

Correspondence - Audit Committee – July 8, 2010

City Council Audit Committee

7-1-2010

Mayor Dean Barbieri, Vice Mayor John Chiang and Judge Ken Kawaichi

Re: Why did Administrator Grote choose the Valley Utility bid for PHUUD?

I have reviewed the original bidding documents that Valley Utility (VU) and Tennyson Electric submitted to the City for the Piedmont Hills Underground Utility District. (PHUUD) The City required all bidders to complete Piedmont,s State approved bid format that by design prevents fraud and protects the taxpayers. This bidding format simplify,s the City Administrators ability, as the awarding body to act in good faith to make fair and equal comparsons of all the bidders proposals. Valley Utility was the lowest bidder in only the "base bid" catagory, but was not the overall best value or most advantageous.

It was also clear that Valley Utility was significantly higher in their "fixed bid" price costs for the homeowners individual service connections at \$ 244,688.00 higher than Tennyson Electric,s bid. But most glaring was Valley Utility,s "irregular" fixed cubic yard unit price for rock removal at \$2190.00 per yard. Tennyson Electric,s comparison fixed price for the same rock was 80% less at \$425.00 per yard. Synergy was only \$150.00 per unit yard. The four other bidders comparsons average cost for rock excavation was only \$256.00 per cubic yard unit. Valley Utility,s "irregular" rock unit costs was extreme and a flag to me that VU was either unfamiliar, ill-equipped and inexperienced or Valley Utility was "bid rigging" their base & unit numbers-just to buy the PHUUD contract.

Tennyson Electric base bid for PHUUD was\$ 1,735,789.00

Valley Utility,s winning base bid for PHUUD was..... \$ 1,515,294.00

Valley Utility base bid was less by only.....\$ 220,495.00

But Tennyson Electric-laterals connections is less than VU by.....\$ 244,688.00

Tennyson Electric overall base bid & laterals total costs is lower than VU by...\$ 24,193.00

I believe the City Administrator had a fiduciary duty as the chief executive to apply due diligence to follow all California Contractor Bidding Laws and properly screen-review-compare the pros and cons of all the bidders proposals-on a equal comparsion basis. Mr. Grote was not obligated to award the PHUUD contract to VU based singling, on their base bid dollar amount. As per section 00100-page 7-item 25.0 of the bidding documents: The owner reserves the right to reject any and all bids....which are:

- 1. Irregular.
- 2. In which unit prices are unbalanced.

Valley Utility,s rock costs per yard unit were grossly "unbalanced" compared to all the other bidders and should have triggered a automatic bid rejection and disqualification of Valley Utility,s whole proposal. Valley Utility was not the "lowest responsible bidder". Not only did the City,s bid format clearly reveal a irregular VU bid with unbalanced unit figures, Mr. Grote knew these facts and was also notified by one of the other bidders and a engineer of record that there were "irregular" and "unbalanced" bid unit problems, inherent in the Valley Utility proposal.

It appears the seasoned legal triad of Administrator Grote, City Attorney Peyton and PHUUD leaders-violated the State Public bidding laws and orchestrated the PHUUD construction contract to a unknown firm with a irregular low bid-coupled with unbalanced unit numbers. Valley Utility was a less qualified firm-unfamiliar with hard rock excavation. Once irregular rock unit costs became a problem and ever-growing financial drain on the City, Mr. Grote failed to react in a timely manner and exercise the City,s option to stop the project and re-negotiate the rock clause with VU to the Bay Area industry norm of \$150 to \$425 per cubic yard. If VU had refused to re-negotiate to a lower rock fee? Tennyson Electric, Synergy or Ranger Electric could have readily been brought in to finish the rock trenching phase at their normal rock unit rates of \$425, \$150 or \$250 per cubic yard unit.

I believe the City Administrator knowingly/recklessly awarded the project to a unqualified bidder.

Neil J. Teixeira

June 9, 2010

PHUUD: Valley Utility irregular and unbalanced bid report

This report is concerned with the bid information that city staff had in hand before accepting any construction bids for the Piedmont Hills Underground Utility District (PHUUD), and whether the process of selecting a contractor was done objectively and in the best interest of Piedmont taxpayers.

The following table shows the Base Bid and the critical Line 38 “rock clause” for the eight contractors who bid on the PHUUD mainline trench work. Line 38 is listed as “rock excavation (revocable)” on the unit price bid form at a per cubic yard price (CY).

<u>Contractor</u>	<u>Base Bid</u>	<u>Line 38</u>	<u>City</u>
Valley Utility Svc.	\$1,515,204	\$2,190	Sacramento
Tennyson Electric	\$1,735,789	\$425	Livermore
Synergy Project Mgn.	\$1,896,112	\$150	San Francisco
MCH Electric, Inc.	\$1,850,110	\$6,000/\$90,000 cap	Tracy
Ranger Pipeline, Inc.	\$1,945,179	\$250	San Francisco
Smith Denison Const. Co.	\$2,011,724	\$350	Livermore
Underground Const.	\$2,344,514	\$275	Benicia
St. Francis Electric	\$2,594,979	\$1,000	San Leandro

Tennyson Electric is the second lowest bidder, with a base bid \$220,585 higher than Valley Utility’s bid. The draft Preliminary Engineer’s Report from Harris Engineers of Jan. 10, 2007 estimated construction costs of \$3,744,000, and a total project cost of \$6,904,000. Subsequently, the final Harris Engineer’s Report presented to City Council on May 5, 2009, showed the construction cost exactly the same as the Valley Utility bid of \$1,515,204 and a total project cost of \$3,879,315. Confirming this substantial difference is the Nov. 20, 2009 PHUUD Steering Committee (SC) letter to PHUUD residents stating: “YOUR TOTAL COST IS FAR LESS THAN PREDICTED IN 2007.” On a per household basis, the Valley Utility bid was the essential element that brought the PHUUD cost in at \$15,477 less than the initial Harris Engineering estimate. Had Tennyson’s bid been accepted, the per household cost for the 144 households in the district would have been \$1,531 higher.

MCH Electric’s Line 38 rock-clause of \$6,000 is grossly higher, with its Line 38 rock clause bid capped at \$90,000. MCH’s bid would not have been considered, as all other contractors’ rock clause estimates are open ended, while MCH capped this critical unit price. The MCH bid is not being used for this comparative analysis. Thus, the average bid for the Line 38 rock clause is \$663, and Valley Utility’s bid is 330 percent of the average. Valley Utility’s Line 38 rock clause amount is actually 515 percent and 1,460 percent higher, respectively, than the next two bidders, Tennyson and Synergy. Valley Utility’s’ Line 38 rock clause is grossly higher than that of any other bidder and appears to be irregular.

Larry Rosenberg's 12/7/2009 staff report states that when bedrock was discovered during the first week of construction in July, a “time & materials,” plus 15 percent contract was negotiated with Valley Utility, rather than the firm’s Line 38 rock clause price of \$2,190 per cubic yard. I spoke to both Michael Tennyson (owner/senior estimator) and Curtis Brand (project manager) of Tennyson Electric. Both assured me they would have honored their \$425 per yard rock-clause bid, regardless of the amount or type of bedrock found, including blue granite. The matter speaks for itself, as contractors that do not honor their contracts generally do not remain in business.

The responsibility of Piedmont city staff is to reject any bid that appears irregular. An irregular line amount, especially on an unknown quantity item, such as the Line 38 rock clause, may indicate an unbalanced bid. An unbalanced bid has unit bid items that do not reflect reasonable actual costs, plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs. With an unbalanced bid, a contractor is essentially attempting to “buy” the job by

producing a low base bid, knowing profit will be made on substantial change work orders. As of March 30, 2010, payment requisition #48 shows Valley Utility had billed "\$3,159,860 in net change orders." This is double their base bid.

Low construction costs encouraged PHUUD residents to vote affirmatively for their district undergrounding. Harris Engineers Preliminary report of Jan. 7, 2007, in addition to forecasting much higher construction costs, also called for a "30% Contingency." However, Harris Engineers May 4, 2009 final report stated a "~15% contingency." The actual contingency allowed on Valley Utility's \$3,813,121 bid was \$543,527, or 14.25 percent. While two previously completed undergrounding districts had used a 15 percent contingency, perhaps Harris Engineers initially noted an issue in the PHUUD that required a higher contingency. Had the original contingency estimate of 30 percent been used, there would have been an additional \$600,435 available for cost overruns.

All contractors were informed in the bid documents that "no geotechnical work has been done." Aware of this, contractors bid a Line 38 rock clause number that would minimally allow them to make a reasonable per cubic yard profit if bedrock was found. At the original per cubic yard price, had another contractor been selected such as Tennyson, the net change orders on a per cubic yard price would have been about one-fifth of Valley Utility's. In addition, the cost to taxpayers would have been substantially reduced, and likely eliminated entirely if the original 30 percent contingency had been used.

Questions:

Why was the Valley bid chosen when it appears to be irregular, and irregular in the most critical aspect of the bid, the Line 38 rock clause?

Was the PHUUD Steering Committee aware of substantial bedrock in their district?

Was the Valley bid an unbalanced bid?

Why was geotechnical work not required by staff, once substantial bedrock was found in the first week of construction (Rosenberg 12/7/09)?

Why wasn't Tennyson Electric brought in to replace Valley Utility early on, or another contractor such as Ranger Pipeline who has extensive experience digging in blue granite?

Why wasn't a competitive price in line with the other bids negotiated with Valley Utility, once substantial bedrock was found? (The city has stated they had the right to terminate the contract with Valley upon a 10 day notice.)

Why was the 30 percent project contingency amount in the Jan. 10, 2007 Harris Engineer Preliminary Draft report reduced to 14.25 percent?

Why didn't city staff inform city council members immediately in July?

Note: Cited works list to follow if needed. Most sources can be linked to City website except for Jan 10, 2007 Harris report which I have on file.

Rick Schiller