

Draft

**MINUTES
SPECIAL CITY COMMISSION MEETING
THURSDAY, JUNE 5, 2014 – 5:30 PM
KATIE PIEROLA COMMISSION CHAMBERS**

Pledge of Public Conduct: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

CALL TO ORDER - 5:30

PLEDGE TO THE FLAG

ROLL CALL

PRESENT: Mayor William “Bill” Shearon, Vice Mayor Janie Robertson, Commissioner Ed Straight, Commissioner Jan Vosburgh, Commissioner Jack Clarke

ALSO PRESENT: Ricinda Perry, City Attorney; Jamie Anderson, City Clerk; Sheila Dalton, City Treasurer

Mayor Shearon requested the addition of a proposal from ZNS Engineering for consideration as item e. (Exhibit A)

**MOTION BY COMMISSIONER VOSBURGH TO ADOPT AGENDA AS AMENDED.
MOTION SECONDED. VOTE: ALL AYE. MOTION PASSES.**

ORDER OF BUSINESS:

1. ATTORNEY BUSINESS:

a) Disposition of Bids received for RFP 14-1

City Attorney Perry gave an update on what has been going on with the disposition of the original letting of bids for pier reconstruction. The preliminary award was to Duncan Seawall. Then we received 2 protests. In a meeting with the evaluation team, the Mayor and the City Clerk, other issues began coming up. In addition to the reconstruction of the pier, there is a second issue of lighting, which is critical since there is a tenant and we need to make sure there is appropriate lighting. A company was identified who had provided the previous lighting, and there was an attempt to time the two components together and open the lighting bids at the same time. We were trying to expedite and get this done before storm season and tourist season. Then you decided to make a master plan with lighting component being part of reconstruction. Now we need to reevaluate the way we need to address this. Another issue is the Manatee County water structure that may provide land access for Pier reconstruction. Some of the bidders relied on the use of this structure for staging for the project. Currently that is prohibited by the County. They would not be able to use that unless an interlocal agreement is reached with the County. There are also a number of minor inconsistencies in the bids. She is recommending that Commission considers rejecting all the bids to date. She suggests the Commission rescind the preliminary award to Duncan Seawall and withdraw the original letting notices.

PUBLIC COMMENTS OPENED.

Chris Theriot, Tampa Bay Marine. They filed their protest because of non-consideration according to article 5c, PacComm did not put in a price for the alternate or unit price, and neither did Shoreline, which were the two lowest bidders. They were 3rd lowest bidder, and feel they should have been awarded the contract. They got an e-mail from Karen Wilson on the 21st that put out a final bid saying they weren't going to use alternates. They were lowest, not Duncan Seawall. They are good with you throwing it all out and putting the lighting in too.

Walter Sowa, Attorney representing PacComm. They are not looking for a contentious situation asking. They are not looking for litigation. What they are looking for is for the bid protest to proceed as it is outlined and defined in the bid documents. They would like this referred to a hearing officer. They would like a fair evaluation of the situation. We are hearing a lot of extraneous facts about lighting, which is not a part of this IFB. The lighting is not part of this, this IFB needs to be evaluated on its own merit. That is the fairest solution. Bid protest protocol was established within the bid documents. They have the lowest price, they have the highest rating from the Engineer for this project. They are the most responsible bidder. John Hewitt is here from PacComm because that is they type of company PacComm is. That is the service they provide, it is second to none. They provided a responsive bid. If the bids are cancelled, PacComm will allege that is an arbitrary and capricious cancellation of the bids. They are looking for the City to follow through on the bid protest policy. It will be quicker for everybody to go through a hearing officer, it's going to be a lot quicker and a lot cheaper. Litigation is very expensive. We should go through dispute resolutions as outlined in the IFB. He feels they are past the point of cancelling.

Steve Liebel, Duncan Seawall: Thank you for your confidence in voting to award Duncan Seawall the pier reconstruction project. You have right to accept any bid you believe is in best interest of the City. The notice publicizing this project stated "the Bradenton Beach City Commission reserves the right to accept or reject any or all bids in the best interest of the City of Bradenton Beach." You do not need to justify your decision. You should not accept PacComm or Shoreline's bids as they did not follow the bid instructions, and both left portions of their bid blank. The instructions to bidders in Section 5.01c states "Bidders failure to submit a price for any alternate or unit price will result in the bid being non-responsive." They were non-responsive on their bid, it is not ambiguous. They did not fill in alternate price. After detailed interviews with the Pier review committee, where each contractor was asked about schedules, equipment and subcontractors and specifically our pier construction experience, the committee said that Tampa Marine and Duncan Seawall were both qualified, but recommended Duncan Seawall to be awarded the contract. At your May 22nd meeting you agreed with the Pier committee and voted to award Duncan Seawall the contract. In 20 years, he hasn't seen a project be vetting more than this one. He has been doing business in Manatee County, and the City of Bradenton Beach for 35 years. He did want to read part of one appellate First District Court of Appeals which was upheld by a Florida Supreme Court in November 2002. It says "the decision of public agency is not subject to judicial interference provided the decisions correctness is debatable by reasonable persons."

...”as long as the decision was made in good faith, the courts will generally not interfere where the agency reaches a conclusion on facts upon which reasonable men may differ.” “The remedy in such cases is at ballot box and not in courts.” Regarding the inconsistencies in their bid. Apparently we did not fill in our EIN number on our bid. That is an informality and the City retains the right to waive informalities. The lighting can be included or not. He is asking not to succumb to the threats and further delays, but move forward with your previous decision to award the pier reconstruction project to Duncan Seawall.

PUBLIC COMMENTS CLOSED.

Ricinda Perry: Article 6 6.02 of the original letting documents clearly stated that the City retains the right to reject all bids. The claim that there would be damages is outrageous. You have absolute right to reject bids. She recommends allowing her to conclude her investigation and if necessary go to a hearing officer. If you want to go that route Commission needs to give her that authority. If not, then she needs a motion to rescind the award to Duncan Seawall under RFP 14-4 and to reject all bids for RFP14-4. In your packet, you have added to the agenda a proposal from Zoller Najar regarding the approximate cost to go through this a second time around. I believe it was approximately \$7,500.

Mayor Shearon clarified that it would be an addition \$5,500 because \$2,000 has already been authorized to get through the hearing process.

Commissioner Vosburgh: Her biggest concern is with the references. That is really important. She would vote to stay with Duncan.

Vice Mayor Robertson: The staging area would require we have interlocal agreement, and do not have one? *Yes, that is correct.*

MOTION BY COMMISSIONER STRAIGHT TO RESCIND THE AWARD TO DUNCAN SEAWALL UNDER RFP 14-4 AND TO REJECT ALL BIDS SUBMITTED UNDER RFP 14-4. MOTION SECONDED.

Commissioner Vosburgh: She feels we are going around in circles, and we are going to spend additional money and will end up with Duncan anyway.

Vice Mayor Robertson: She has always been in favor of incorporating the two bids together in one RFP. She is glad we have an opportunity to include the lighting in.

VOTE: ALL AYE. MOTION PASSES.

b) Update on Pier

This was covered under the previous item.

c) Cancel RFP 14-4

MOTION BY COMMISSIONER CLARKE TO CANCEL RFP 14-4. MOTION SECONDED. VOTE: ALL AYE. MOTION PASSES.

d) Approval of RFP 14-5

City Attorney Perry recommended the Commission authorize staff to relet the pier project and incorporate the lighting design into the plan.

MOTION BY VICE MAYOR ROBERTSON TO AUTHORIZE STAFF TO RELET THE PIER PROJECT AND INCORPORATE A LIGHTING DESIGN BUILD PLAN WITH FURTHER PROCEDURAL CLARIFICATIONS. MOTION SECONDED.

Mayor Shearon: Karen Wilson, is that information prepared now? *It is about 95%.* When will it be completed? *It has to be reviewed by Ricinda to make sure we have all the procedural content.*

Ricinda Perry: It will be ready for the Clerk's office to advertise on Tuesday, June 10th.

Karen Wilson: Possibly Monday.

Commissioner Clarke: We really need to have this. We are behind.

VOTE: ALL AYE. MOTION PASSES.

MOTION BY VICE MAYOR ROBERTSON TO AUTHORIZE THE CITY CLERK TO ADVERTISE THE PIER PROJECT RFP NO LATER THAN JUNE 11, 2014 FOR TWO WEEKS. MOTION SECONDED. VOTE: ALL AYE. MOTION PASSES.

e) ZNS proposal - **Exhibit A**

Mayor Shearon advised that during the process of investigation, he authorized the expenditure of \$2,000, with the ZNS proposal for the completion of the new RFP at \$5,500, the total is \$7,500.00.

MOTION BY COMMISSONER STRAIGHT TO APPROVE THE EXPENDITURE OF \$7,500 FOR ZNS ENGINEERING FOR THE RFP PROCESS FOR THE FISHING PIER. MOTION SECONDED. VOTE: ALL AYES. MOTION PASSES.

There being no additional business, the meeting was adjourned at 6:05 p.m.

Mayor William "Bill" Shearon

ATTEST:

Tammy Johnson
Deputy Clerk

This is not a verbatim record.