

**PINOLE / HERCULES
Wastewater Subcommittee**

**Minutes prepared by: Anita Tucci-Smith
January 7, 2016
8:30 A.M.**

The regular meeting was hosted by the City of Hercules in the Council Chambers of City Hall.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Dan Romero, Mayor, City of Hercules, called the meeting to order at 8:37 A.M.

2. ROLL CALL

Subcommittee Members Present:

Dan Romero, Mayor, City of Hercules
Sherry McCoy, Councilmember, City of Hercules
Debbie Long, Mayor Pro Tem, City of Pinole
Tim Banuelos, Councilmember, City of Pinole

Subcommittee Members Absent:

None

Staff Present:

David Biggs, City Manager, Hercules
Mike Roberts, Public Works Director/City Engineer, Hercules
Michelle Fitzner, City Manager, Pinole
Hector De La Rosa, Assistant City Manager, Pinole
Al Petrie, Interim Director of Public Works, Pinole
Ron Tobey, Plant Operations Manager, Pinole

Members of the Public:

Eric Christen
Nicole Goehring, ABC NorCal
Anthony Gutierrez, Pinole
Anton Jungher
Ken Kreischer, Western Water Constructors, Inc.
James Tillman, Wastewater Advocate, Pinole
Mike Warriner, Carollo Engineers

3. INTRODUCTIONS

4. APPROVAL OF MINUTES FROM NOVEMBER 5, 2015 MEETING

Action: Motion by Hercules Councilmember McCoy, seconded by Pinole Councilmember Banuelos to approve the minutes of the November 5, 2015 meeting, as submitted, carried by the following vote:

Ayes: Banuelos, Long, McCoy, Romero
Noes: None
Abstain: None
Absent: None

5. CITIZENS TO BE HEARD – FOR ITEMS NOT ON THE AGENDA

Anton Jungher, Hercules, expressed concern for the timely posting of material related to the Wastewater Subcommittee. When advised that packets were routinely posted on the City of Pinole website, and usually on the City of Hercules website, he requested that all information, including any supplemental information made available at the meetings, be routinely posted on the City of Hercules website in accordance with the Brown Act.

Jim Tillman, Pinole, reiterated a prior request for review of the initial 2001 contract for the Wastewater Treatment Plant between the cities of Pinole and Hercules, and sought an agendaized discussion of that contract to clarify the responsibilities related to the plant, and to clarify the appropriate structure of the Wastewater Subcommittee to protect both cities.

6. REPORT ON THE PROJECT BID OPENING

- a. Receive a verbal update on the Bid Opening including the number of bids received and the associated cost estimates (Mike Warriner – Carollo)

Mike Warriner, Carollo Engineers, the Project Manager, explained that ten bidders had been prequalified for the project issued for bid in October 2015; two bidders had declined the mandatory job walk; after contacting the bidders a week before the bid four contractors had dropped out at that time; and at the time of bid opening on December 10, 2015 only two bidders had presented bids. He reported that at no time did anyone ask for an Extension of Bid or indicate they were not bidding, and he had reached out to those prequalified to find out why. Having spoken with a number of the bidders, he described an inability to commit, timeframe conflicts, other bid opportunities, and the Project Labor Agreement (PLA) as reasons for not submitting a bid. Reasons for the cost differential in the two bids received included the tight site; the PLA; and the letter from the United Association Local Union 159 related to a prior agreement between plumbers and pipefitters on the division of work, an agreement that had later been rescinded.

Mr. Warriner reported that the Engineer's Estimate for the project was \$39.85 million; the lowest responsible and responsive bid was from Kiewit at \$43.143 million; and the only other bid, from Overaa Construction, was \$48.558 million.

Mr. Warriner presented the bid analysis and recommended proceeding with the award of the Water Pollution Control Plant Upgrade contract to Kiewit. If approved, the bid documents would be submitted to the State Revolving Loan Fund for review and approval followed by Award of Bid, which should hold the previously reported start date of March/April 2016 to begin construction in the field.

In response to questions, **Mr. Warriner** explained his understanding that the UAL 159 letter did not impact Kiewit's bid although it had affected Overaa Construction's bid. He did not believe the letter impacted the bid process since most bidders felt the practice area agreement referenced in the letter still existed.

Hector De La Rosa, Assistant City Manager, Pinole, clarified the stipulations of the PLA did not get into the specifics of the differentiation of labor, and while any dispute would be addressed there would be no work stoppage.

Mr. Warriner further responded to questions as to why prospective bidders might have dropped out, by noting that he had not heard from any of the bidders that the site restrictions was the reason from them not bidding although he had heard that it was an impact to the cost. The site restrictions were strictly related to the treatment capacity of the plant. While it was typical that plant upgrades required the continued operation of the plant during the upgrade process, in Pinole's case, the site was more constrained given a lack of space.

With respect to the scope of the Engineer's Estimate and whether it did or did not reflect everything that needed to be included in the bid which might have affected the second bidder, **Mr. Warriner** described the particulars of the bid from Overaa Construction, commented that it could have lowered Overaa's bid but suggested that Kiewit's bid would still have been the lowest bid. With respect to the Kiewit bid on insurance, he noted that Kiewit had believed that insurance was covered by other insurance in the project and was an additional item that could be eliminated. He stated it was now being considered as part of the base bid. He verified the Engineer's Estimate had been based on a 30-month construction period, and all bidders had been advised of the 30-month timeframe.

Subcommittee members compared some of the line items between the two bids and the Engineer's Estimate and questioned the reasonableness of some of the bid responses.

As to whether there was an outline to be able to compare the two bids with the Engineer's Estimate, **Mr. Warriner** stated a written description and a set of drawings had been provided for the bid items through the bid process, and each bidder had interpreted those items differently. He had focused on the Engineer's Estimate versus the lowest bidder.

PUBLIC COMMENTS

Jim Tillman, Pinole, referred to the work area available for the project and suggested if there was insufficient area the park might have to be used. He spoke to the myriad issues involved with bids, and emphasized the timeline and the need to get the project started.

Anton Jungher, Hercules, verified with Mr. Warriner that the bids were good for 120 days. He agreed with prior comments that the Overaa Construction bid was not a real bid, and as such only one bid, which exceeded the Engineer's Estimate, was valid. In reviewing other PLAs in California, he noted a requirement for a three-bid minimum, which had not been included in the subject PLA. As a result, there was only one bid and it could not be determined if that bid represented the best response for taxpayers. He suggested that the bids be rejected, the PLA be amended to require a three-bid minimum, and the project be rebid.

Nicole Goehring, Community and Government Relations Director, Associated Builders and Contractors of Northern California, stated she had warned the Pinole City Council of the problems with a PLA, noted the lowest bid was 8 percent over the Engineer's Estimate, and the higher bid was 23 percent over that estimate. She concurred that standard PLAs had a three-bid minimum requirement. With respect to the requirement for local hire, she stated the report about the subcontractors was that there was only one subcontractor in Contra Costa County, and the subcontractors were from Sacramento, San Joaquin, and Alameda counties. On the suggestion there would be higher legal costs for a PLA, she estimated that \$11,000 a month for 30 months would be the cost to monitor the PLA. She added that plumbers and pipefitters signatory to the agreement had given out misleading information to the bidders which had affected the outcome. She requested that the local letter and Pinole resolution be posted on the website. She recommended that the bids be rejected and the project be rebid without a PLA.

Ken Kreischer, Western Water Constructors, Inc., explained the discussions early on had tried to make the PLA discussion about union versus non-union, and had indicated that the PLA increased costs and discouraged bidders. Now that two bids had been submitted out of ten pre-qualified bidders, he suggested the reasons reported for why bids had not been submitted should have been in the Engineer's Estimate such as project size, project sequencing and restrictions, and specified equipment was more expensive than alternates. Eliminating those reasons from the equation left the union letter and the PLA, which were the cost differentials. For the benefit of taxpayers, he recommended that the Wastewater Subcommittee reject all the bids and rebid the project without a PLA.

Eric Christen, Executive Director of the Coalition of Fair Employment and Construction, reiterated that the City had been warned and told what would happen with a PLA. He stated there was something wrong with the numbers and

the bid needed to be rethought, redone, and rebid without a PLA. At the very least the PLA should have required a minimum of three bidders.

Anthony Gutierrez, Pinole, was not pleased with the bids and requested an interpretation of the bidders' estimates for some of the line items. He suggested there was a credibility gap with the project manager, and asked that the bid documents for the two bidders be posted on line. He urged that all bids be rejected at this time.

In response to public comments, **Mr. Warriner** advised that the park was to remain open as a condition of the bid; a small portion of the park would be used but any action to close the park would require negotiation with the East Bay Regional Park District (EBRPD) and the City of Pinole, and the Bay Conservation and Development Commission (BCDC) permit also required that the park remain open. As to the type of manager to be used, the prequalification documents required that each firm supply the name of a project manager and the top individuals who would be part of the team, who had to be held for the project. As to local hire, the good faith documentation had been received from the contractors as part of the bid to verify that bidders had reached out to Hercules and Pinole communities. Kiewit and Overaa Construction had both gone out to a number of local firms in the area, although most of them had stated they were not interested in the work or could not provide a bid for work on that site. There was still a local hire requirement in the PLA and compliance with those terms would be pursued.

Mr. Warriner added that while the bid sheet and the good faith document could be made available for review online, the actual numbers were a trade secret and had to remain confidential. With respect to the differences in the bid amounts for the line items, he clarified that HDR, Inc. had put together the plans and specifications and the submitted bid from each bidder would be the cost to do the work, whether the actual cost was less or more than the bid amount. He explained that a change order would occur if there was an unknown field condition. As to a definition of "unknown condition," he stated that had been a specific question Kiewit had asked prior to the bid, and what was an unknown condition and what was not had been identified.

The Wastewater Subcommittee requested that the definition of "unknown condition" be provided to the city managers for the benefit of the city councils.

As to why there was not a three-bid minimum in the PLA, **Mr. De La Rosa** stated that question had never come up and had not been proposed as part of the discussion of the PLA.

David Biggs, Hercules City Manager, advised that all bidders were obligated to bid based on the plans and specs approved by the City and developed by HDR that had been peer reviewed. It was the bidders' discretion as to how they chose to categorize things, which he acknowledged would have made comparisons

easier. He stated there was discretion as to how bidders submitted bids.

Mr. Warriner reiterated that a written description of a bid item and a set of drawings had been provided to bidders and there was some interpretation on the part of the contractors. Given that there were different methods of construction by different contractors, there would be a number of differences in the amounts bid for each line item. When asked, he stated he could perform a detailed analysis of the bids and talk in generalities but reiterated that he could not give away contractors' trade secrets. He clarified that the only other thing given to the bidders prior to bid was the total number of the Engineer's Estimate, and while no breakdown had been provided, it was part of the public record. He also verified that the Engineer's Estimate had included a seven percent contingency.

Hercules Councilmember McCoy verified with Mr. Warriner that if there was any cost savings as a result of value engineering, those savings would be shared equally between the two cities.

7. PROPOSED MODIFICATIONS TO THE CAROLLO CONTRACT

a. Costs related to Carollo providing Project Management Services

Al Petrie, Interim Public Works Director, Pinole, referred to Task 5; costs related to Carollo Engineers providing Project Management Services. He stated that Mr. Warriner had provided a spreadsheet for that task to identify an expansion of his work from 24 months to 30 months. The personnel cost with respective hours, the hourly rate, and the labor escalation during construction identified a \$655,659 subtotal for the extension from 24 to 30 months, which also included some additional work that Mr. Warriner would be taking on due to the retirement of Pinole's Public Works Director where an additional 340 hours had been added over 30 months. This would be the first amendment to the Carollo contract.

b. Costs related to Administration of the Project Labor Agreement

For the second amendment to the Carollo contract, **Mr. Petrie** referred to Task 6; the costs associated with the administration of the PLA. He reported that the additional costs for the involvement of Carollo Engineers in the PLA was \$328,105. A third amendment to the Carollo contract was to have Carollo Engineers serve as the Fiscal Agent to support the Fiscal Agent administration, which had been shown as a separate budget at a cost of \$196,876.

Mr. Biggs clarified that the Fiscal Agent would be Wells Fargo Bank; Carollo Engineers would be the Fiscal Administrator. He described the role of each, and explained how the bills would be paid and how each city would be reimbursed.

Michelle Fitzer, Pinole City Manager, clarified with respect to the costs associated with the PLA that a question had been raised whether it was inclusive or in addition to any requirement under the Davis Bacon Act for prevailing wage. She stated those costs would be in addition to.

The Wastewater Subcommittee requested that the scope be modified to clarify the roles of the Fiscal Agent and the Fiscal Administrator.

Pinole Mayor Pro Tem Long noted that the costs would still have been included with or without a PLA project. She clarified the added part was also auditing the use of local hire as outlined in the PLA, although local wage would have been part of the contract anyway.

Pinole Councilmember Banuelos verified with Mr. Warriner why the original estimate for Carollo's time had been for 24 months and not 30 months in that the former Public Works Director had requested a 24-month estimate in the hope of completing the project in less time.

Mr. Kreisler noted his understanding that the costs related to Task 6 were solely related to the PLA, which Pinole required and indicated that there would be no additional costs, which was not the case since now over half a million dollars was required to enforce the PLA.

Anthony Gutierrez, Pinole, suggested that the new Pinole Public Works Director, when hired, should perform the public works functions, estimated at 11.3 hours per month under Task 5. He noted that Hercules had a full-time Public Works Director and Pinole had an Interim Public Works Director, each of whom could also perform those functions without added cost. Commenting that he had previously expressed concern that the project could not be done within 30 months, he expressed concern that the project could go beyond 30 months and he asked what would happen if that became the case.

Pinole Mayor Pro Tem Long clarified for the record with respect to the PLA that it had always been known there would be some additional costs, although those costs had been weighed against having well educated, trained individuals on a risky project, and to be able to hire as many locals as possible. She expressed her hope to have as many local individuals from the community and surrounding communities on the job as possible.

When asked, **Mr. Petrie** stated the project was not unlike the other projects with respect to an estimated completion time, and when there was an overrun of time he described what would occur to allow the project to be completed where the construction manager's contract could be extended, city employees could be used, or a consultant project manager could be secured.

8. WESTERN WATER "INFORMAL" PROTEST OF BID PROCEDURE

Mr. Petrie reported that an informal protest had been received from Western Water Constructors, Inc. The formalized protest period had expired. He referred to a communication requesting a rejection of all bids and a request for a rebid.

Mr. Warriner confirmed there had been no formal protest during the 10 days from the time of bid when a protest could have been made.

Chair Romero stated that the letter and email had been sent to members of the Board and he asked that all the letters associated with the items be posted so that all members of the public could see what had transpired.

Mr. Kreischer explained that his email to Mr. Warriner was not a protest. He referred to the union letter, suggested it had created an issue for the bidding contractors, stated the disingenuous way the letter had been shared between the plumbing contractors and the laborers for an agreement that had been rescinded was a concern, and suggested it spoke to the credibility of the people the Pinole City Council had aligned itself with. He referred to a consistency of misinformation that spoke to credibility which had contributed to costs and the lack of bids.

9. UPDATE OF THE PROJECT TIME FRAME

Mr. Warriner stated the next step was to submit the bid documents to the State of California State Revolving Loan Fund with the support documentation for review and approval. Concurrent with that both cities would look to Award the Bid and issue a Notice to Proceed.

Mr. De La Rosa reported that the State would review the document to make sure that the total project cost did not exceed what each individual city had requested. The City of Pinole would then move forward to award the contract.

Mr. Gutierrez commented that a Project Manager and a Construction Manager were two different things, the project needed a Project Manager, and he requested that the Project Manager come prepared with a Gant chart.

Ms. Fitzer reported that a community meeting had been scheduled for February 17, 2016 at 7:00 P.M. in the Pinole City Council Chamber. A notice would be sent to those living within 1,000 feet of the project. The notice would also be provided to the City of Hercules for placement on its web site.

10. STATUS OF THE REVOLVING LOAN

Mr. De La Rosa reported that the State had reviewed all four components of the loan and the legal review was ongoing. Each city had been found to be eligible for \$24 million, as requested. The bid including contingency, as well as reimbursement for final engineering design, exceeded the loan amount. As a

result, the City of Pinole had verified with the State Revolving Loan Fund that it was eligible for additional funding under a 30-year loan. He suggested there was sufficient funding to move forward with the project. When asked, he verified the total project cost at \$52 million and stated the City of Hercules share would be half that amount.

11. OPERATIONAL REPORT

Ron Tobey, Plant Operations Manager, Pinole, reported that the upgrade project included biological nutrient removal, which was one thing the Regional Water Quality Control Board (RWQCB) might require within the next 20 years. He added that the plant had received 1.3 inches of rain in the past 36 hours and there was a 6.7 to 6.9 mgd maximum at the plant. Average dry flow had decreased to 2.2 based on the drying of the water table and water conservation.

12. FUTURE AGENDA ITEMS

Chair Romero requested an updated timeline report.

13. ADJOURNMENT

The meeting adjourned at approximately 11:00 A.M. to a regular meeting scheduled for Thursday, February 4, 2016 at 8:30 A.M. in the City of Pinole.