



JACKSONVILLE CITY COUNCIL

TRUE COMMISSION NOTICED MEETING MINUTES – SMG ISSUES April 5, 2011 10:30 a.m.

City Council Conference Room A
Suite 425, City Hall
117 W. Duval Street

Attendance: Commissioners Wes Benwick, Marcella Lowe, Diane Brown, Mike McCollum, Tom Martin

Guests: City Council President Jack Webb; Bob Downey – former SMG general manager for Jacksonville; Heather Norsworthy – Council Auditor’s Office; Tony Bates – Concerned Taxpayers of Duval County; Paul Harden, Larry Wilson, John Burns – SMG; Anne Shindler – *Folio Weekly*; Jeff Clements – City Council staff; Connie Benham, Phil Fretz

The meeting was called to order at 10:42 a.m. Chairman Benwick stated that his intent was to further develop the information the committee has received thus far on insurance and food vendor issues, and he would ask those present to either provide information they have readily available today or be prepared to take questions from the committee and provide the requested information at a later date. He hopes to have one more committee meeting and develop a final report for consideration by the TRUE Commission at its May meeting.

Mr. Benwick outlined a list of 6 questions/issues he’s developed after reviewing all the testimony and information distributed to date:

1. Insurance – the SMG contact was very clear about the requirement for competitive bidding for insurance, but that wasn’t done until 2009 and then only for health and liability insurance but not for worker’s comp. coverage.
2. Performance bond – has the required bond ever been procured by SMG and is it currently in force? The Office of Inspector General’s report does not verify that the bond is in place.
3. Savor food management – this issue is complicated and confusing. Can we really be sure the Savor deal is working and the City is being protected? Was the arrangement between SMG and Savor properly approved by the City/JEDC?
4. Procurement issues – to what extent does SMG’s procurement process match the City’s processes? Is SMG’s procurement process transparent enough to protect the public’s interests?
5. 80% sales test on suite sales, advertising signage and pouring/naming rights – why is this test not documented annually as required by the contract? Is the City getting the full share of revenue it’s entitled to?
6. Office of Inspector General recommendations – have the 20+ recommendations contained in the OIG’s report been implemented? Is JEDC tracking completion of these items?

Commissioner Lowe added two additional questions/issues:

7. Safes – the Inspector General’s report noted a need to reduce access to cash safes in several venues.
8. Live Nation promotions contract – did the City approve SMG’s ticket rebate incentive agreement with Live Nation? Who is benefitting from Live Nation’s activities?

Paul Harden, representing SMG, gave the following responses to the questions/issues posed:

1. Insurance procurement – the contract does not require competitive *bidding*, just competitive procurement. SMG has an extensive procurement process that meets City standards.
2. Performance bond – the bond is now and has been in force as required and copies have been provided to the JEDC.
3. Savor food management – the first year of the Savor contract produced \$350,000 additional revenue for the City over Levy’s operations the prior year, and customer service was improved tremendously. Business relationships with affiliate companies are specifically permitted under SMG’s contract as long as they are disclosed to and approved by the City, which the Savor contract was. SMG could choose to run the food service operation in-house if it wished (there is no requirement for a third party vendor), but third party vendors have been selected because SMG feels they can do a better job given their specialization in that area. The contractual arrangement SMG has with its food service contractor does differ between the Levy deal and the Savor deal; Levy worked under a profit-and-loss arrangement while Savor utilizes a management fee arrangement.

John Burns, SMG’s Chief Financial Officer in Jacksonville, stated that the management fee arrangement is a much better business practice for the Convention Center in that SMG, in attempting to recruit business to the building, can bargain over food and beverage discounts with potential clients with Savor’s agreement because of their management fee structure which Levy, operating under a profit-and-loss arrangement, would be less likely to approve.

In response to a question Mr. Harden stated that SMG’s budget is developed in great detail and is reviewed by the City three times – by the JEDC, by Council Auditor and by the Finance Committee. Wes Benwick mentioned the OIG’s report which mentioned the lack of SMG monthly reports on file with the JEDC. It appears the reports are being prepared and submitted by SMG as required, but the failure is in not having them on file or at least easily accessible in the JEDC offices.

Mr. Burns stated that SMG’s reputation is vitally important for their company’s credibility and future business potential, so they have no incentive to endanger their good name by cheating clients. He feels that allegations have been made about the company’s operations in Jacksonville that taint SMG’s image and reputation.

Mr. Harden stated that the SMG contract is reviewed in-depth on a monthly basis by the JEDC and there should be written minutes and other documentation of those reviews in JEDC’s files.

8. Live Nation contract - Mr. Burns stated that the company is the dominant concert and event promoter in the U.S. today, controlling 85% of the touring shows. If a venue wants to have any hope of getting the popular acts of the day, you have to deal with Live Nation. He stated that Bob Downey negotiated the original agreement with Live Nation that subsequently had to be re-worked by SMG and Paul Harden to comply with the City’s contract terms.
5. 80% test – Mr. Harden stated that the calculation has been made every year as required and the test has been met. He suggested that the lack of documentation on file might be due to the timing of the OIG’s audit and when the test documents are filed.

In response to a question from Commissioner Lowe about whether the JEDC had been provided the promised “white paper” on insurance procurement issues Mr. Harden stated that the document had been provided to the JEDC. There was discussion of the liability insurance procurement process and why the

invoices provided to the TRUE Commission showed a Philadelphia address when the contract was supposed to have been awarded to a local company. Mr. Harden stated that Marsh did have a local office in Jacksonville until 2008. Mr. Harden explained that SMG surveyed the operators of NFL stadiums around the country and decided to purchase \$100 million in coverage from Marsh which would cover all the SMG facilities in Jacksonville, and the cost of which would be divided among the venues based on either the number of patrons attending or the percentage of revenues produced for Jacksonville operations, depending on the type of event. The JEDC asked SMG to try to find cost reductions and SMG did that by reducing the coverage level from \$100 million to the \$5 million required by the City's contract, and by excluding certain types of coverage from the policy (i.e. sexual harassment complaint and biological agent coverage). All insurance costs are a straight pass-through from the provider to the City with no SMG markup, commission or other incentive. The City and the Jacksonville Jaguars are listed as indemnified parties on the policies and all parties are committed to protecting each other.

Connie Benham, an interested citizen, read a prepared statement questioning SMG's performance and urging that the venue operation contract be opened up to a competitive bidding process when it expires in 2013. She urged the closure of the Equestrian Center and a general reduction in bloated government and redundant personnel and governmental authorities. Wes Benwick stated that the TRUE Commission is purely a research and advisory body and has no authority to compel action on any of Ms. Benham's issues. The committee will study the issues involved in the SMG contract and produce a report within 30-45 days for the full TRUE Commission to consider and act upon.

The group discussed worker's compensation insurance issues. Part of the cost savings effort via insurance was supposed to come from reclassifying some SMG employees to lower risk categories, where possible. The savings was approximately \$17,000 but that is subject to further review and approval by state regulators and insurance underwriters. The city also approved allowing SMG to procure the insurance from a company rated A- when the contract requires an A rating. Mr. Burns stated that SMG surveyed its employees and found that they preferred better health care coverage to enhanced retirement benefits, so SMG is catering to that preference. The JEDC knew and approved the changes because of the need to reduce the City's subsidy to the operation of the assembly facilities.

Wes Benwick asked for an explanation of what the City gets for its management fee paid to SMG, and asked why the contract has not been competitively bid. Paul Harden explained that the contract was competitively bid in 1993 and several companies and the City's existing Recreation Department bid for the contract. Since then the City has renewed the contract without a bidding process. John Burns stated that one of the primary benefits of using a management company like SMG is the connection the company has to the promoters and touring acts. Promoters can book an entire tour through SMG into company-run buildings across country, something a City-run building can't do. A company like SMG also has a vast reservoir of management experience and access to experts and best practices in many fields relevant to the running of public assembly facilities. It is no accident that many NFL stadiums are operated by SMG. Mr. Harden described how experts from SMG's corporate offices in Philadelphia and from other SMG facilities around the country are made available to Jacksonville at no cost to consult on particular operational questions or to lend a hand for special events such as the Super Bowl.

Tony Bates stated that some of the issues raised by Ms. Benham earlier in the meeting are will within the TRUE Commission's purview and he hoped that the commission would look into whether the City ought to be subsidizing public assembly facilities to the tune of \$10+ million per year. Perhaps an incentive-based contract rather than a management fee contract will be considered when the contract is up for reconsideration in 2013. Paul Harden stated that the concept of an incentive-only agreement was raised at the time of the original contract in 1992 but federal tax law prohibited it at the time.

There being no further business, the meeting was adjourned at 12:24 p.m.

Jeff Clements, Chief
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5:00 p.m.