



Progress Report to the Legislature:
Studying the Viability of Joint Governance of the Xcel Energy Center and the Target Center

As Required by:
Laws of Minnesota 2013, chapter 143, article 4, section 39

The Minnesota Department of Administration

Executive Summary

The Twin Cities are unique in that they host two publicly-owned stadiums, the Xcel Energy Center and the Target Center, in close proximity to one another. Competition between the stadiums has resulted in head-to-head competition that leads to diminished revenues for both cities—to the detriment of their taxpayers. At the same time, antitrust laws prevent the stadiums from coordinating efforts to boost income.

The 2013 Minnesota legislature passed legislation to study options that would not be in conflict with antitrust barriers and encouraging collaboration among the stadiums. The legislation directed the cities of Minneapolis and St. Paul to procure an independent study and report “on establishing a joint governing structure to be responsible for the joint administration, financing, and operations of the facilities and the possible effects of joint governance on the finances of each arena and each city.” The Department of Administration was named the contracting agent.

The legislature intended a data-driven report that accurately projected the viability of prospective arrangements to “minimize the potential burden on general taxpayers....”

On behalf of the two cities, the Department of Administration contracted with Stafford Sports, LLC to conduct the study. Stafford successfully completed the first phase of its study, which included interviews with city and stadium leaders. To initiate the second phase, Stafford requested proprietary data from each stadium. In general, the Minnesota Government Data Practices Act presumes that data collected by government contractors is public information. Due to concerns that sensitive price data potentially impacting competition would be publically released, the stadiums were unwilling to supply data that might become public. The study was halted because there was insufficient data to proceed.

A bill was introduced in the 2014 legislative session tailored to protect specific data collected over the course of the study. However, the bill did not become law. Further efforts to facilitate cooperation by the stadiums were unsuccessful.

The parties considered a scaled-back version of the report. The revised report would involve a comparative analysis of the Twin Cities and case-studies that Stafford had already completed. Stafford agreed to a scaled-back report, but insisted on charging full price.

A scaled-back report would fall short of accomplishing legislative objectives. The legislature intended to receive a data-driven report with dependable projections and actionable items to seriously debate and consider. A scaled-back report would not provide the data for an analysis of the viability of joint management of the two arenas.

Purpose of This Report

The 2013 Legislature commissioned a study and report about the viability of joint administration, finance, and operations of the Xcel Energy Center and the Target Center. This report describes the obstacles to meeting the report criteria outlined in legislation.

Background

The Xcel Energy Center is a multi-purpose arena located in St. Paul and owned by the City of St. Paul. Minnesota Sports and Entertainment (MSE), a parent company of the Minnesota Wild, leases the building. MSE has a facility management company, the St. Paul Arena Company (SPAC) that manages operations. The Xcel Energy Center averages 1.5 million visitors and 150 events a years.

The Target Center is a multi-purpose arena located in Minneapolis. The city of Minneapolis owns the arena and AEG Facilities manages operations. The Target Center averages 1.3 million visitors and 172 events a year. Its primary long-term tenants are the Minnesota Timberwolves and Minnesota Lynx.

Introduction

The Twin Cities host two publicly-owned stadiums in close proximity to one another. This distinguishes us from other major metropolitan areas because it is atypical for stadiums to compete for the same entertainment events. Frequently, the Xcel Energy Center and The Target Center engage each other in a head-to-head competition for performers. The stadiums cannot work together because of antitrust laws. Performers are therefore able to obtain low rents that diminish revenues and result in higher costs borne by St. Paul and Minneapolis taxpayers.

The 2013 Legislature Commissioned a Study and Report about the Viability of Joint Governance of Xcel Energy Center and Target Center that was Intended to Minimize Taxpayer Burden

With the antitrust issue identified as the primary inhibitor of stadium cooperation, the legislature passed a law indicating its intent to remove barriers to “minimize the potential burden on general taxpayers of financing and operation of the arenas.” (Laws of Minnesota 2013, chapter 143, article 4, section 39). The statement of purpose reasoned that when state and local governments contribute financing to build sports stadiums, the associated “burden and risk” taken on by the public justify legislative action to lift antitrust restrictions. Namely, the legislature stated, cities should be authorized to maximize revenues by entering into arrangements with each other and associated private entities.

The law invoked two doctrines to shield key players from antitrust laws. The Noerr-Pennington doctrine gives antitrust immunity to private entities that attempt to influence passage and enforcement of certain anticompetitive laws. The Parker Antitrust doctrine applies to states that pass legislation with anticompetitive effects, and private entities that act on the basis of the legislation.

The law aimed to alleviate the burden of antitrust laws to enable “the cities and any associated private entities to enter into arrangements that attempt to maximize the combined revenues of these facilities[.]” The law also directed Minneapolis and St. Paul to study the establishment of a joint governing structure that would combine financing, operations, and administrative functions of the arenas in each city. It directed the Department of Administration, on behalf of the cities, to procure an independent consultant to work on the study, which should include specific actionable items. It should:

1. Examine the arenas’ finances;

2. Determine the prospective impact of joint governance;
3. Examine the prospect of joint scheduling, marketing, and promotion of events;
4. Estimate the amount of funding required to operate a joint governance.

The Department of Administration Procured Independent Consultant Stafford Sports, LLC to Study and Report on Viability of Stadium Joint Governance

The Department of Administration issued a request for proposal on September 3, 2013, and set a submission deadline of September 26, 2013. Four firms returned proposals:

Conventions, Sports, and Leisure International; C.H. Johnson Consulting, Incorporated; Barrett Sports Group, LLC; and Stafford Sports, LLC. A standard review process commenced. A team consisting of state and city representatives evaluated the merits and value of each proposal.

The Department of Administration contacted Stafford Sports, LLC on October 21, 2013 to notify them that their proposal received the highest score. A contract was executed between the State and Stafford on November 5, 2013. The Statement of Work, which was incorporated into the executed contract, delineated the following timeline of deliverables:

1. On-site meetings* with client team, designated representative from each arena, senior executives from arena management and sports tenant franchises, designated government representatives and local stakeholders (estimated November 6-8, 2013) [\$28,500]
*Client team or designated representative from each arena will assist in scheduling meetings, as needed
2. Request and collection of all raw data from management of both arenas (November 15, 2013) [\$0]
3. Review of data and collection of any additional data from arena management (November 29, 2013) [\$0]
4. Completion of additional interviews as necessary (December 13, 2013) [\$0]
5. Initial draft report (January 15, 2014) [\$28,500]
6. Review of draft report by client team and stakeholders (January 15-23, 2014) [\$0]
7. Submission to Stafford of any changes to draft report by client team and stakeholders (on or before January 23, 2014) [\$0]
8. Conference call with client team to review written changes (January 24, 2014) [\$0]
9. Final report issued by Stafford Sports (January 31, 2014) [\$38,000]

Notably, the Statement of Work stated: “Stafford Sports is reliant on the cooperation of many different parties in order to meet this timeline.”

Stafford Successfully Completed the First Deliverable and Initiated the Second Deliverable

Stafford completed the first deliverable between November 6 and November 8, 2013, meeting with representatives and stakeholders from the Xcel Energy Center, Minnesota Wild, St. Paul, Target Center – AEG Facilities, Minnesota Timberwolves, and Minneapolis.

To initiate the second deliverable, Stafford provided Target Center -AEG Facilities and the Minnesota Wild with data requests. It requested documents relating to league data, venue financials, event financials, management and operating agreements, partner agreements, premium seating and sponsorship, events, facilities upgrades, plans and studies, manuals, marketing and sponsorship, and personnel. Accordingly, Stafford signed nondisclosure agreements to protect the companies’ propriety data.

Minnesota Government Data Practices Act Had a Preclusive Effect on Data-Sharing by Stadiums

The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, creates a presumption that all government data are public unless there is a state or federal law that protects the data. Chapter 13 also extends to a private person contracting with government to perform any of its functions. Data related to performing the contracted function are subject to the Data Practices Act and the private person must comply as if it was a government entity. Any data maintained by that private person related to their government work would be subject to public data requests to the extent that they maintain public data that the government entity does not

maintain (i.e. data maintained by a private person performing a government function would be presumptively public).

Stafford sought to collect data under a contract to perform a government function—namely studying the viability of joint governance between two public stadiums. That data, therefore, would be presumed public government data. Furthermore, data cannot bypass the reach of Chapter 13 even if a contractor maintains the data in lieu of the government. *See, e. g.* Commissioner of Administration Advisory Opinions 10-018 & 05-039.

Minnesota’s Data Practices Act does include an exception that protects trade secret information from public reach. Minn. Stat. § 13.37, subd. 1(b). Trade secret information is:

[g]overnment data, including a formula, pattern, compilation, program, device, method, technique or process

- (1) that was supplied by the affected individual or organization,
- (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and
- (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

This exception does not necessarily protect all information that Stafford sought. *See* Minn. Stat. § 13.37, subd. 1(b). The trade secret exception offers less protection than its federal “proprietary information” counterpart, and generally does not protect information such as pricing or copies of subcontractor contracts, general characteristics and explanations of solutions/strategies, lists of employees and salaries, site evaluations and designs, or ordinary compilations of information prepared as part of day-to-day operations. *See, e.g.* Commissioner of Administration Advisory Opinions 99-035, 02-041, & 03-017. Based on a relatively unspecific trade secret definition and a history of data having been deemed public, it was unlikely that much

of the requested data would be guaranteed protection under the high bar of the trade secret exception.

On November 12, 2013, the Department of Administration notified representatives from the Minnesota Wild and Target Center-AEG Facilities that data collected by Stafford would not enjoy blanket protection under the trade secret exception. Based on that understanding, Target Center-AEG Facilities contacted Stafford on November 26, 2013 indicating they would only provide the following requested data: historical event calendars (past 5 years), event calendar for 2013-14, list of capital improvements during the past 5 years, age of certain systems (scoreboard and ribbon board, HVAC, MEP, ice plant, roof, parking), and nature of future renovation/major improvements.

Likewise, the Minnesota Wild contacted the Department of Administration on December 2, 2013 stating they would only provide the following data: lease agreements, historical events calendar (last five years), list of capital improvements completed over the last five years, arena debt schedule, some of the parking revenue that is already public data, age of the building equipment, and future capital plans.

Over the course of January, the Department of Administration, in conjunction with representatives from St. Paul and Minneapolis continued discussions with Stafford and negotiated a revised scope of work. The parties considered a modified report where Stafford would use its existing case studies to perform a comparative analysis. Some expressed concern that relying on a comparative analysis void of case-specific data would paint an unrealistic portrait, and therefore lead to discontent down the road. Further concern was grounded in the fact that because certain contract costs were not recoverable, the study would fail to anticipate the

impacts of termination clauses. In other words, the revised study would have limited efficacy in predicting contractual hurdles for joining the arenas' administration, financing, or operations.

Legislators Proposed but did not pass Legislation that would have Classified Necessary Data as Nonpublic to Facilitate Information Sharing by the Stadiums Authorities

The contract lapsed on January 31, 2014, when the report would have been due. On February 26, 2014, at the request of the sponsoring legislators, the Department of Administration contacted Stafford indicating that the report would be put on hold until after the legislative session. In the meantime, the sponsoring legislators intended to pursue other solutions. These included (1) facilitating cooperation among the private entities, and (2) legislating a specific exception to protect the proprietary information of the Minnesota Wild and Target Center-AEG.

Representatives Mahoney and Davnie introduced H.F. No. 2979 to protect information collected for purposes of completing the study. The bill was introduced and sent to the Committee on Civil Law. The bill did not receive a hearing and did not pass.

All Parties Negotiated a Revised Study and Report – But no Contract was formed

The 2014 legislative session did not change the status of the study by allowing for data to be held in a nonpublic manner. In mid-June 2014, discussions about a modified report resumed between the Department of Administration, Stafford, and representatives from Minneapolis, St. Paul, and both arenas. On July 11, 2014 Stafford indicated that a second trip to the Twin Cities would not likely be required.

The parties considered the following revised scope of work contained in a revised contract draft:

The Contractor, who is not a State employee, will provide a report containing the following information, consistent with the prior work completed under Contract No. 71184, executed November 5, 2013:

A summary of the data that was collected;

- 2.1 Explanation of problems obtaining the data;
 - a. Details of necessary data that was not able to be collected;
 - b. Impact that the uncollected data has on the study;
- 2.2 Case studies of possible comparable scenarios;
- 2.3 Actions for consideration;
- 2.4 Actual challenges that would need to be addressed in order to move forward. For example, building contracts/agreements, building ownership, funding models for upkeep/competitiveness/improvements, tax differences between cities, expense coordination, etc.

On August 11, 2014, Stafford informed the Department of Administration that it would charge \$67,800 to complete the modified report. This sum included the balance of the original contract, travel-related expenses, and a retainage fee. Stafford provided several reasons to justify the high price for a scaled-back report:

- They now believed it necessary to send two of their staff on one or two trips to the Twin Cities;
- They considered the revised scope of work as “essentially starting over”; and
- They suggested that the revised scope of work would take longer than the initial scope of work because they would have to rely on existing data and extrapolate.

The Department of Administration, after consulting with the cities, considers the aforementioned inadequate justification for billing the State of Minnesota, and cities of St. Paul and Minneapolis full price for a significantly modified product.

Conclusion

The 2013 legislature mandated that the Department of Administration in coordination with the cities of Minneapolis and Saint Paul undertake a study of the viability of joint governance of the Target Center and the Xcel Energy Center. During the initial phases of the project, the contractor, Stafford Sports, was unable to obtain proprietary data from the stadiums needed to undertake the study. Following the conclusion of the 2014 legislative session, no changes were made to Minnesota Chapter 13 that would have reclassified the data necessary to undertake the study as non-public. As a result, the Department in coordination with Stafford and the cities, discussed the possibility of an alternate study that would have provided analysis based upon stadiums in other regions.

Due to the significant deviation from the initial RFP for a data-driven study, it was determined by the Department of Administration and the two cities that it was not valuable to pursue a modified study. Any conclusions that Stafford reached would have been based on financial data from stadiums in different geographic and economic regions that would not correlate with the unique, two stadium region represented by Minneapolis' Target Center and Saint Paul's Xcel Energy Center. A comparative analysis that is not based on case-specific data runs the risk creating unrealistic expectations based upon experiences in regions that are unlike the Minneapolis Saint Paul metropolitan area. In sum, the legislative intent "to minimize the potential burden on general taxpayers...." cited in Laws of Minnesota 2013, chapter 143, article 4, section 39 would not be accomplished with a modified study.