two firms responded on the revised due date of March 1, 2013. After review for responsiveness on the required information, one firm, AEG Facilities, was deemed non-responsive upon the advice of the City Attorney as no information was provided for "Financial Sustainability." On March 18, 2013, the CAO sent a letter informing AEG Facilities that its submittal was non-responsive (see Attachment 1 for a copy of the letter). The City Attorney further advised the CAO to conclude AEG Facilities' participation in the RFP process.

On April 11, 2013, the City Administrative Officer received a letter from AEG disagreeing with the conclusion that its submittal was non-responsive (see Attachment 2 for a copy of the letter). This report will factually discuss the issues raised by AEG.

DISCUSSION

The RFP requested the following information under Section VI, Proposal Requirements, D) Narratives (page 20):

"FINANCIAL SUSTAINABILITY

Provide the following financial documents. Items one (1) through six (6) below must be audited financial statements in US GAAP.

1. Balance Sheets for prior three years.
2. Income Statements for the prior three years.
3. Statements of Cash Flows for the prior three years.
4. Statements of changes in stockholder's equity for the prior three years.
5. Notes to Financial Statements.
6. Corporate/partnership federal income tax returns for the last completed fiscal year.
7. Credit report (e.g., Dun & Bradstreet report).
8. Credit history letter(s) from financial institution(s).
9. Most recent quarterly financial statement.

In any event, should the City require additional evidence of financial stability other than what is submitted, the proposers will be expected to provide such acceptable evidence in order for their proposal to be considered responsive to this RFP."

AEG's proposal included the following response:

"Request for Proposal for the Los Angeles Convention Center requests a copy of our most recent audited financial statements and other financial information. Anschutz Entertainment Group, Inc. and AEG Facilities, LLC are privately held companies and do not release financial information. However, company management is willing to meet with City representatives to review and discuss such financial information and our financial sustainability."

The RFP allowed for the proposers to ask clarifying questions. These were due on January 8 and then extended to January 23, 2013 in Addendum 1 after the Proposers' Conference on January 17, 2013. One question was asked and answered on "Financial Sustainability," as follows:

"37. Regarding the documents requested for firms "financial stability" (page 20), please confirm that respondents to this RFP will be responsible for providing financial statements for the entity that will be executing an agreement with the City, and not those of a parent or affiliate

Answer: The City is requesting all relevant financial information for entities executing the agreement as well as parent and affiliates of that entity."

There was no further request for clarification of this response, although there were three other addenda posted to BAVN.

The CAO reviewed with the City Attorney AEG Facilities' offer to meet with City representatives to review and discuss their financial information. The City Attorney determined that such a meeting would amount to unequal treatment of the proposals and create an opportunity for the other firms to challenge the equity of the RFP process.

Since AEG Facilities did not submit any information, the City Attorney also advised that we could not ask for "additional evidence" as no "evidence" was submitted. The City respects that some information may be confidential so the RFP has specific guidelines on how proprietary and confidential information is to be handled.

According to the City Attorney, although the Charter does allow the awarding authority to waive technical informalities such as lack of signature on a form, the omission of the Financial Sustainability requirement is not a technical informality but rather goes to the issue of whether a company has the resources to manage the facility.

With regard to the City Ethics Commission (CEC) forms, the CAO's office made an administrative error in omitting a form from the RFP as advised by the City Attorney. It is the intent of the CAO to correct this administrative error and make the finding to Council upon the advice of the City Attorney. Although the RFP on page 25 asked the proposers to submit City Ethics Commission (CEC) Form 55, staff attached CEC Form 50. Both firms submitted CEC Form 50. Both forms are required.

OPTIONS FOR COUNCIL

Based on the above discussion, the CAO is seeking direction on the request to reconsider the decision finding AEG Facilities' proposal non-responsive.

MAS:RPE:NRB:09130238

Attachments

ATTACHMENT 1

CITY OF LOS ANGELES

CALIFORNIA

MIGUEL A. SANTANA
CITY ADMINISTRATIVE OFFICER



ANTONIO R. VILLARAIGOSA
MAYOR

ASSISTANT
CITY ADMINISTRATIVE OFFICERS

RAYMOND P. CIRANNA
ROBIN P. ENGEL
PATRICIA J. HUBER

March 18, 2013

0670-00029-0000

Mr. Robert Newman, President
AEG Facilities
800 W. Olympic Blvd., Suite 305
Los Angeles, CA 90045

Dear Mr. Newman:

On March 1, 2013, the City received your proposal in response to the Request for Proposal for the Management and Operation of the Los Angeles Convention Center (the "RFP"). Based on the information provided in your proposal, you failed to provide the financial information and documentation in the Financial Sustainability section expressly requested in the RFP. Thus, your proposal is non-responsive.

The RFP requested the following information under Section VI, Proposal Requirements, D) Narratives:

"FINANCIAL SUSTAINABILITY

Provide the following financial documents. Items one (1) through six (6) below must be audited financial statements in US GAAP.

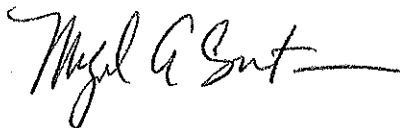
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5. Notes to Financial Statements.
6. Corporate/partnership federal income tax returns for the last completed fiscal year.
7. Credit report (e.g., Dun & Bradstreet report).
8. Credit history letter(s) from financial institution(s).
9. Most recent quarterly financial statement.

In any event, should the City require additional evidence of financial stability other than what is submitted, the proposers will be expected to provide such acceptable evidence in order for their proposal to be considered responsive to this RFP."

Because your proposal did not include the information described above and the deadline for submittals has passed, any information or documentation provided at this time would constitute an enhancement to your proposal that may not legally be considered. According to a review by the City Attorney, consideration of such proposal enhancements would be a basis for a court to set aside any award of a contract to AEG. Consequently, we have been advised to conclude AEG Facilities' participation in this RFP process.

We want to thank you for your submittal. If you have any questions or comments regarding this decision, please feel free to contact the City through the Response Coordinator, Natalie Brill, at cao.debt@lacity.org.

Sincerely,



Miguel A. Santana
City Administrative Officer

MAS:NRB:09130213

CC: Honorable Antonio R. Villaraigosa, Mayor
Honorable Herb J. Wesson Jr., President, City Council
Honorable Jan Perry, Councilmember, Council District 9
Carmen A. Trutanich, City Attorney
Gerry F. Miller, Chief Legislative Analyst

ATTACHMENT 2



April 11, 2013

Miguel R. Santana
City Administrative Officer
City of Los Angeles
200 N. Main St. Suite 1500
Los Angeles, CA 90012-4137

Re: RFP for Management and Operation of the Convention Center

Dear Mr. Santana:

I am writing on behalf of Anschutz Entertainment Group, Inc. (AEG) and our affiliate, AEG Facilities. 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 have reviewed the City's letter to AEG Facilities President Robert Newman, dated March 18, 2013, which stated that our Proposal was non-responsive to the RFP. We disagree with that conclusion and respectfully ask you to reconsider the decision set forth in that letter.

At the outset, let me say that after a successful relationship with the City dating back over 16 years that includes three of the most successful public-private partnerships perhaps anywhere in the nation, we have the utmost respect for the entire City family, including your office. This letter is intended in that spirit. Together, STAPLES Center, the Convention Center hotels, L.A. Live, and surrounding development in the Los Angeles Sports and Entertainment District represent over \$3 billion in private investment and have generated hundreds of millions of dollars in state and local tax revenue over the past 15 years.

A key goal of the City in the original arena transaction was to provide for a master plan development that included a convention center hotel and retail, dining and entertainment uses to invigorate the financial viability of the Convention Center. AEG and the City worked together to make the JW Marriott and Ritz Carlton Hotels a reality, and L.A. Live the center of entertainment in the region. I think we can all agree that these efforts have been extremely successful. In fact, these efforts led to the development of two additional hotels that are under construction today, with plans for a third hotel currently underway.

Our most recent public-private partnership, the Convention and Event Center Project, will result in the construction of a modern, state-of-art Convention Center and a multi-purpose Event Center that will return the NFL to Los Angeles. Your office and the City negotiated to ensure that the

\$350 million Convention Center modernization would be at no risk to the general fund. In addition, the Event Center planned for construction on ground-leased Convention Center property would provide additional convention and exhibition space that would move Los Angeles into the very top tier of convention centers around the country. This project represents another \$1.3 billion of investment generated by the AEG-led initiative. We were gratified that your office and the Chief Legislative Analyst's office jointly recommended that the Council approve the Convention and Event Center Project and that the City has placed its trust in, and the responsibility on, AEG to rebuild the Convention Center for the people of Los Angeles.

As stated in our Proposal, there are tremendous synergies between our L.A. Live campus and the Convention Center, and AEG is best positioned to enable the City to realize the full benefits of those synergies. No other operator possesses control of L.A. Live's complimentary facilities and AEG's extensive event booking capabilities which are uniquely suited to generate more event activity and improve the performance of the Convention Center in a way that will directly benefit the City and drive the tourism sector that is so important to the region's long-term economic health.

With this backdrop of its successful execution on major developments in Los Angeles and its on-going operation of large-scale businesses in the City; AEG is surprised to learn that the City would disqualify our Proposal on the basis of financial sustainability. We do respect the fact that in selecting an operator for the Convention Center, the City has set an appropriate goal to ensure the financial sustainability and stability of the operator. (As a private company that has invested billions on and around the Convention Center property, we share that goal too.) However, we do not agree that our Proposal was non-responsive in this regard, as it specifically stated that we would provide financial information.

Of course, as you can appreciate, the confidentiality of AEG financial information is important to us. It was always our intention to provide requisite financial information, but for reasons described below we felt there was a lack of clarity regarding precisely which information was necessary. Because of that ambiguity, our Proposal offered an appropriate mechanism to provide relevant information in a manner which would avoid excessive disclosure and protect the confidentiality of sensitive information.

We believe that the RFP's requirements for disclosure of financial information were unclear. We note that the City received a question on this subject as evidenced by Response 37 set forth in Addendum #1 to the RFP. Unfortunately, the response issued by the City, namely that the requested information should be provided for the proposer and its "parent and affiliates" only served to introduce greater ambiguity. Did the City really intend that proposers provide the requested financial information for all of their affiliates? From our perspective, such a requirement would not only be excessively burdensome to proposers, but would be highly inefficient and not particularly helpful to the City in reviewing proposals.

As you know, AEG has scores of different businesses that are owned and operated by its family of affiliated companies (many of which are conducted through different legal entities with their own books and records and distinct financial statements). Without even taking into account affiliates that are under common control but not within the AEG family, AEG has over 100 different subsidiaries through which it conducts a wide variety of businesses around the world (e.g. operations of stadiums, arenas, theatres, hotels and clubs; operation of hockey teams, soccer teams and other sports properties; promotion of music concerts and other live events; development of venues; development of other real estate). To have technically complied with the literal language of this portion of the RFP (as supplemented by Addendum #1) would have been impractical, if not outright impossible, as it would have required furnishing financial statements for numerous operating businesses affiliated with AEG (most of which have no relevance to the financial wherewithal of our proposing entity).

In any event, AEG is willing to provide the requested financial information for AEG Facilities, its proposing entity, as well as for one or more parent or affiliated entities as deemed necessary by the City.

Your letter stated that to allow us to provide that documentation would be considered an enhancement of the bid. Clearly, how financial documentation is provided in no way affects the amount of the Proposal. Indeed, the requested information regards *past* events, here historical financial documentation, and is not, therefore, an “enhancement” at all. The financial information has not changed since the time the Proposal was submitted. It would appear that the City agrees that financial information can be provided after submittal of proposals. In fact, the RFP provides that the City can require a proposer to provide additional evidence of financial stability. (See RFP page 20.) The City should not be able to have it both ways in deeming the same type of information an inappropriate “enhancement” when offered by a proposer but not when requested by the City. The method by which financial information is communicated to the City should be deemed immaterial or inconsequential to the RFP. It is impossible to see how the method of delivery can be construed as providing an unfair advantage or affecting the economic value of the Proposal.

The City Charter provides the City with discretion to reject any and all bids and proposals and to waive any informality or proposal when to do so “would be to the advantage of the City.” Here, it is in the best interest of the City to take into account the long track record that AEG has in revitalizing the area surrounding the Convention Center and to determine if this factor outweighs the technical issue of how financial information is delivered. The City has, and should exercise, the discretion to allow AEG to present financial information at this time in the manner proposed by AEG in its proposal or confidentially in writing.

In addition to the ambiguity regarding financial disclosure, we believe that the RFP was likely inconsistent and incorrect in other areas, as well (e.g. attaching the incorrect City Ethics Form as an appendix), potentially rendering all proposals deficient or non-responsive in some respect.

We want to focus on the key issue of what is in the best interest of the City so we do not feel it is appropriate to detail various other concerns with the RFP now—unless you feel that would be useful. Overall, we do not see how the best interest of the City would be served by allowing technical issues to dictate the outcome of a process for such an important asset to the entire City—the Convention Center. To do so would have form prevail over substance.

We believe, instead, that the fairest approach would be to allow each proposer to make technical corrections to submission materials without allowing any change in the economic offer made at the time of submission. This provides fairness to all proposers for technical compliance but serves the important doctrine that prohibits an enhancement in the value offered to the City after submission of proposals. This balanced approach is in the best interest of the City as it will ensure that the best operator is selected.

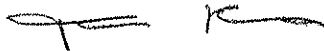
In closing, AEG has demonstrated time and again that it meets its goals and carries out its responsibilities, as evidenced by AEG's successful execution of the projects that have revitalized the area surrounding the Convention Center. Even more relevant than forms and documents, such a track record of performance is core to the City's goal of ensuring that an operator has the financial wherewithal to meet its obligations in successfully managing the operations of the Convention Center.

AEG is uniquely situated in financial strength and experience—and literally in location—to operate the Convention Center. Selection of AEG as the operator would only be the next logical step in cementing the public-private partnerships we have with the City that have transformed Los Angeles as a place to visit, and stay, for business, entertainment and sports.

Based on the foregoing, we respectfully request that AEG be allowed to provide the requested financial information and that the City allow all proposers to make technical corrections to the proposals as necessary to resolve the ambiguities and inconsistencies in the RFP and its addenda.

We look forward to your response. Thank you in advance for your thoughtful consideration of this matter.

Very truly yours,



Ted Fikre
Vice Chairman
Chief Legal and Development Officer