



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: September 11, 2018

IBA Report Number: 18-30

Smart Growth and Land Use Committee Meeting Date: September 19, 2018

Item Number: TBD

Proposed Response to Grand Jury Report “San Diego Continues To Lose Money On Stadium Management”

OVERVIEW

On May 22, 2018, the San Diego County Grand Jury filed a report, directed to the San Diego City Council, entitled “San Diego Continues To Lose Money On Stadium Management.” The report discusses issues related to naming rights and suite sales contracts at the SDCCU Stadium. The Grand Jury report includes twelve findings and four recommendations directed to the City Council and Mayor.

Per the Grand Jury report, the City Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, due to the summer legislative recess, the Mayor’s and Council President’s offices requested and received an extension for their responses to November 16, 2018.

In responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that each recommendation (1) has been implemented; (2) has not yet been implemented, but will be in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

The Office of the IBA worked collaboratively with the Mayor’s Office, Real Estate Assets Department and Purchasing and Contracting Department to develop a proposed joint Council/Mayoral response to the Grand Jury report, which is included as Attachment 1 to this

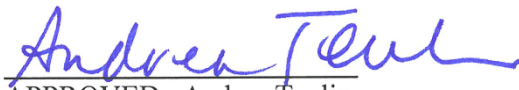
report. We request that the Smart Growth and Land Use Committee provide feedback and forward its approved proposed response to the full Council.



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Attachments:

1. Proposed City Response to San Diego County Grand Jury Report Entitled “San Diego Continues To Lose Money On Stadium Management”
2. San Diego County Grand Jury Report Entitled “San Diego Continues To Lose Money On Stadium Management”

**Proposed City Response to
San Diego County Grand Jury Report Titled
“San Diego Continues To Lose Money On Stadium Management”**

Pursuant to California Penal Code section 933(c), the City of San Diego provides the following responses to the findings and recommendations pertaining to the City of San Diego that are included in the above-referenced Grand Jury Report:

FINDINGS 01 THROUGH 12

Finding 01: *The Chargers’ departure gave the City an opportunity to recoup revenue on Stadium advertising and suite sales.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

Finding 02: *Stadium staff could have sold the Stadium advertising.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

Ensuring that stadium advertising revenues are maximized requires sales staff, expertise in negotiating advertising agreements, knowledge of market contacts and relationships, and knowledge of industry standard advertising rates. The City’s staff at the stadium currently consists of a stadium manager, a program coordinator, a senior management analyst, an administrative aide, and a clerical assistant, and none are qualified to sell stadium advertising. Developing staff with this expertise would have diverted resources away from the actual management of the stadium and booking of revenue-producing events at the stadium.

In FY18, the budgeted operating revenue for the stadium was \$3.0 million. However, actual revenue for FY18 was \$6.7 million, in large part because the stadium’s staff was able to focus on booking revenue-producing events at the stadium

While the City could have attempted to sell stadium advertising, the net gain of \$3.7M from booking events, in contrast to the City’s FY 18 revenue from suite sales of \$263,000 and from advertising sales of \$475,000, makes it clear that City taxpayers were best served by focusing the City’s efforts in areas of the stadium staff’s expertise in recruiting revenue-producing events.

Finding 03: *Stadium staff could have sold the suites.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

Similar to the City’s response to Finding 02, selling stadium suites requires sales staff, expertise in negotiating suite sales agreements, knowledge of market contacts and

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relationships, and knowledge of industry standard suite rates, none of which the City’s staff located at the stadium are qualified to do. Developing staff with this expertise would have diverted resources away from the actual management of the stadium and booking revenue-producing events at the stadium.

Finding 04: *The City gave away revenue it could have retained.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

This finding assumes that the City’s existing staff, which lacks advertising and suite sales expertise, could have generated greater advertising and suite sales revenues than the professionals the City contracted with to perform this function.

Finding 05: *The City allowed work on the contract before its effective date.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

Fox Sports did start work prior to the effective date of the contract. Their work consisted of developing an RFP and soliciting interest in the market. However, as no costs were incurred during this process and no commitments would have been binding or finalized without a fully executed contract in place, risk to the City was limited.

Finding 06: *The City allowed Stadium suites to be sold before it authorized the sales.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Suites were marketed prior to commencement of the agreement with the Bowl Association, however, no suites were sold prior to execution of the agreement.

Finding 08: *The City needs rules on contracts that allow private parties to issue RFPs on the City’s behalf.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

The criteria under which the City might chose a third party to issue an RFP would be based on specific circumstances and expertise. Additionally, while Fox Sports did make solicitations for potential naming rights advertisers, this solicitation was not an RFP issued on behalf of the City. The San Diego Municipal Code (SDMC) addressing the competitive process for contracts governs only the City’s selection of contractors. It does not address how third-party contractors conduct their business, including how they find vendors or advertisers, but those third parties are required to mirror as closely as possible the practices of the City.

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Finding 09: *The City had the time and expertise to issue its own renaming RFP in time for the Stadium events of September 2017.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Had the City conducted a search for a naming rights sponsor, it would have been through the RFS (Request for Sponsorship) process. Qualcomm’s naming rights expired on June 13, 2017, and the City negotiated up until that expiration for Qualcomm to renew. Ultimately, Qualcomm did not renew their sponsorship agreement.

Initiating a RFS process after the Qualcomm negotiations concluded would not have allowed the City to contract with a naming rights sponsor in time for the commencement of the 2017 college football season. This would have greatly reduced the sponsorship revenue available for those naming rights.

Finding 10: *The City needs rules on third parties judging responses to RFPs.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

In some cases a third party will have special expertise that would be valuable for judging RFP responses, and the same rules would apply to that third party as apply to City employees. However, as noted in the City’s response to Finding 08, the solicitation Fox Sports made for potential naming rights was not a City RFP.

Finding 11: *The Fox Sports and Bowl Association contracts did not conform to the requirements for sole source status.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Sole source certifications for both agreements were reviewed by the City Attorney’s Office and approved by the Purchasing & Contracting Department in compliance with the SDMC. Because the City planned to cease scheduling events in December 2018, the relatively short period of time created a challenge in garnering interest from available suppliers of private suite sellers and stadium sponsorship sales.

In addition, the first game of the 2017 San Diego State Aztecs Football season was scheduled for September 2, 2017, so it was imperative that suites and advertising sales be maximized prior to that date.

Further, the City already had a contractual relationship with the Bowl Association associated with the Bowl Association hosting Holiday Bowl at the stadium since 1978. The City also has had a contractual relationship with Fox Sports, as Fox Sports is a partner of

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San Diego State University and the University holds a Use and Occupancy Agreement to play collegiate football games at the stadium.

Finding 12: *The City needs rules on valuing revenue-generating contracts.*

Response: **The Mayor and City Council partially disagree with the Grand Jury’s finding.**

Rules on valuing revenue-generated contracts are important, and the City has already adopted a number of them: the City has multiple Council Policies governing how to value revenue-generating contracts, including Council Policy 700-10 (Disposition of City-Owned Real Property), 700-12 (Disposition of City Property to Nonprofit Organizations), 700-41 (Use of the RFP Process for Lease of City-Owned Land) and 900-20 (Naming of City Assets).

RECOMMENDATIONS 18-16 through 18-19

Recommendation 18-16: *Establish policies and procedures for City contracts with private parties in which the private party will issue a Request for Proposal on the City’s behalf and include rules on when the private party can participate in judging the responses to that RFP.*

Response: **The recommendation will not be implemented because it is not warranted.**

The solicitation Fox Sports made for potential naming rights advertisers was not an RFP as defined in the SDMC. Further, while third parties may sit on City selection panels when the City is following its RFP process, this process did not apply in this case.

Third parties generally do not issue RFPs on behalf of the City. However, if a third party were to issue an RFP or sit on a selection panel, the same rules would apply to that third party as apply to City employees. The criteria under which the City might chose a third party to issue an RFP and/or sit on a selection panel would be based on expertise.

Recommendation 18-17: *Establish policies and procedures for selling the naming rights for City assets leased to private parties.*

Response: **The recommendation has been implemented.**

Naming rights are either permitted per lease agreements or as specified in Council Policy 900-20 (Naming of City Assets).

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Recommendation 18-18: *Establish policies and procedures for valuing revenue-generating contracts.*

Response: The recommendation has been implemented.

The City already has multiple council policies governing how to value revenue-generating contracts, including Council Policy 700-10 (Disposition of City-Owned Real Property), 700-12 (Disposition of City Property to Nonprofit Organizations), 700-41 (Use of the RFP Process for Lease of City-Owned Land) and 900-20 (Naming of City Assets).

If a particular valuation falls outside the expertise of City staff, an outside contractor with expertise in that form of valuation is hired to perform the valuation.

Recommendation 18-19: *Require the Bowl Association to follow standard government accounting practices in its monthly and annual income statements.*

Response: The recommendation has been implemented.

This is already required in the agreement between the Bowl Association and the City of San Diego in Exhibit A (Scope of Work).

SAN DIEGO CONTINUES TO LOSE MONEY ON STADIUM MANAGEMENT

SUMMARY

The City of San Diego's Stadium was leased to the Chargers as the primary tenant from 1967 until January 12, 2017, when the Chargers announced their intention to move to Los Angeles. The San Diego State University Aztecs football team's Stadium lease expires in December 2018, at which time the City plans to close the Stadium. The Holiday Bowl, administered by the San Diego Bowl Game Association (Bowl Association), has one more event in December 2018. The Stadium is managed by the City's Real Estate Assets Division (READ), with Stadium Staff administering contracts and handling day-to-day operations. In 1997, the City sold the Stadium naming rights to Qualcomm Inc. The Qualcomm agreement expired in May 2017.

The City's historic loss of revenue at the Stadium was a bone of contention for the City Council for many years. City Council members looked forward to recouping that income under a "Chargers leave" scenario. Yet when the Chargers did leave, the City began exclusive (sole-source) negotiations with Fox Sports College Properties (Fox Sports), a Division of National Advertising Partners¹ to sell Stadium advertising and with the Bowl Association to sell the skyboxes and other luxury suites. When it became clear Qualcomm Inc. would not renew its naming rights, READ added the task of issuing a Request for Proposals (RFP) for those rights to the Fox Sports agreement. Those sole-source contracts were signed in September 2017.

The 2017/2018 San Diego County Grand Jury (Grand Jury) found that these contracts did not meet the San Diego Municipal Code requirements for sole-source procurements. Further, the Grand Jury found Stadium staff had the knowledge and experience to issue the RFP for the naming rights, and to sell the Stadium advertising and suites, which would have brought more revenue to the City. Finally, the Grand Jury found the City lacks policies and procedures on:

- Contracting with private parties for issuance of an RFP on the City's behalf,
- Defining the circumstances in which private parties who issue an RFP on the City's behalf may help judge the responses to that RFP,
- Valuing revenue-generating contracts covering a range of potential products and/or services, and
- Selling the naming rights for City assets like the Stadium.

The Grand Jury recommends the San Diego Mayor and City Council adopt policies and procedures that regulate these situations.

INTRODUCTION

The Grand Jury learned of the City's 2017 agreements with Fox Sports College Properties and the San Diego Bowl Game Association. Wanting to learn why the City, with a continuing loss of stadium revenue, had contracted out these functions, the Grand Jury decided to investigate.

¹ Fox Sports College Properties is a separate entity from Fox Sports San Diego, which is a regional affiliate of Fox Sports Networks and is a joint venture between Fox Cable Networks, a unit of the Fox Entertainment Group division of 21st Century Fox (which owns a controlling 80%) and the San Diego Padres (which owns the remaining 20%).

PROCEDURE

The Grand Jury interviewed representatives of City government and reviewed the following:

- City Policies and Procedures regarding Stadium management and renaming
- City Policies and Procedures on contracting
- Recordings of City Council and Council Committee meetings regarding the Stadium
- Contracts/agreements for Stadium use
- Minutes of the Stadium Advisory Board meetings
- Stadium budget documents
- Audit reports on the Stadium and its revenues

DISCUSSION

Stadium History

The City of San Diego built the stadium and hosted the first San Diego Chargers football game in 1967. The Chargers announced on January 12, 2017, that they were moving to Los Angeles. Their Stadium occupancy agreement expired July 31, 2017. The San Diego State University (SDSU) Aztecs football team began playing its home games at the Stadium in 1967 with its current Stadium lease expiring after its last regular home game of the 2018 college football season. The Padres played at the Stadium from 1969 to 2004, and the Sockers from 1978 to 1983. It is the only stadium to host the Super Bowl and the World Series in the same year (1998). It has hosted other Super Bowl and World Series games as well as national championships, the Holiday and Poinsettia Bowls, international soccer matches, concerts, conventions, monster truck and moto-cross events, parking lot vehicle sales, etc. During the 2003 and 2007 wildfires, the Stadium served as the primary evacuation center. The City currently plans to close the Stadium at the end of December 2018.²

In 1980, voters approved naming the Stadium after Jack Murphy, the late sports writer who had convinced the Los Angeles Chargers' owner to move the team to San Diego. For the 1997 Stadium expansion, Qualcomm Inc. paid the City \$18 million to finish the remodeling and for the naming rights. The Qualcomm Stadium naming rights expired in May 2017. In September 2017, San Diego County Credit Union (SDCCU) bought the naming rights through December 2018.

The City of San Diego owns and operates the Stadium; it is managed by the city's Real Estate Assets Department (READ). At the beginning of 2017, the facility had 37 full-time employees. The Stadium manager reports to the READ director. Stadium staff is responsible for marketing the Stadium, booking events, administering contracts (e.g., for parking and concessions), and maintaining the facility.

The City Council established a nine-member Stadium Advisory Board (SAB) in 1998. The Board serves as liaison between the public, stadium tenants, contractors, and the City and is

² There has been discussion of leaving the Stadium open until the Aztecs find another venue for football, but no decisions have been made. The fate of two November 2018 ballot measures – "Soccer City" and "SDSU West", will undoubtedly influence that decision.

supposed to provide recommendations to the Mayor and City Council on actions requiring Council approval, such as leases and renaming.

In 1978, the Holiday Bowl was launched in San Diego. Local business people formed the non-profit San Diego Bowl Game Association (Bowl Association) to promote the game and related events (e.g., a golf tournament). Over the years, the Holiday Bowl has had several title sponsors (e.g., the National Funding Holiday Bowl in 2015 and 2016). In early 2017, SDCCU bought the title sponsorship. Also in 2017, the City contracted with the Bowl Association to sell the luxury suites for all Stadium events.

The City Has Traditionally Lost Money on the Stadium

The Stadium historically has not generated enough revenue to cover operations and maintenance (O&M). The deficit is made up primarily through a transfer from the Transient Occupancy Tax Fund. The Chargers paid a minimum annual rent (\$3 million a year from 2014 to 2016, with \$4 million a year scheduled to begin in 2017). However, decades of re-negotiated use agreements and legal settlements gave the Chargers all or part of advertising, ticket, suite, concession, and parking receipts, as well as other rent credits. As a result, the Chargers profited further from use of the stadium. In FY 2016 (the last budget cycle before the Chargers left), the Transit Occupancy Tax had to contribute \$11.6 million to cover the deficit. Beyond annual expenses, the 50-year old Stadium is estimated to have deferred maintenance needs totaling around \$80 million.

During the Chargers tenancy, the City's revenue losses on Stadium operations became an issue for the City Council. So when the Council approved the Aztecs new lease in 2009, Council members asked the READ director whether the City would regain control of revenue from Stadium advertising, suite and ticket sales, etc. under a "Chargers leave" scenario. The then-READ director assured them the City would be able to recover those revenues.

The 2017 Stadium Contracts

On January 12, 2017, the Chargers notified the City they would terminate their lease and would vacate the stadium by July 31, 2017. Thus the Chargers' contract rights to advertising and suite sales would revert to the City at that time. In April 2017, READ informed the SAB that "A meeting will be held with San Diego State and the Bowl Association to discuss newfound opportunities with selling the advertising panel and suite sales that previously belonged to the Chargers."

Table 1. – Stadium contracts timeline

DATE	EVENT
1/12/2017	Chargers announce they are moving to Los Angeles. The right to sell Stadium advertising and suites reverts to City
4/13/2017	City Council adopts Policy 900-20, Naming of City Assets, but Policy doesn't apply to Stadium, Sports Arena, or Ballpark
5/7/2017	Qualcomm Inc.'s Stadium naming rights expire
5/11/2017	READ tells SAB that Qualcomm Inc. will not renew its naming rights and that "an RFP will be sent out"
7/2017	Bowl Association begins selling Stadium suites
7/13/2017	READ informs SAB: <ul style="list-style-type: none"> • City hired the Bowl Association to sell suites • City hired Fox Sports to sell advertising signs • Fox Sports will also pursue the naming rights on behalf of the City
8/1/2017	Fox Sports issues Request for Proposals for Stadium naming rights
8/16/2017	City Attorney advises READ and the Department of Purchasing and Contracting (P&C) that the Fox Sports and Bowl Association agreements will require a competitive process, not sole-source
9/1/2017	Responses to the naming rights RFP are due to Fox Sports at its offices at the Aztec Athletic Foundation
9/14/2017	Effective date of sole-source contract between City and Bowl Association regarding sale of Stadium suites
9/15/2017	Effective date of sole-source contract between City and Fox Sports regarding Stadium renaming and advertising
9/19/2017	City Council adopts Resolution 2018-98 renaming the Stadium "SDCCU Stadium"

Coincidentally, Qualcomm Inc.'s 1997 Stadium-naming contract expired in May 2017. That contract did not give Qualcomm rights to extend the naming and did not restrict the City's right to negotiate a new naming sponsor.³ Therefore, the City had the right to seek a new naming partner at the beginning of May 2017 when over 500 events were scheduled in the Stadium or its parking lot through the end of 2018. These included the Aztecs 2017 and 2018 home football

³ As early as March 2015, Qualcomm executives had informed City officials that the company would not invest any more money in San Diego because they did not believe the City had treated them well in return for their past investments (e.g., the \$18 million for Stadium renovations and naming).

schedule (beginning with its 2017 season-opener September 2, 2017), and U2 and Coldplay concerts (on September 22 and October 8, 2017 respectively), plus soccer games, car sales, etc. These known events were the basis for valuing the naming rights.

The City Council adopted Policy 900-20, Naming of City Assets, on April 13, 2017. At the Council hearing on the draft policy, READ clarified that it did not apply to the Stadium, Sports Arena, or Ballpark because those assets typically are leased to a primary tenant, and the naming rights go with the lease. In addition, Policy 900-20 doesn't discuss requesting bids for naming rights, and there is no requirement for Council review of the underlying contract if it is for less than \$3 million. It is awkward to have a class of city assets excluded from a Council Policy on naming those assets but still required to request Council approval of the naming itself. The Mayor and City Council should either amend Policy 900-20 to capture the naming of assets leased to private parties and the contractual procedures to be followed in selling naming rights, or establish a new policy related solely to leased assets like the Stadium.

The Naming Rights and Advertising

In May 2017 the Stadium manager told the SAB that a Request for Proposal (RFP) for purchase of the naming rights "would be sent out." No one consulted the SAB even though renaming the Stadium is an action requiring Council approval. No RFP was prepared by any City agency. Instead, READ negotiated a sole-source contract with Fox Sports to issue that RFP. That contract became effective September 15, 2017, when signed by the city attorney.

On August 1, 2017, Fox Sports published a "Request for Proposal Naming Rights for the Stadium." This RFP called for responses to be delivered to Fox Sports at its Aztec Athletic Foundation address. It specified that the City and Fox Sports would jointly evaluate the proposals and make the selection. Fox was to receive 25% of the naming-rights revenue.

The City does not usually contract out the issuance of an RFP, and it has no rules covering such a contract. The City's standard for issuing an RFP is 60 to 100 days. If the City had developed an RFP for the naming rights beginning in April or May 2017, it could have been issued and the bids received on roughly the same schedule as that followed by Fox Sports, with the City retaining all of the naming rights revenue. Nor are there City rules about a private party issuing such an RFP and assisting in the judging of the responses. The Grand Jury recommends the City adopt rules governing the issuance and judging of RFPs by third parties.

READ presented the request to rename the Stadium to the City Council on September 19, 2017. In the normal course of business, that request would have been heard first by a Council committee, allowing time for the members and the Independent Budget Analyst (IBA) to undertake a critical review of issues before a final vote. As this process can take up to four months, time-sensitive requests for Council action can be expedited through a Supplemental Docketing Request. READ used the Supplemental Docketing process and thus the September 19, 2017 Council meeting was the first notice Council members and the IBA had that READ had contracted with Fox Sports to issue an RFP for the naming rights and to help judge responses to that RFP. As a result, the issues the IBA and Council members raised at that hearing about Fox Sports' role in awarding the naming rights were not discussed in detail, nor were they pursued further.

READ has argued that it could not issue that RFP because the City did not have the expertise to value the naming rights, while Fox Sports is familiar with that market. However, the Stadium staff belongs to professional organizations such as the International Association of Venue Managers and the Stadium Managers Association, and routinely communicates with other stadiums to compare business strategies and gather up-to-date market information. Even without these professional connections, a simple Internet search provides numerous hits on the value of stadium and arena naming rights. Staff could have drawn on these sources of information to determine where the RFP should be publicized and which bids were reasonable. It also may be argued that there was no established market value for the naming rights for a 50-year old decaying stadium with no professional sports anchor tenant. It was a unique item in the American sports world, and Fox Sports' market familiarity did not offer anything beyond the City's own resources.

READ also told the City Council that the City had no experience selling advertising, thus it was necessary to contract with Fox Sports for all Stadium advertising. However, Stadium staff knew from the Chargers' accounts who the advertisers had been and how much each ad was worth. Indeed, the Stadium advertising "Inventory" (a complete list of advertising locations in and around the Stadium and their prices) is appended to the Fox Sports Agreement as Exhibit A (see Table 2).

Table 2. – Stadium Signage Inventory

Location	Value	Available	Notes
Fascia Panels	\$75,000	8	
Parking Lot Pole Signs	\$25,000	4	4 parking lot areas available
Trivision North Full	\$60,000	3	
Trivision South Full	\$60,000	3	
West Video Board Permanent Signage	\$30,000	4	
East Video Board Permanent Signage/lower	\$50,000	2	
East Video Board Permanent Signage/top	\$80,000	1	One 14' x 50' backlit ad panel
East Video Board Permanent Signage (small)	\$20,000	2	
External Trivision	\$100,000	2	
Street Signs (Friars Road)	\$25,000	1	
Concourse Escalator	\$15,000	6	Three 20' x 5' banners on escalators in main concourse
Pedestrian Ramp	\$10,000	6	
Ticket Office/Gate C & E	\$10,000	8	
Friars Road Marquee/Primary	\$50,000	1	
Friars Road Marquee/Secondary	\$30,000	1	
Murphy's Lounge	\$25,000	1	
West Tunnel Team Entrance	\$25,000	1	
Elevator Tower	\$20,000	2	
Elevator Doors	\$5,000	10	
Restrooms	\$500	40	
Game Clocks	\$3,333	3	
Custom Branded Concessions Site	\$20,000	3	
East Concourse Concessions	\$15,000	1	

Again, READ did not seek the SAB's advice about contracting out advertising sales, but negotiated a sole-source contract with Fox Sports as the City's exclusive sales representative for "any and all available multi-media and in-venue marketing, advertising, promotional, naming

and/or sponsorship opportunities” related to the Stadium. In that Agreement, Fox retains 25% of all net advertising revenue up to \$1.5 million, and 30% of advertising revenue over \$1.5 million. The Fox Sports agreement became effective September 15, 2017, when the City Attorney signed the contract.

The Suite Sales

The Stadium has a variety of luxury suites and press boxes. In the past, the City leased most of them to the Chargers Associates, who “sold” the suites for most Stadium events. When the Chargers terminated their agreement with the City, the right to sell those suites reverted to the City. Stadium staff is familiar with the suites, their size and location, and their past revenue streams to Chargers Associates. Indeed, by February 2017, Stadium staff was in contact with existing suite “owners” to see if they wanted to keep their suites. Stadium staff could have begun selling suites for all Stadium events at that time, retaining most of the revenue and thus offsetting a larger share of the suites’ O&M costs than was possible under the Chargers’ Agreement.

Instead, on August 18, 2017, READ submitted a request for sole-source procurement to the City Department of Purchasing & Contracting (P&C) to award a non-competitive contract to the Bowl Association “to sell all suites for all events held inside the Stadium.” The justifications for using a sole source were the short time available before the Aztecs’ first game on September 2, 2017, and the contractual relationship the City already had with the Bowl Association for the Holiday Bowl.

READ’s agreement with the Bowl Association for suite sales was effective September 14, 2017 (although suites sales began in July 2017). Under that agreement, the City gets 40% of suite-sale revenue, the Bowl Association 30%, and the event sponsor 30%. In addition, the Bowl Association gets 5% of the City’s share of Stadium signage revenue from the Fox Sports contract. From July to December 2017, the City received a total of \$152, 989.35 from its 40% share of suite sales. However, the Bowl Association’s monthly income statements are so poorly prepared the Grand Jury was unable to verify the accuracy of this number. The City should require the Bowl Association to use standard government accounting practices in their monthly and annual reports.

The Sole Source Process

The Grand Jury finds that the sole-source process was not justified in negotiating either the Fox Sports or the Bowl Association agreements.

Municipal Code §22.3003 defines the City’s agreements with Fox Sports and the Bowl Association as contracts for services. READ and P&C assumed that a competitive process was not required for either of these contracts because they are revenue-generating, a process through which Fox Sports and the Bowl Association would each collect the revenue, retain their share, and send the remainder to the City, rather than be paid by invoice. The city attorney disagreed, and on August 16, 2017 advised READ and P&C that the competitive process under MC §22.3203 was triggered because the contracts were worth more than \$25,000 each. Table 3 shows the number of quotes required for different contract values.

Table 3. – Competitive contract Solicitation Requirements

Value of Goods/Services Contractor Will Provide	Number of Quotes Needed
Up to \$25,000	1 quote
\$25,000.01 to \$50,000	2 quotes
\$50,000.01 to \$149,999.99	5 quotes
\$150,000 or more	Formal solicitation (RFP)

The total value of these contracts is difficult to estimate because it is unknown which suites and advertising panels might be sold for Stadium events. The City does not have rules on valuing revenue-generating contracts, and the Grand Jury recommends they develop some.

Under the provisions of MC §22.3208 relevant to this analysis, the only contracts that are *not* required to be competitively awarded are those for less than \$25,000 or necessary to safeguard life, health, or property in an emergency. The City Procurement Manual is based on MC §22.3208 and states that justifications for a sole-source contract also can include continued work on an existing project or system, an exclusive supplier, legacy systems, and operational impact. The Manual goes on to provide:

“Requests for Sole Sources submitted to P&C with invalid justifications include the following. These justifications will not be approved:

1. Poor planning – ‘We did not have time to go out to bid’;
2. Preference – ‘We like the current provider and do not want to switch’; or
3. Past practices – ‘P&C approved this two years ago, why can’t they approve it now?’”

When a City official requests a sole-source procurement, MC §22.3016 requires that the P&C director certify that it is necessary by showing why a competitive process would be unproductive or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

On August 18, 2017, the READ director submitted a sole-source request for the Fox Sports and Bowl Association contracts. The justifications offered for both requests were, first, insufficient time to undergo a competitive process and still capture the value of Stadium events scheduled in September and October of 2017, and second, the City’s existing contractual relationships with Fox Sports and the Bowl Association. P&C approved the sole-source requests on September 6, 2017.

The Grand Jury does not believe these justifications are sufficient to support use of the sole-source procedure. First, there was no emergency requiring the City to safeguard life, health, or property as required by MC §22.3208(b). Second, the certifications did not describe why strict compliance with a competitive process would be unproductive or would not produce an advantage as required by MC §22.3016(a). Third, the certifications relied on the short time before the Aztecs season began and the U2 and Coldplay concerts, but did not explain why the City had been unable to act more quickly when the suites and advertising had reverted to the City in January and the naming rights in May. Fourth, the certifications relied on prior relationships

with Fox Sports and the Bowl Association, but did not explain why those relationships justified a sole-source process. The reasons given for sole-source status do not conform to the requirements of the Municipal Code or the City's Procurement Manual.

FACTS AND FINDINGS

Fact: The City of San Diego owns and manages the Stadium.

Fact: From 1967 to 2017, the Chargers were the Stadium's primary tenant.

Fact: The Chargers' Stadium Use and Occupancy Agreement (with all amendments) gave the team control of Stadium advertising and suite sales.

Fact: On January 12, 2017, the Chargers announced they would be terminating their Stadium Use and Occupancy Agreement.

Finding 01: The Chargers' departure gave the City an opportunity to recoup revenue on Stadium advertising and suite sales.

Fact: In May 2017, READ began a sole-source negotiation with Fox Sports for the sale of Stadium advertising.

Fact: In May 2017, READ began a sole-source negotiation with the Bowl Association to sell the Stadium suites for future events.

Fact: Stadium staff is knowledgeable about the Stadium advertising opportunities and their costs.

Fact: Stadium staff is knowledgeable about the Stadium suites and their costs.

Fact: Stadium staff is well versed in national standards of stadium management.

Finding 02: Stadium staff could have sold the Stadium advertising.

Finding 03: Stadium staff could have sold the suites.

Finding 04: The City gave away revenue it could have retained.

Fact: The City's contract with Fox Sports to issue an RFP for the Stadium naming rights was effective September 15, 2017.

Fact: Fox Sports issued an RFP for the Stadium naming rights on August 1, 2017.

Fact: The RFP responses were due to Fox Sports on September 1, 2017.

Finding 05: The City allowed work on the contract before its effective date.

Fact: The City's contract with the Bowl Association to sell the Stadium suites was effective on September 14, 2017.

Fact: The Bowl Association began selling Stadium suites in July 2017.

Finding 06: The City allowed Stadium suites to be sold before it authorized the sales.

Fact: Qualcomm Inc. bought the Stadium naming rights in 1997.

Fact: Qualcomm Inc.'s naming rights expired in May 2017.

Fact: Qualcomm Inc. did not wish to extend its naming-rights contract.

Fact: The City contracted with Fox Sports for Fox to issue an RFP for the Stadium naming rights.

Fact: The City Procurement Manual specifies RFPs are prepared collaboratively by the client department, the Purchasing & Contracting Department, and the city attorney

Fact: Neither City contracting policies nor the Municipal Code discuss contracts to issue RFPs.

Finding 08: The City needs rules on contracts that allow private parties to issue RFPs on the City's behalf.

Fact: The City's benchmark for issuing RFPs is 60 to 100 days.

Fact: Stadium Staff is familiar with the RFP process through the contracts for parking and concessions.

Finding 09: The City had the time and expertise to issue its own renaming RFP in time for the Stadium events of September 2017.

Fact: The City's contract with Fox Sports provided that Fox would issue an RFP for the Stadium naming rights.

Fact: A Fox Sports representative was on the panel that reviewed the RFP responses and selected the winner.

Fact: The City's contract with Fox Sports gave Fox 25% of the naming-rights revenue.

Fact: The City does not have policies and procedures governing the judging of RFPs by third-parties who have a financial stake in the outcome.

Finding 10: The City needs rules on third parties judging responses to RFPs.

Fact: The contracts with Fox Sports and the Bowl Association are “contracts for services” under MC §22.3003 that require a competitive solicitation under MC §22.3206.

Fact: MC §22.3208 defines a “sole source” contract as one that is not required to be competitively awarded.

Fact: MC §22.3016(a) justifies a sole-source contract when “...strict compliance with a competitive process would be unavailing or would not produce an advantage, and...soliciting bids or proposals would therefore be undesirable, impractical, or impossible.”

Fact: The sole-source certifications for the Fox Sports and Bowl Association contracts are based on the short period of time available to issue RFPs and the prior relationships with Fox Sports and the Bowl Association.

Fact: The City had the opportunity to issue an RFP for advertising and suite sales as early as February 2017.

Fact: The City Procurement Manual provides the official statements of what circumstances justify and what circumstances do not justify sole source contracts.

Finding 11: The Fox Sports and Bowl Association contracts did not conform to the requirements for sole source status.

Fact: The Fox Sports and Bowl Association contracts are revenue-generating.

Fact: The City has no rules on valuing revenue-generating contracts for the purposes of determining the appropriate solicitation process.

Finding 12: The City needs rules on valuing revenue-generating contracts.

RECOMMENDATIONS

The 2017/2018 San Diego County Grand Jury recommends that the Mayor and City Council:

- 18-16:** Establish policies and procedures for City contracts with private parties in which the private party will issue a Request for Proposal on the City’s behalf and include rules on when the private party can participate in judging the responses to that RFP.
- 18-17:** Establish policies and procedures for selling the naming rights for City assets leased to private parties.
- 18-18:** Establish policies and procedures for valuing revenue-generating contracts.
- 18-19:** Require the Bowl Association to follow standard government accounting practices in its monthly and annual income statements.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
Mayor, City of San Diego	18-16 through 18-19	8/21/18
San Diego City Council	18-16 through 18-19	8/21/18