



## County of Erie

MARK C. POLONCARZ  
COMPTROLLER

July 20, 2006

Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

Re: Department of Parks, Recreation and Forestry  
Review of Driving Range/Golf Practice Facility Request for Proposals

Dear Honorable Members:

Please be advised that earlier this year my office commenced a review of an initiative being pursued by the Department of Parks, Recreation and Forestry ("Parks Department") to study establishing golf driving ranges and golf practice facilities at two Erie County Parks (the "Initiative"). For your information, said Initiative is contained in the Four Year Plan as initiative number 149.

As part of this review, on June 5, 2006, the undersigned sent a letter to the Commissioner of the Parks Department detailing our specific concerns regarding the request for proposals process utilized for the Initiative, and requested a response to the concerns and questions posed therein. A copy of that letter is enclosed for your review.

In response to the letter, on June 15, 2006, senior members of my staff met with the Commissioner of the Parks Department, County Attorney, Director of Purchase and Youth Recreation Coordinator Dean Jewart (who is also a golf professional) to review our report and discuss our concerns.

While that meeting was productive on addressing some of our issues, it did prompt additional questions on the Initiative from my office. As a result, the undersigned issued another letter to the Commissioner of the Parks Department on June 26, 2006 posing such new questions and concerns on the Initiative and the process being used to implement it. A copy of that letter is also enclosed for your review.

Despite several requests from my office asking for a response, neither the Parks Department nor Department of Law has responded to that letter. Accordingly, I believe it is now appropriate to inform the Legislature of my concerns in order to enable your Honorable Body to take such action as you deem fit on this matter. Please note that my office supports the proposed Initiative, but questions the manner in which the Parks Department implemented it.

**Letter to Legislature on Parks Department Driving Range Proposal**

**July 20, 2006**

**Page 2 of 2**

As always, either I or members of my staff will be available to meet with Legislators individually or in committee to discuss our review. If you wish to speak with us, please feel free to contact me or Deputy Comptroller-Audit Michael Szukala at 858-8430.

Very truly yours,



Mark C. Poloncarz, Esq.  
Erie County Comptroller

MCP/sa  
Encl.

cc: Hon. Joel A. Giambra, County Executive  
Angelo Sedita, Commissioner of Parks, Recreation and Forestry  
Laurence K. Rubin, Esq., County Attorney  
James Hartman, Budget Director  
Michael R. Szukala, Deputy Comptroller - Audit



## County of Erie

MARK C. POLONCARZ  
COMPTROLLER

June 5, 2006

Angelo Sedita, Commissioner  
Department of Parks, Recreation and Forestry  
95 Franklin Street, 15<sup>th</sup> Floor  
Buffalo, New York 14202

Re: RFP Process for Proposed Golf Driving Ranges

Dear Commissioner Sedita:

I am writing to express my concern regarding the request for proposals and the proposed projects to develop golf practice facilities at Como Lake Park and Ellicott Creek Park. The purpose of this letter is to discuss my concerns, as well as to elicit from you specific answers to my questions and concerns.

### **Background – Four Year Plan**

The four year financial plan included initiative number 149 to “explore potential expansion of driving range opportunities and other recreational concessions.” The proposal stated that the county could generate revenue by developing and operating municipal driving ranges through contracts with private concessionaires. The county would sign long-term agreements with private entities that would make upfront capital investments and make upfront payments to the county (either through concession fees or a percentage of gross revenues). The county would partner with a private driving range operator to plan, construct and manage the driving range facility, as well as determine what other amenities would make the range competitive (for instance, a putting green, chipping area, pro shop, snack bar, miniature golf, batting cage, restaurant, dome/indoor golf, etc.).

The four year plan also stated that consultation with the county parks commissioner suggested that the driving range(s) could be at Como Lake Park, Emery Creek Park, Ellicott Creek Park, or Akron Falls Park. The plan suggested developing two driving ranges. The plan projected contractor payments to the county of \$50,000 per year per range, with the first payments in 2007.



## Request for Proposals

On March 15, 2006, the county's Division of Purchase published a legal notice in the Buffalo News announcing a request for proposals ("RFP"):

"From qualified professional firms to design two golf practice facilities for County owned land at Como Lake Park and Ellicott Creek Park. The successful respondent will research selected sites for viability, work with qualified engineers to establish a development plan, draft conceptual plans and identify construction requirements for the two selected sites, draft a final master plan, and provide cost estimates and budgets for the same."

On March 15, 2006, WGRZ-TV ran a segment concerning the RFP, and quoted you saying the RFP was "just to explore the feasibility of whether it makes sense, to get some plans, to get some cost estimates, (and) cost benefits." Your department held a site visit of both parks on March 21, 2006 and responses were due on April 3, 2006.

The RFP included the following consultant requirements: (1) consultants and design firms shall possess extensive experience in golf course design and/or golf practice facility design and operation; (2) candidates should provide multiple references of successful design and implementation for other entities both private and public; and (3) operations experience will be weighted as a factor in each proposal.

The Division of Purchase mailed the RFP to two organizations: Turf Solutions Group, LLC of Dunlap, Illinois and Witter Design Golf Course Architect, PC of Lockport, New York. After receiving inquiries, the Division of Purchase sent the RFP to eight organizations: E. I. Team of Tonawanda; TVGA Consultants of Elma; Erdman Anthony & Associates of Rochester and Buffalo; Kideney Architects of Amherst; Frank Brzezinski Landscape Architect of East Amherst; Naomi Tucker; Watts Engineering & Architecture of Amherst; and Foit-Albert Associates of Buffalo.

On April 3, 2006, the Division of Purchase closed the RFP. There were four respondents: Turf Solutions Group, LLC; E. I. Team; TVGA Consultants; and Foit-Albert Associates. We note that the Division of Purchase's formal bid control file states that Kideney Architects responded to the RFP, whereas the Department of Parks and Kideney each have confirmed to this office that Kideney did not respond. This discrepancy requires explanation and clarification from the Division of Purchase.

You, Deputy Commissioner Nicholas Page and Youth Recreation Coordinator/Golf Professional Dean Jewart constituted a committee ("Review Committee") which recommended in early April 2006 that the contract be awarded to Turf Solutions Group, LLC ("TSG"). In your review, you stated the following: "the evaluation of the RFPs by above committee has

determined that Turf Solutions Group is the most qualified company. Their business is to build and design recreational parks including batting cages, domes and golf practice facilities.”

### **TSG's Proposal**

TSG's seven-page proposal consists of two pages of satellite photographs, a cover page, a cover letter, and three pages of details of their proposal (1 ½ of which are essentially a copy of the RFP requirements and not original content or a response). The remaining 1 ½ pages of detail provides their costs, proposed start and end dates, expenses, and legal terms for the cancellation of any contract.

### **Legislature Approval**

Approval by the Erie County Legislature is required of any contact or award to the winning respondent. We understand that your department sent a letter to TSG on April 18, 2006 awarding them the contract. Mr. Jewart has stated in an e-mail to this office that “the RFP with Turf Solutions will be completed by June 15<sup>th</sup>.... Nothing has been signed as of yet.” We also understand that your department intends to present a master plan to the Legislature after that.

### **Questions/Concerns of Office of Comptroller**

#### **1. Turf Solutions' Involvement in the RFP's Development**

This office has been advised that TSG helped write the RFP and worked with the Department of Parks, Recreation and Forestry to advance the concept of the county creating driving ranges and golf practice facilities. This is a serious allegation and a breach of standard protocol, and if true, raises significant questions and concerns of collusion or an unfair relationship between the county and the vendor who “won” the RFP. If TSG assisted in drafting the RFP it should be barred from responding as it would have an unfair competitive advantage over other respondents.

We also understand that TSG actually submitted a proposal to the county on January 25, 2006 – three (3) weeks before the RFP was even announced. In fact, their formal response, dated March 22, 2006 is the same as that January 25, 2006 document and TSG's March 22, 2006 proposal is actually signed and dated January 25, 2006. How could TSG submit a response to a RFP three (3) weeks before the RFP was even announced? This is a serious matter requiring immediate clarification.

#### **2. The RFP**

This office believes that the RFP was poorly written and researched, and lacking in detail and content. As noted above, we have serious concerns over the apparent involvement of the winning respondent in the writing of the document. However, we have other concerns with the RFP as well. These concerns include the following:



- Was the RFP disseminated nationally, and in golfing or design/architecture trade publications, or just via a one-day advertisement in the Buffalo News?
- What other outreach was conducted to publicize this RFP?
- Why did the Division of Purchase and/or Department of Parks only disseminate the RFP to two firms?
- Why is TSG the only non-local organization to have responded or been solicited?
- Why was the time frame between the announcement of the RFP and the deadline to respond less than three weeks (March 15, 2006-April 3, 2006), leaving little time for formal responses?

In addition, this office questions why/if the Department of Parks determined that the driving ranges/golf practice facilities should be at Ellicott Creek Park and Como Lake Park, to the exclusion of other sites. As previously noted, the four year plan stated that consultation with the county parks commissioner suggested that the driving range(s) could be at Como Lake Park, Emery Creek Park, Ellicott Creek Park, or Akron Falls Park. At what point and based on what criteria did the Department of Parks decide to site the facilities at Ellicott Creek and Como Lake before conducting the feasibility study? Was not the point of the RFP to determine where and how the county could operate such facilities?

### **3. Department of Parks' Intentions**

TVGA's proposal stated that based on their site visit and discussions with Dean Jewart, they understand that the county seeks to: (1) create a domed 18-hole miniature golf course, 40-tee driving range and caddy shack, as well as pro shop, restaurant and parking at Como Lake Park; and (2) create an outdoor 30-tee driving range and caddy shack and parking at Ellicott Creek Park. As none of this detail was provided in the RFP it is important to clarify the Department of Parks' intentions on the two facilities. What exactly does Parks intend to do, and how did that shape/limit/define their review of the proposals to the RFP?

### **4. TSG's Proposal**

This office has evaluated TSG's response, as well as those of the other three respondents, which leads to our office having significant other concerns.

TSG's response alleges extensive experience in the golf industry. However, their proposal, unlike those of the other respondents (especially TVGA and Foit-Albert) is exceptionally lacking in detail, content and professionalism. The other three proposals provide

details on relevant work experience and project examples by name, names and resumes of staff, and so forth. TSG does not do so. Why?

Additionally, the RFP required that the respondents provide "multiple references of successful design and implementation for other entities both private and public." In the documents provided to our office, no such references are included in TSG's response. The other respondents also provided details concerning how they might construct the two facilities; TSG provides no details whatsoever.

The RFP also states respondents must have experience operating a concession (that condition, for example, is what led Kideney to not respond to the RFP). TSG's response does not contain any such statement of experience. The failure to provide such information in their response should have disqualified TSG. What operational experience does TSG have running such concessions/facilities, and where did the Review Committee obtain such information?

Furthermore, TSG's cover letter to its response is not signed. That is a breach of accepted procedure for RFPs. Has TSG signed and provide the insurance certificate and standard agreement (Exhibits F and IC)? The package reviewed by this office does not include those two signed exhibits.

My office notes that TSG's response includes language binding the county to a twenty-four percent (24%) annual late charge/service charge. The county does not pay late fees. TSG's response also includes language binding the county to pay TSG's attorney fees, court costs, collection fees, and filing fees in the event of legal action. The county cannot agree to that and it should not have been accepted as a responsible proposal.

TSG proposed a total cost of \$14,435 for their proposal. However, that does not include their out-of-pocket expenses, including airfare, lodging, transportation and meals for a possible additional total of \$1,750 "plus 10% per diem" for required site visits by their staff. That is an issue. TSG also sought an immediate payment of \$5,000 upon signing of an agreement – prior to any work being conducted. Has that payment been made, and if so, what account was it paid from?

Additionally, my office notes that TSG was not the lowest bidder. The lowest bidder, TVGA, was \$10,000. TSG's costs also differ significantly from two others (E. I. Team at \$74,950, which is not inclusive of all costs, and Foit-Albert at \$44,702). This vast discrepancy in costs among the respondents needs to be addressed. Why the differences?

While the RFP stated cost was only 30% of the weighted factor, we would like to know the reasoning behind choosing TSG's response over the others, especially considering TSG's response was not the lowest and suffered from material structural deficiencies that should have led to its rejection.



**5. Additional Questions**

My office poses the question of how the county will pay for this feasibility study. You stated to WGRZ-TV in March 2006 that you would seek state efficiency grant funds through the Erie County Fiscal Stability Act. However, that source of funding is questionable and could be quite time consuming. Assuming such grants are not immediately available, how will your department pay for this study?

In addition to your office's response to the above noted issues, we request an update on the current status of the project (is any work being done?), including the provision to us of any signed formal contract or memorandum of understanding, or if no formal documents yet exist, the status of any term sheet between the parties, as well as an explanation of what Mr. Jewart meant when he said "the RFP with Turf Solutions will be completed by June 15, 2006."

Please note that this office fully supports any effort which generates the county additional revenue while providing services the taxpayers seek. However, we do have significant concerns regarding the RFP and the award of a contract, especially to a party that may have assisted in the drafting of the RFP. Thus, we request you respond in writing to each of the concerns and issues noted in an expeditious manner.

If you have any questions concerning this document, please contact Michael Szukala, Deputy Comptroller – Audit, at 858-8430.

Sincerely yours,

A handwritten signature in black ink, reading "Mark C. Poloncarz". The signature is stylized with a large, sweeping flourish at the end.

Mark C. Poloncarz, Esq.  
Erie County Comptroller

MCP/sa

cc: Hon. Joel A. Giambra, County Executive  
Joseph Gervase, Director of Purchase  
Michael Szukala, Deputy Comptroller - Audit





## County of Erie

MARK C. POLONCARZ  
COMPTROLLER

June 26, 2006

Angelo Sedita  
Commissioner of Parks, Recreation and Forestry  
95 Franklin Street, 13<sup>th</sup> Floor  
Buffalo, New York 14202

Re: Driving Range Development

Dear Commissioner Sedita:

Thank you for meeting with members of my staff on June 15, 2006 to discuss our concerns regarding the driving range/golf practice facility request for proposals ("RFP") and the role of Turf Solutions Group ("TSG") in this matter.

Notwithstanding my staff's conversation with County Attorney Laurence K. Rubin, yourself, and Youth Recreation Coordinator Dean Jewart, we continue to have concerns and problems with the RFP process, including TSG's failure to comply with the terms of the RFP, your award of the project to TSG, and the lack of outreach by your department to solicit respondents. If anything, the June 15<sup>th</sup> meeting confirmed our concerns and reservations about this RFP and TSG's involvement.

However, our most significant concerns involve your department's failure to negotiate and award a contract to TSG prior to TSG commencing work on the project. Based on your meeting with our staff, we understand that TSG engaged in work starting April 19, 2006 (the day after your letter awarding them the contract) when members of their organization conducted site visits at Ellicott Creek and Como Lake Parks, and only halted work on June 6, 2006 at your direction when you received my letter expressing my office's concerns with the project. Mr. Jewart also stated at that June 15<sup>th</sup> meeting that TSG was to complete work on the feasibility study by June 15<sup>th</sup>. Those comments lead us to conclude that TSG has conducted significant work on this project without a contract.

As such, we are concerned that even without a contract the county is liable to make payment of some form to TSG for work they conducted on this project, lest we incur litigation. This might not be an issue if there was a dedicated revenue stream as a source of payment, but it is our understanding that no such source for payment exists. As such we are concerned that Erie County could be liable to TSG for work completed prior to any contract being awarded with no dedicated source of revenue being identified.

To that end, we pose the following questions to you:

- What work has TSG conducted to-date? What is the current status of their feasibility study?
- What documentation do you have to support any work done by TSG? Have they submitted interim reports, etc.?
- Has TSG submitted any invoices for any work conducted? If so, please provide copies to my office.
- How much do you expect TSG will charge for their work, including out-of-pocket expenses (inappropriately, as Mr. Rubin has acknowledged) as noted in its response to the RFP?
- What funds are available in your departmental budget to pay for any work? If none, please discuss other funds from other sources/departments or accounts for which payment could be made to TSG.
- What discussions, if any, have you or any other employee held regarding payment to TSG? Have you, or any other employee held discussions with TSG itself concerning payment? Has TSG requested any payment?
- What are your intentions for the future development of driving ranges/golf practice facilities? Do you intend to pursue these facilities?

Thank you in advance for your assistance and cooperation. We look forward to your response.

Sincerely yours,



Mark C. Poloncarz, Esq.  
Erie County Comptroller

MCP/sa

cc: Laurence K. Rubin, Esq., County Attorney  
James M. Hartman, Director of Management Initiatives  
Michael R. Szukala, Deputy Comptroller-Audit