

**From:** [Nic Seymour](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Agenda item #894  
**Date:** Friday, October 21, 2022 6:30:47 PM

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Sirs,

I would like to register my concern and disagreement with the award of this contract to a non local entity.

Clearly it would have beneficial on many fronts to have local, knowledgeable, and caring people in charge of this matter.

I would urge you to reconsider the award and be full transparent on the reasoning behind this award and what the proposal actually contains.

Local contracts means local jobs and local interest and builds the sense of community with is needed in the Portland area at this point in time.

Yours Hopefully

Mr Nic Seymour  
Resident and golfer.

**From:** [Ken Malmin](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Item 894  
**Date:** Friday, October 21, 2022 10:58:27 PM

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Testimony for Wednesday, Oct 26 council meeting.

Regarding agenda item 894 proposing accepting the Kemper Sports bid to manage city golf courses:

I am an avid golfer that's has regularly been playing the city's courses for 47 years. I also have played at Kemper managed courses countless times.

I sincerely believe it is a mistake to approve this contract for the following reasons:

1. It is a commonly held belief among avid golfers that golf management done by locals rather than national corporations is superior in serving the local golfing community. I have heard this opinion strongly voiced by dozens of Portland golfers.
2. When I travel and play at Kemper managed courses I both experience the difference as well as hear the same above opinion voiced by golfers I meet there. It seems that golfers perspective is that Kemper talks a better game than they actually play.
3. The perception of the Portland golfers I encounter is that we are all appalled at the council's seeming "backroom secret handshake" approach to keeping the public and interested parties in the dark until this 11th hour quick approval just days before the current contract expires.
4. Those of us who understand the golf industry find it incredulous to believe that with this contract the city won't be wasting millions of dollars that could be saved or invested in course improvements for the benefit of all Portland golfers.
5. All of this makes it look like something shady is going on at a time when city hall can ill afford to further weaken its credibility.

Sincerely,  
Ken Malmin  
9150 NE Fremont St  
Portland, OR 97220  
503-348-9383

**From:** [BJ Swearer](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** City Council Agenda #894 Written Testimony  
**Date:** Wednesday, October 26, 2022 12:40:34 AM  
**Attachments:** [894 - Swearer Written Testimony.pdf](#)

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Please see the attached written testimony submitted to the City Council, regarding agenda item #894 for the the meeting of October 26th, 2022.

Thanks!

BJ Swearer  
Executive Director  
GolfPDX, LLC  
(843)422-5867  
[www.golfpdx.org](http://www.golfpdx.org)



## **Written Testimony for City Council - Meeting of October 26<sup>th</sup>, 2022; Agenda item #894**

Members of the City Council,

The report submitted to you by Chief Procurement Officer (CPO), Biko Taylor, in regards to the competitive solicitation authorized by Ordinance #190729, fails to accurately summarize the facts and events that have occurred over the past year. While this report mentioned that there was a protest filed, Mr. Taylor neglected to provide any further details. Before voting on the item before you, these details should at the very least, be presented for your consideration and that of the public.

Attached to this written testimony, is the referenced protest letter submitted by GolfPDX, LLC, which initially occurred on August 21<sup>st</sup>, 2022, not August 16<sup>th</sup>, as was erroneously stated in the CPO's report. This protest was filed provisionally, pending the City's undue delay and in part, outright refusal, to comply with public records requests of documents required to support the asserted grounds for protest. A final amended protest letter was submitted on September 7<sup>th</sup>, to the following persons:

- Biko Taylor – Chief Procurement Officer
- Mark Ariza – Senior Procurement Specialist
- Vincent Johnson – Director of Golf
- Adena Long – PP&R Director
- Carmen Rubio – PP&R Commissioner

As confirmed by email receipt records, Mark Ariza opened this email on September 7<sup>th</sup>. It was not until October 25<sup>th</sup> that Vincent Johnson and Carmen Rubio opened this email. To this date, neither Adena Long nor Biko Taylor have yet to open this email. One can only be left to wonder whether the CPO ever even read the final protest letter, let alone seriously investigated and considered the facts contained.

The CPO's September 12<sup>th</sup> written response to the protest, misrepresented the grounds for protest submitted and ignored the evidence provided in support. Moreover, the CPO either misconstrued or intentionally ignored much of the sections of City Code and state statutes cited, particularly PCC 5.33.720-C.3, which explicitly states that judgement that is "biased or not exercised in good faith" does constitute grounds for protest. The CPO failed to provide any reasonable refutation to the clear fact that several scores in the pro forma and management fee sections of the written evaluations were arbitrary and capricious.

Despite having submitted several public record requests for the original, unaltered Phase-1 evaluations, in their original form, no explanation has been provided by any City agency or representative, detailing how or why scoring changes were made to these Phase-1 written evaluations.

According to Ordinance 190792, it is only “upon Council acceptance of the Chief Procurement Officer's Report Officer” that the CPO is authorized to “negotiate and execute one or more contracts.” The existing contracts for golf course operations, all expire as of the end of this month. Even if the Council were to approve this report today, that would leave on 5 days to successfully negotiate a contract with Kempersports Management (KSM), the CPO’s recommendation, let alone handle provide enough time for KSM to handle contracting retained staff, onboarding of new staff and implementation of a comprehensive transition plan.

Given this timeline of events, one is left only to reasonably presume that the City has already been in negotiations with KSM over these past weeks, despite having yet to be authorized by the Council to do so. This presumption is supported by the fact that over the past two months, KSM staff has been working with the current operators at Rose City and Eastmoreland to merge the financial records at the various processes, as well as negotiating employee retainment.

The recommendation before the Council, is to award a potentially \$40 million contract to a large Chicago-based corporation, that lacks any evident connection with the local community, and who proposed the **most expensive** cost to the City. On the other hand, GolfPDX LLC, a Portland-based emerging small business, led by highly qualified and experienced locals, who was supported by hundreds of golfers from the local community, offered the **most financially sustainable** and corporately responsible proposal to the City.

It would be most prudent for the City Council, in the best interests of the golfers, the people, the Greater Portland community, to reject the CPO’s recommendation and instead reconsider alternatives, such as contracting a local company like GolfPDX, to become the next stewards of the City’s valuable community resources.

Respectfully,

BJ Swearer

GolfPDX LLC – Owner & Executive Director

Heron Lakes Golf Club – Tournament Chairman

Avid Portland Municipal Golfer since 2009

## Protest Letter

RE: City of Portland, Oregon  
RFP No. 00001854  
Golf Course Operations

Biko Taylor  
Chief Procurement Officer  
1120 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

August 21<sup>st</sup>, 2022

Greetings Biko,

GolfPDX, LLC submits this letter in formal protest against the recent City notice of intent to negotiate and award a contract to KemperSports (KSM), for the management of clubhouse operations at Colwood Golf Center, Eastmoreland Golf Course, Heron Lakes Golf Course and Rose City Golf Course.

Our proposal sufficiently met all of the requirements and addressed all of the goals set forth by the RFP, while offering a significantly lower management fee structure than recommend by the objective GGA Consultant Report.<sup>1</sup> Compared to the other bidders, our proposal guaranteed the City far greater financial sustainability.<sup>2</sup> Furthermore, we believe that a decision to award this contract to KSM, specifically, is not in the best interest of the City. **KSM lacks the support of the local golf community** and has exhibited a well-documented history of neglect, abuse and deceit while operating Heron Lakes, and other properties across the country.<sup>345678</sup>

Under ORS 279B.145, the determination of an RFP such as this, “is final and conclusive unless the determination is clearly **erroneous, arbitrary, capricious** or contrary to law” (emphasis added). A commonly accepted legal definition for “arbitrary and capricious conduct” is “willful and unreasonable action without consideration or regard for the facts and circumstances.”<sup>9</sup> We contend that this determination is based on numerous instances of erroneous, arbitrary and capricious processes and conclusions. Additionally, several evaluations contained judgments which were demonstrably “biased or not exercised in good faith.”<sup>10</sup>

The resulting harm of this determination is our loss of a potential contact to conduct business with the City, totaling a minimum of \$1.2 million over the span of the 10-year contract term (5 years plus a conditional 5-year extension, exempt from solicitation) stipulated by the RFP. Furthermore, the harm caused to the golf community by permitting KSM to continue operating any of the City courses, let alone giving them oversight of two additional facilities, is immeasurable.

We ask you, the Chief Procurement Officer, vested with the sole authoritative discretion to review this determination, to further investigate the facts and circumstances of this case and reject the Committee's recommendation to award a contract to KSM. We further urge you to remedy this injustice to not only GolfPDX, but also to the thousands of loyal local golfers who support us, by overriding the committee's errant recommendation and instead determining that GolfPDX is, as a matter of fact, the most financially beneficial and corporately responsible option to be the next steward of the City's valuable community golf facilities and services.<sup>11</sup>

We request immediate relief up to and including:

1. a contract being offered to GolfPDX, LLC which scored the highest total in the Phase-1 written evaluations, when based on only the unchanged, **inherently objective, unbiased** scores, with exclusion of scores issued in **bad faith**.<sup>12</sup>
2. the requirement that any winning proposer be required to subcontract GolfPDX to perform the operations duties specified by the RFP, ensuring **LOCAL** immediate management that has been the bedrock of a widely successful City golf program for over 100 years<sup>13</sup>
3. a complete reevaluation process that is fully transparent, fair and truly competitive, including clearly defined Phase-2 advancement standards, detailed scoring criteria for Phase-2 (not just an arbitrary "100 points"), and an Evaluation Committee consisting of actual golf community leadership such as Board Members from the Men's and Women's Clubs at each golf course, and representatives from the OGA, First Tee, Leisure Hour, and large golf leagues (SAPs, Freightliner, Boeing, PGE, Union Pacific etc)<sup>14</sup>

We were encouraged that upon your appointment to the position of Chief Procurement Officer, you emphasized that you "and the City are committed to supporting small businesses,"<sup>15</sup> especially a local company like ours that has prioritized the inclusion of people of color and women as owners and in upper-level management.<sup>16</sup> We sincerely hope to see this goal implemented in this case.

Respectfully,

BJ Swearer  
Executive Director, GolfPDX  
bjswearer@golfpdx.org  
843-422-5867 (mobile)  
[www.golfpdx.org](http://www.golfpdx.org)



## **Supporting Arguments & Documentation**

As of 10:30pm (PST) on August 21<sup>st</sup>, 2022, the City has yet to provide the public documents and records that we requested for the purpose of supporting our grounds for protest.<sup>17</sup> Therefore, **we are filing this protest pending such disclosure.** We request that the City permit us to amend and update our protest upon receipt of the pertinent information **requested on Aug. 16<sup>th</sup>**, including:

- all 6 written proposals that were accepted and scored, including from KemperSports, Troon, CourseCo, Touchstone and Regency
- any notes taken, or any other records pertaining to the Phase 2 in-person interview process that was conducted with KemperSports, Troon, CourseCo and Touchstone
- all meeting minutes, agenda, video or audio recordings, correspondence and any other records pertaining to the selection of the Evaluation Committee, any discussions amongst the Evaluation Committee members between themselves or others, including between the members and any City official (Director of Golf, Parks Director, City Council, City Procurement et al), 3rd party experts, current golf course operators, and any of the 5 bidders named above, that may contain relevant information as to the actions of the Evaluation Committee and RFP evaluation process.
- the names and contact information of the members of the Evaluation Committee, and details as to how they were chosen, by whom and on what criteria basis demonstrating their qualifications to be appointed to such Committee.

## **Golf RFP History & Context**

The City unfortunately has a history of controversy surrounding golf RFP processes going back over 30 years. In 1992, Double Eagle Golf, Inc. engaged the City in a four year long lawsuit over the contract to manage Heron Lakes Golf Course.<sup>18</sup> The City in response, performed reviews and audits of the program, concluding that:

“...the [Parks] Bureau could improve and strengthen the selection process by 1) soliciting proposals earlier and from a wider geographic area 2) clarifying the scoring criteria to be used and the basis of contract award, 3) providing more detailed written instructions to the Selection Advisory Committee, and 4) documenting the selection process more completely.”<sup>19</sup>

Bryon Woods Enterprises (BWE) managed Heron Lakes until 2008, when KSM was awarded a 5-year contract, with a 5-year extension exempted from solicitation.



When BWE'S contract expired, City records indicate that only two bidders submitted proposals, or at least had their proposals accepted, in response to an RFP for a new contract to manage Heron Lakes. Dale Bernards, of Heron Lakes Golf LLC, ended up filing a protest against the City's decision to award that contract to KSM. The main points of contention focused on:

- the lack of any consultation with the Men's and Women's Clubs, or other local organizations such as the PYGA, to gauge feedback or solicit input
- the structuring of the RFP itself, which made it impossible for anyone to "compete with a national course management company like KSM"
- comments from City officials indicating that the decision to hire KSM had apparently already been predetermined before the process began
- failure of KSM to follow an RFP provision to purchase existing inventory
- the no-risk management fee structure benefitting KSM more than the City
- financing of a new clubhouse project (which as of today is STILL yet to have been completed, despite the emphasis of KSM's proposal to prioritize it)

#### **RFP No.1854**

Prior to being repealed in 2015, PCC 5.33.050 "Authority for Golf Concession Contracts" governed the Golf RFP process. Though quite vague, the previous ordinance explicitly authorized the Director of Portland Parks and Recreation with the power and responsibility to appoint a "selection advisory committee" and "execute contracts" for clubhouse operations (at the time, termed "concessions"). It would appear that under the current PCC version, this authority is vested with the Chief Procurement Officer.

When this RFP was released, we immediately sought clarification regarding the somewhat contradictory nature of the provision requiring proposers to possess a minimum 5-year contract history. A strict reading of this provision essentially disqualified Emerging Small Businesses (ESB), who by definition could not possess any such contract history and still be certified as ESB. Over the phone, we were told that the combined industry experience of our team would be sufficient. However, a written addenda explicitly stated that an ESB or new entity must still have a "vested party in their proposal" who "could produce the required experience via contract history."<sup>20</sup> Even though we still considered this a stark contradiction with the emphasis of preference for local contracting, as described in Part III, Section A, of the RFP, we nevertheless secured vested partners to ensure that we met this qualification. Our proposal was accepted and scored by the Committee.

Multiple bidders, in addition to ourselves, made several requests for more detailed financial information to help develop pro forma and management fee structures.

Even though general reports were presented, no recent full line-item budgets were provided. These should all be public records. KSM, as the current operator of two of the City facilities, possessed such records and the benefit of direct consultation with the City in discussing and approving budgets. Without providing all of the same data available to one bidder, to all bidders, KSM was allowed to maintain an inherently unfair advantage over their competition. Additionally, two proposers, Troon and CourseCo, both operate golf courses (Langdon Farms, Tri-Mountain and Glendoveer, respectively) that are in direct competition with the City courses. Both of these bidders should have been immediately disqualified due to a clear conflict of interest. At the very least, the Evaluation Committee should have been briefed with these facts before reviewing the proposals from these bidders.

This RFP failed to provide any details as to who would appoint the Selection Committee, the number of members to sit on the Committee, or upon what qualification basis prospective members were to be selected. It has yet to be revealed whether or not the Committee or any of its members sought “the assistance of outside expertise [such as] technical advisors.” A Committee of members lacking demonstrated prior experience in the golf industry, or significant involvement with the local golf community, is unqualified and unreliable.

Aside from a brief mention in the GGA Consultant Report, there was seemingly minimal to no discussion with local golf community leaders such as the Men’s & Women’s Clubs from any of the courses, the First Tee, Leisure Hour, NWGG or OGA. In the GGA Report, it was noted that there was a “Preference for Local Concessionaires – Members communicated that they appreciate the local and long-standing family-run golf operations.”<sup>21</sup> Yet, the Committee advanced only 4 large out-of-state corporate management companies, and excluded the lone local firm.

No detailed records from the actual meetings between the Club/Organization representatives and GGA, let alone with City officials or the Evaluation Committee, have been published. From our conversations with the Heron Lakes Clubs, their leadership explicitly stated their preference for local management, such as GolfPDX, and their opposition to KSM to be retained as the program operator. Was the Evaluation Committee made aware of this, or even review the GGA Report?

The scoring criteria for the written proposals, while containing some level of clarity and objectivity, nevertheless was quite undefined, allowing for the arbitrary subjectivity of Evaluators to influence their scores. Moreover, without a set number of Evaluators specified, no potential total score was established. Bidders were also completely in the dark as to any set competitive range for advancement into the second phase, what ended up be worth 600 additional total points, and ample opportunity to make up any deficits from the phase 1 scoring. Without any set

standards evidenced, this process was inherently arbitrary. If there were standards set and they were not explicitly stated from the beginning, then any actions contrary to such standards would be capricious.

### **Evaluation Scores**

When the first results spreadsheet was published on July 26<sup>th</sup>, it contained **scoring errors** to our Corporate Responsibility sections. All 6 Evaluators failed to award us the 8 points required by the MWESB Contracting provision. While these errors were acknowledged and corrected on August 4<sup>th</sup>, we were never provided with an actual explanation as to why these errors occurred. This could not be a mere tabulation mistake. Rather, it is evident that the Evaluators were either not clearly instructed how to score this section, or they all disregarded their instructions. Such an inexcusable **error** throws doubt on the reliability of the rest of the evaluations. If Evaluators were not properly instructed about or ignored one set of criteria, how are we to trust that this didn't occur in other sections?

Interestingly, when the second results spreadsheet was published on August 4<sup>th</sup>, this spreadsheet contained **comments** indicating that **changes had been made** to a total of 13 scores, including 5 made to our scores. All but the 2 changes to KSM's scores, were reductions in points from the original scores. None of these changes were in regards to the errors from the Corporate Responsibility section, which oddly had no comments noted on those cells. We inquired about these changes on August 9<sup>th</sup>, and have yet to receive any reply from the City. When the final results spreadsheet was published on August 15<sup>th</sup>, these comments were conspicuously absent from public view. This leads us to suspect that the comments were never intended to be seen at all. And yet, we saw them and wish to know the context of when these changes occurred, who initiated them, and for what reason?

These 5 changes were made to our original scores, resulting in a loss of 33 points:

- **Background, Experience & Qualifications:** "Evaluator 2 changed from 15-10 due lack of experience. Scored too high due to lack of experience with gov't"  
– Prior experience with government was not a specified factor to measure
- **Pro Forma & Financial Impact:** "Eval 1 changed score from 9-6 due to growth" and "Eval 3 changed from 14-6 due to growth"  
– If these two Evaluators were unclear as to our target 8% growth was to be achieved, why were we not given any opportunity to clarify and explain as much? Did the other proposals actually use 3% growth? Was the Committee required to evaluate on the basis of assumed 3%? Even based on 3% growth, did our projections result in a lower net reimbursement fee to the City, compared to the other proposals?

- **Management Fee & Structure:** “Eval 1 changed from 22 - 10 due to concerns with linking the incentive fee to gross revenues” and “eval 2 changed from 20 - 15 due to missed proposing on gross revenue to incentive fee.”  
- Again, if these two Evaluators were confused about our proposal, why were we not consulted for clarification? Clearly 2 other evaluators who gave similar scores saw no reason to change their scores ex post facto. One Evaluator changed because of the incentive being based on gross revenue, while the other because it wasn’t based on gross revenue. This is rationally inconsistent. Did other proposals not base incentives on gross revenue? Furthermore, were these two evaluators confused about the very clear model that we provided, which indicated a 15% incentive based on gross revenue in excess of the target budget? Even with our theoretical combined incentive fee with set management fee, the total was still a minimum 50% lower than any other proposal.

It should be noted that all 5 changes were made by the same three Evaluators. It should also be noted that in every case, other Evaluators scored us significantly higher in these categories and yet apparently saw no reason to reduce their scores. It seems that these changes were either the result of confusion (erroneousness), lack of reasonable comparison to the competition (arbitrariness), or intentionally changed, presumably to reduce our overall point total (capriciousness/bias).

Given that score changes were made, it is evident that **the initial results were discussed at some level**, either between Committee members, or with members and outside sources. According to PCC 5.33.211 G. 1. a. “In conducting discussions, the City:

- (1) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
- (2) May disclose other eligible Proposers’ Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);
- (3) May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.”

It is undeniable that we were not treated fairly in comparison to the other proposers. The most changes were made to our scores, far more than to any other proposer. We were never consulted to provide clarification in response to the apparent questions about parts of our proposal. There simply was no discussion with all “eligible Proposers”, but rather discussion without the proposers involved.

Had no changes been made, our point total would have been 433, only 18 back from KSM's unaltered total of 451, and only 9 points behind Touchstone, who was advanced to Phase-2. We were told that the Committee unanimously voted to not change their determination to advance us to the second phase. We find this very hard to believe, considering Evaluator 5 gave us the highest score of all 6 bidders. It would appear that groupthink and biased intimidation from one or more Committee members, or outside influence, was responsible for these decisions.

No reasonable observer can look at the scoring results and explain the massive variance in the scores given to us by **Evaluator 6**. In four out of five categories, the scores from Evaluator 6 all fell massively outside scientific standard deviations, relative to the scores from the rest of the Evaluators in those categories. Given that Evaluator 6 only exhibited such scoring patterns for one other proposal, the next most similar company to us, it is blatantly obvious that this Evaluator's scoring was not impartial, but rather **arbitrary, biased and not made in good faith**.

The scoring rubric, by its flawed design, left open the potential for one Evaluator to essentially take a proposer or proposers out of contention. The scores from Evaluator 6, clearly demonstrate the results of such a flaw. A far more scientifically accurate, competitively equitable scoring system would have for instance, accounted for such statistical outliers and factored them out of the score total. This is why in the USGA/WHS golf handicap system, only the best 8 scores of the golfer's most recent 20 scores to more accurately gauge that golfer's skill level. Had for instance, the scoring system be set up to drop the lowest single score in each category, regardless of Evaluator, for all proposers, then the impact of these statistical anomalies would have been reduced. If such a preventative measure had been used, the written proposal total scores would have been as follows: GolfPDX – 400, KSM – 390, CourseCo – 388, Troon – 386, Touchstone – 381, Regency – 306.

Despite the most simplistic impartial analysis of the scoring results indicating that the evaluations, as recorded, were far from reliable, with unobjectionable error corrections our reported total score was 400 points. Phase-2 was worth a possible 600 points, which allowed for significant opportunities to lower scored proposers to catch up on and even overtake the leader. Both Troon and CourseCo were able to extend their leads over Touchstone. Troon even jumped CourseCo during Phase-2 and ended up with the second most points behind KSM. With KSM only scoring 542 out of a possible 600, theoretically it would have been possible for us to overtake KemperSports. The very fact that we were not even given this opportunity, evidences a lack of an objective, impartial decision-making process. We assert that Phase 1 scores, which were at best questionable as to their reliability, caused bias to develop amongst Committee members, thus resulting in their refusal to give us the same opportunity as the other bidders. They had already

written us off, without us ever having a chance to clarify parts of our proposal that two of the Evaluators were clearly confused about, or address the clear bias against us expressed by Evaluator 6.

Additional comments and documentation to be added pending City disclosure of public records requested on August 16<sup>th</sup>, 2022...

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### **Amendments – September 7<sup>th</sup>, 2022**

The recent public release of the other 5 competitors' proposals confirmed what we had suspected regarding the scoring of the Pro Forma and Management Fee sections. All financial information from Troon was redacted and thus cannot be included for comparison. The unredacted version should have been published per our public records request, but that did not yet happen. From the data available, it is evident that our proposal was **undeniably** the "most financially sustainable" offer to the City, as called for by the **Ordinance** authorizing this competitive solicitation.<sup>22</sup>

#### **Pro Forma**

Touchstone failed to account for ACGOT and their model did not calculate a "Net Impact to Golf Fund." Regency also did not provide a model indicating a "Net Impact to Golf Fund" but did account for ACGOT so this value can be calculated to \$7,655,892. CourseCo's projection was \$6,793,666 and KSM was \$2,430,213. Our projection totaled **\$10,763,836** which was the highest of all bidders. Thus our Pro Forma anticipated the largest increase to the Golf Fund, that is, making the most money for the City program. And yet, we were scored the second lowest.

Two Evaluators changed their scores for us, due to questions over our target of 8% overall revenue growth. Regency assumed 2.3% general revenue growth, CourseCo 3% and Touchstone 4.7%. KSM set overall targets varying from 4-7%, including green fee revenue growth of 6-12% and F&B growth of 12%. The RFP did not *require* projections to reflect a specific growth rate. Our operating and vision plan detailed how this 8% goal is achievable. If some Evaluators were still doubtful, they should have asked us to further discuss this matter in the Phase-2 interviews instead of denying our advancement. The RFP called for proposers to demonstrate ambitious approaches to generating revenue. Yet we were penalized for doing so.

#### **Management Fee**

Our base fee was 50% lower than the next closest bidder and **70% lower** than KSM. For incentives, Regency had a gradual structure ranging from 5%-10%, while all others, include us, had a flat 15% incentive. Though each proposer *explained*



relative benchmarks differently, all followed the same basic model: operator would get 15% of “net surplus” (beating budgetary target). The below chart compares the totals for each, over a 5-year model: **base + incentives – contributions = total** (\*incentives not modeled by Regency & Touchstone).

	Management Fees - 5 Year Projections			
Proposer	Base Fees	Incentives	Contributions	Total Fees
Troon	redacted	redacted	redacted	redacted
Kemper	\$2,038,708	\$244,804	\$200,000	\$2,083,512
Regency	\$2,028,571	not modeled	\$100,000	\$1,928,571*
CourseCo	\$1,250,000	\$251,453	\$62,863	\$1,438,590
Touchstone	\$1,344,000	not modeled	\$150,000	\$1,194,000*
GolfPDX	\$630,759	\$315,380	\$315,380	<b>\$630,759</b>

The facts are that we proposed the lowest combined management fees, 70% lower than KSM and 56% lower than CourseCo (highest scorer in category). Moreover, our contributions back to the program (100% of our incentive fees) were the most of any bidder, nearly 58% more than the next closest (KSM).

Nonetheless, Evaluators subjectively scored us the lowest in that section at 102 points (119 prior to changes made by Evaluators 1 and 2). We had the lowest fees, and thus should have received the **highest** score from all Evaluators, relative to how they scored the other bidders. The scores from Evaluators 1, 2 and 6 were especially **egregious**. Even the scores from Evaluators 3, 4 and 5 did not reflect what should be a completely objective comparison of proposed terms. These *judgements* were contrary to the facts, that is, they were **arbitrary and capricious**.

Our financial models were clearly presented. Nevertheless, if any Evaluator was confused, they should have asked for assistance and clarification. What is more troubling is that Evaluator 6, who judging by a comment in an email obtained through public records, appears to have been a financial analyst for PP&R.<sup>23</sup> If this is the case, such complete disregard for the facts in the financials sections, can only rationally be explained as the result of bias and having been made in bad faith.

These two categories were the only two in the scoring criteria outlined in the RFP, that were in **any sense objective**. By permitting such erroneous, arbitrary and capricious scores to be counted, our total score was substantially and unfairly shorted. And this does not even factor into account, the still yet to be explained scoring changes that we received in these categories.<sup>24</sup>

Should we have gotten the maximum points possible in these categories, as the facts require, our total score should have been a *minimum* of 448 points.

Additionally, the scores for the other bidders, at the very least in the management fee section, should have been significantly lower given that the facts evidence that their proposed terms were not as financially advantageous to the City as terms. Erroneous scoring was used to justify a denial of our advancement to the second phase of the evaluation process, even after these issues were challenged and the Committee having the opportunity to remedy but refusing to do so.

### **Evaluation Committee**

Of the 6 Evaluators, 3 were current or past members of the Golf Advisory Committee, and the 3 others were PPR staff. Given that KSM has been closely associated with all 6 Evaluators during their tenure operating Heron Lakes and Colwood, it is unreasonable to conclude that the Committee, as a whole, was an impartial body to evaluate the proposals. We contend that such bias was clearly evidenced by at least one Evaluator in their scores, and it is apparent that such bias and bad faith influenced two other Evaluators to erroneously change their scores, due to the perceived “expertise” of said Evaluator in that specific category.

Excepting the PPR Director of Golf, Vincent Johnson, it is not evident that any of the other 5 Evaluators had any actual experience working in or expertise of golf operations. Superintendent John Ball may well have knowledge of agronomy, but the RFP was for clubhouse operations, not course maintenance. If the proposers are expected to be qualified to win a contract with the City, then it is only reasonable to expect the same standards be applied to their evaluators.

Furthermore, there was not a single representative of any community stakeholder, such as the course Clubs, Leagues, First Tee, Leisure Hour, OGA, or NWGG, on the Committee. Should not those who are actually most directly impacted by this solicitation, have had at least some voice in the decision?

### **Local Support**

Eerily reminiscent of the 2008 RFP process for Heron Lakes (awarded to KSM), only one proposer, GolfPDX, evidenced having the support of the local golf community. We documented petitions and testimonials from over 150 active participants and leaders in the community, including the official support of the Heron Lakes Men’s and Women’s Club Boards. Aside from a letter from the Cumpston Brothers asking that KSM retain the staff at Eastmoreland, under the now accurately predictive assumption that the City would choose KSM, no other proposer demonstrated making any effort to connect with the local community. Moreover, as previously noted, Club leadership **explicitly told the GGA consultant** that they were dissatisfied with KSM’s operation of Heron Lakes and voiced their desire for a change. It is disappointing that this input apparently was not passed along.



Combined with our leading score in the Cooperate Responsibility section, this exclusive evidence of local support from the CITY, that is **the people**, makes it abundantly clear that GolfPDX presented the “most responsible and responsive” offer to the City (government officials).

We sincerely hope that by filing this protest, we are not unfairly viewed by the City as adversaries. Nothing could be further from the truth. We all share the same goal of growing the golf program into one worthy of national recognition. As this protest should hopefully demonstrate, we are committed to working harder than any of the big outside management corporations to achieve this transformative success, and **for a fraction of the cost**. That means more money for the City to put back towards course maintenance and capital improvements.

We again respectfully implore you, the Chief Procurement Officer, to take these facts and circumstances into serious consideration, and conclude as the people and the data indicate, that GolfPDX is objectively the best option to become the next stewards of the City golf facilities. We welcome the opportunity to engage in further discussion and negotiation to address any concerns the City might have.

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<sup>1</sup> “A single operator management agreement for Heron Lakes, Colwood, Eastmoreland and Rose City is assumed at **\$400k per year** in management fees.” GGA Consultant Report, p.32.

<sup>2</sup> The GolfPDX proposal offered the City an annual base management fee of only **\$120,000** and an incentive fee that even if maxed, would have still totaled 35% lower than this report’s projected total. Comparisons to other bidders are only possible upon full public disclosure of their financial projections.

<sup>3</sup> The City of Wichita KS recently rejected a similar contract for KSM to take over operations of the City’s municipal golf program. “KemperSports and [RFP Committee Member] Houtman blatantly lied to the park board about the revenues from food and beverage,” Goter said. “That was done with deceitful intent and makes it impossible to have any faith in Kemper under any circumstance.” For more detailed information about this story, see: <https://www.kansas.com/sports/golf/article258752558.html> and <https://www.ksn.com/news/local/wichita-city-council-will-decide-golf-course-management/>

<sup>4</sup> 2017 Bandon Dunes sexual harassment scandal and lawsuit which resulted in negative national news coverage, and KSM losing their management contract with Bandon Dunes Resort. Though KSM still claims the Resort as one of their “properties”, all daily operations are actually managed directly by Dream Golf. For more information see: [https://golfweek.usatoday.com/2017/11/15/sexual-harassment-lawsuit-against-bandon-dunes-gm-kempersports-settled/?amp\\_js\\_v=a6&amp\\_gsa=1&usqp=mq331AQHKAFCrABIA%3D%3D#aoh=16027526553629&referrer=https%3A%2F%2Fwww.google.com&tf=From%20%251%24s&ampshare=https%3A%2F%2Fgolfweek.usatoday.com%2F2017%2F11%2F15%2Fsexual-harassment-lawsuit-against-bandon-dunes-gm-kempersports-settled%2F](https://golfweek.usatoday.com/2017/11/15/sexual-harassment-lawsuit-against-bandon-dunes-gm-kempersports-settled/?amp_js_v=a6&amp_gsa=1&usqp=mq331AQHKAFCrABIA%3D%3D#aoh=16027526553629&referrer=https%3A%2F%2Fwww.google.com&tf=From%20%251%24s&ampshare=https%3A%2F%2Fgolfweek.usatoday.com%2F2017%2F11%2F15%2Fsexual-harassment-lawsuit-against-bandon-dunes-gm-kempersports-settled%2F), and <https://web.archive.org/web/20171116044259/https://www.kgw.com/news/investigations/lawsuit-alleges-sexual-harassment-at-bandon-dunes-golf-resort-parent-company/491480991> and <https://www.statesmanjournal.com/story/news/2017/11/13/bandon-dunes-golf-resort-lawsuit-alleges-rampant-sexual-harassment/860699001/#aoh=16027525354182&referrer=https%3A%2F%2Fwww.google.com&tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.statesmanjournal.com%2Fstory%2Fnews%2F2017%2F11%2F13%2Fbandon-dunes-golf-resort-lawsuit-alleges-rampant-sexual-harassment%2F860699001%2F>

<sup>5</sup> 2015 theft of more than half a million dollars of public funds at City course in Carlsbad CA. See: <https://web.archive.org/web/20150716054515/https://www.carlsbadca.gov/news/displaynews.asp?NewsID=811&TargetID=4>

<sup>6</sup> 2014 Heron Lakes sexual harassment and neglect lawsuit, which was settled out of court with the former employee. See <https://www.kgw.com/article/news/investigations/portland-golf-contracts-safe-despite-sexual-harassment-claims/283-494007055>

<sup>7</sup> 2012 firing of first KSM General Manager at Heron Lakes, due to theft and embezzlement.

<sup>8</sup> Numerous abuses at Heron Lakes from 2008-present including but not limited to: exposure of customer credit card information to unauthorized staff to manually process online order forms (PCI compliance violations); failure to provide employees with adequate break time as required by local, state and federal law; failure to pay employees holiday wages for city, state and federal holidays, violating of KSM's own policy regarding holiday wage eligibility (when employees discovered this issue in 2014, the GM told the Controller to only make changes for employees who "pointed out the error"); from 2020-2022, improperly ringing up thousands of dollars of "raincheck redemptions" to offset online merchant fees that were being applied to Men's Club rounds (these expenses should have been classified as some type of operational expense, but instead were hidden in order to make it appear as though more revenue was being collected than was actually the case);

<sup>9</sup> Legal Information Institute, Cornell Law School

<sup>10</sup> Portland City Code 5.33.720-C.3.

<sup>11</sup> Our **Corporate Responsibility** section score total nearly **tripled** that of KSM.

<sup>12</sup> The original, unchanged scoring results, with the elimination of the lowest score per category for all proposals, regardless of Evaluator, to account for bias and statistical outliers

<sup>13</sup> Clark and Rob Cumpston have successfully operated Eastmoreland for nearly 50 years. Hank Childs has similarly operated Rose City for nearly 30 years. Prior to his death, Byron Woods operated Heron Lakes for nearly 20 years. All of these local concessionaires were beloved by their staff and guests. GolfPDX is the only bidder to have expressly prioritize maintaining and continuing the legacy of these local golf icons.

<sup>14</sup> The City has yet to disclose the members of the Evaluation Committee, despite public records request. To our knowledge, none of the Evaluators were members of the community groups listed.

<sup>15</sup> <https://www.portland.gov/omf/news/2021/7/20/city-portland-selects-new-chief-procurement-officer-guide-public-investments>

<sup>16</sup> 40% of our ownership is comprised of racial minority and female members

<sup>17</sup> City Public Records Request :: C240269-081622, 16 August 2022

<sup>18</sup> Double Eagle Golf, Inc. v. Portland, 1996. See <https://law.justia.com/cases/oregon/supreme-court/1996/322-or-604.html> and <https://www.portlandoccupier.org/2013/09/27/city-takes-whack-at-populist-services-golf-unsathed-by-austerity-cuts-part-2/>

<sup>19</sup> Barbara Clark, "Audit of Golf Concessionaire Selection Process," City of Portland, 9 July 1996

<sup>20</sup> ADDENDUM NO. 1 RFP No. 00001854

<sup>21</sup> GGA Partners Consultant Report

<sup>22</sup> Portland City Ordinance #190729

<sup>23</sup> Email from Todd Melton, City Golf Financial Analyst: "I scored [GolfPDX] significantly lower than the top 4." Evaluator 6 is the only Evaluator whose scores would accurately reflect such a characterization.

<sup>24</sup> Screenshot of originally released 2<sup>nd</sup> version of "corrected" results, indicating scores had been changed, without any explanation. These comments were hidden in the 3<sup>rd</sup> and final version of the spreadsheet.

CourseCo, Inc					GolfPDX LLC					Kemper Sports Management, Inc.							
COMPANY BACKGROUND, EXPERIENCE, AND QUALIFICATIONS	VISION AND OPERATING PLAN	PRO FORMA AND FINANCIAL IMPACT	PROPOSED MANAGEMENT FEE AND STRUCTURE	Sub Total Score	CORPORATE RESPONSIBILITY	COMPANY BACKGROUND, EXPERIENCE, AND QUALIFICATIONS	VISION AND OPERATING PLAN	PRO FORMA AND FINANCIAL IMPACT	PROPOSED MANAGEMENT FEE AND STRUCTURE	Sub Total Score	CORPORATE RESPONSIBILITY	COMPANY BACKGROUND, EXPERIENCE, AND QUALIFICATIONS	VISION AND OPERATING PLAN	PRO FORMA AND FINANCIAL IMPACT	PROPOSED MANAGEMENT FEE AND STRUCTURE	Sub Total Score	
25	15	15	25	60	20	25	15	15	25	60	20	25	15	15	25	60	
20	13	10	18	51	16	12	10	10	18	40	12	23	14	12	15	60	
18	12	12	20	62	16	10	10	10	18	44	12	20	13	13	20	74	
24	12	13	23	72	16	19	15	16	24	70	16	24	14	13	24	75	
23	12	12	22	69	15	16	15	16	24	67	15	24	12	13	24	73	
25	15	15	20	62	19	20	20	20	25	74	25	25	13	15	25	88	
23	12	12	23	70	15	5	5	8	10	30	7	25	15	14	25	81	
133	76	74	126	453	97	82	64	55	102	400	37	141	81	80	200	499	

**City Council Meeting - Wednesday October 26, 2022 9:30 a.m.**

<b>Agenda No.</b>	<b>First Name</b>	<b>Last Name</b>
894-01	Brian (BJ)	Swearer
894-02	Steven	Becic
894-03	Tom	Williams
894-04	Timothy J	Dack