

CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Thursday, July 8, 2010

A Regular Session of the City Council Audit Subcommittee was held July 8, 2010, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection.

CALL TO ORDER Mayor Barbieri called the meeting to order at 7:40 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Judge Ken Kawaichi (ret.)

Staff: City Administrator Geoff Grote, City Clerk Ann Swift, Retired Public Works Director Larry Rosenberg and Recording Secretary Chris Harbert

PUBLIC FORUM There were no speakers for the public forum.

APPROVAL OF MINUTES **Resolved**, that the City Council Audit Subcommittee approves as submitted its meeting minutes of May 13, 2010.

Moved by Chiang, Seconded by Kawaichi

Ayes: Barbieri, Chiang, Kawaichi

Noes: None

Absent: None

FOLLOW-UP REPORTS Per the Subcommittee's requests of May 13, staff submitted and highlighted the following information:

- Exhibit 15-Underground Policy Comparison -- it was noted that over the course of the development of the Piedmont Hills Utility Undergrounding District (PHUUD), the district was subject to both the 2003 version and 2007 version of the City's Undergrounding Policy.

Public testimony was received from:

Rick Schiller inquired if project contingencies were required under the City's undergrounding policies. The Vice Mayor responded that City policy was silent as to this issue. However, during the preliminary cost estimate stage of a project, the factored in contingency was typically 30%. After construction bids were received, a 15% contingency was the typical standard.

- Exhibit 16-City Attorney's Response re PHUUD's Preliminary Expense Agreement -- the statement in the City's *Frequently Asked Questions* regarding reimbursement agreements indicating that "The reimbursement may be reduced if the actual costs for construction exceed the budget . . ." was inaccurate. The language of the Piedmont

Hills Undergrounding District's Preliminary Expense Agreement was consistent with what was discussed and approved by the City Council.

- Exhibit 17-Bid Review & Analysis Process--included correspondence from City Engineer Russ Moore of Harris & Associates detailing his analysis of the bid packages for the Piedmont Hills and Hampton/Sea View projects. It was noted that the City's decision to award the contract was based on the "base bid." Contracts for the previous Dudley/Blair and Wildwood/Crocker undergrounding projects were also awarded based on the "base bid."

Public testimony was received from:

Neil Teixeira referenced his correspondence of July 1 in inquiring why the City Administrator failed to determine that Valley Utility's bid was obviously an "irregular and unbalanced" bid and therefore should have been rejected.

Rick Schiller referenced his letter of June 9 in voicing dismay that City staff failed to recognize Valley Utility's transfer of risk given its extremely high rock clause provisions in comparison with other bidders and Valley's apparent effort to "buy" the contract with an irregular bid. He also inquired why the City failed to renegotiate Valley's rock clause line item prior to contract award.

The City Administrator responded that he did not know that Valley's bid was "unbalanced" and relied on the expertise of the City Engineer who did not identify the bid as irregular and recommended bid acceptance.

SCOPE OF WORK REPORT

The Subcommittee members reported on their review of background documentation related to the following scope of work assignments related to the Review of existing City Council policy for underground utility assessment districts (20B projects).

e. Construction--coordination, inspection and change orders and the role of the City Engineer (Chiang). The Vice Mayor delivered a detailed oral report of his examination of this issue, naming the personnel involved and their respective tasks and responsibilities, summarizing construction inspection activities and describing progress billings, the construction credit calculation process, change order procedures and management meetings and decisions. As an outgrowth of his examination, the Vice Mayor suggested that the Subcommittee include as one of its recommendations that a single, in-house team leader be appointed to oversee utility undergrounding projects. He also noted that based on his examination of the difficulties being encountered, the Piedmont Hills Project probably should have been "red flagged" in August to evaluate options. He also noted his continuing effort to ascertain when the project reached its "point of no return."

Public testimony was received from:

Rich Schiller inquired when the City Administrator first notified the City Council of the project's serious trouble. The City Administrator responded that he brought the matter to the Council's attention, including legal ramifications, in Closed Session on November 2, 2009. He added that he had notified Mayor Friedman about the problems in October at which time legal counsel was retained. The Administrator stated that a full report regarding the notification timeline will be given at the next meeting -- Scope of Work 2.d.: Timeline for seeking legal counsel (notification of the City Council and notification of the public).

f. Payments and commitments upon issuance of bonds (Chiang). The Vice Mayor provided a comprehensive report regarding bond issuance, redemptions, security, payouts, foreclosure provisions, etc. He stated that although the Series A & B bonds issued for the Piedmont Hills District were not secured by the City's General Fund, the City Council decided to appropriate the funds necessary to complete project construction for the reasons set forth at its meetings of December 12, 2009 and February 6, 2010.

Public testimony was received from:

George Childs urged the Subcommittee to take into account the risks cited by the Vice Mayor if the City had decided not to complete the Hills project when preparing its final recommendations, stressing that City taxpayers not be put at such great risk again for any future undergrounding projects.

g. Past experience with undergrounding projects (Barbieri). The Mayor referenced Exhibits 13 and 14 in comparing the financials for the Dudley/Blair, Wildwood Crocker and Piedmont Hills Undergrounding Projects, noting that essentially all three projects were similarly managed and budgeted. None conducted soil borings. The difference between the first two undergrounding projects which were completed on and slightly below budget, respectively, and Piedmont Hills was the extensive hard rock encountered during the Piedmont Hills project.

**League of Women Voters'
Task Force Requests**

The Subcommittee acknowledged receipt of a June 15, 2010, letter from the League of Women Voters Task Force requesting responses to a series of questions related to conflict of interest, costs, roles and responsibilities, risk management, district formation and subcommittee process. Judge Kawaichi submitted the following summary of the League's questions, as well as questions received from other residents:

1. Does the City have a conflict of interest policy regarding the City Engineer and the Outside Engineering Firm retained to perform design services?
2. Does the City have a policy regarding the use of General Fund monies for undergrounding districts which applies after formation?
 - a. How does the City define "direct" and "indirect" costs?

- b. Did the City pay direct or indirect costs associated with the Piedmont Hills district and not charge them to the district?
3. What were the specific roles and responsibilities of City staff?
 - a. City Clerk
 - b. Public Works
 - c. City Engineer
 - (i) does a document summarize?
 - (ii) did the roles and responsibilities change over time?
 - (iii) did the Council inquire about such roles and responsibilities?
 - (iv) who verified and audited the PHUUD overruns? When was it done?
4. What were the factors used to determine the contingency for the project?
5. What was the process used to determine what should be included in the documents?
6. Who decided to put zero for the quantity of rock?
7. Who reviewed and approved the bid documents?
8. What was the evaluation process for reviewing the bids?
9. Did anyone raise the issue that the hard rock bids were significantly unbalanced?
10. Was the City Engineer or any other department asked to review the bids results?
11. Was there a policy or practice for the City Engineer or other staff member to notify the Council of potential bid irregularities?
12. Will the Council consider adopting a policy that would require informing residents, at the time they signed a petition expressing preliminary interest in forming a district, what percentage of favorable votes the Council would require in order to proceed with the district?
13. What is the anticipated Subcommittee timetable?
14. How many meetings are expected and when does the Subcommittee expect to provide the Council with a work product?
15. If the bidders followed the state approved bidding format, is it true that the Valley Utility bid, although the lowest base bid, was not the overall best value or most advantageous?
16. Did the Administrator, City Attorney and PHUUD Steering Committee violate the State Public bidding laws by using an unknown firm with an irregular low bid coupled with unbalanced unit numbers?
17. Why was the Valley bid chosen when it appears to be irregular, particularly in the Line 38 rock clause?
18. Was the PHUUD Steering Committee aware of substantial bedrock in their district?
19. Was the Valley bid an unbalanced bid?
20. Why was geotechnical work not required by staff, once substantial bedrock was found in the first week of construction (Rosenberg 12/7/09)?

21. Why wasn't Tennyson Electric brought in to replace Valley early on, or another contractor, such as Ranger Pipeline who has extensive experience in digging in blue granite?
22. Why wasn't a competitive price in line with other bids negotiated with Valley Utility, once substantial bedrock was found. (City has stated they had a 10-day notice to terminate the contract).
23. Why was the 30% project contingency in the Jan. 10, 2007 Harris Engineer Preliminary Draft Report reduced to 14.25%?
24. Why didn't the City staff inform Councilmembers immediately in July?

The Subcommittee agreed that the above questions will be addressed either in the main text of the Subcommittee's final report or responded to as an addendum to the report, adding that many of the questions have already been answered. The Subcommittee requested the City Administrator to "flag" any questions that could potentially impact the City's litigation efforts.

Public testimony was received from:

Kathleen Quenneville inquired when the Subcommittee will complete its assignment and make its final report available to the public. She voiced concern that litigation related to the Piedmont Hills Project could proceed for years. The Mayor responded that no timetable has been established given the legal and confidentiality issues involved. He added that it is expected that the Subcommittee will complete the fact-finding portion of its Scope of Work at the next meeting. Thereafter it will prepare its report. The report will then be reviewed by legal counsel prior to its release to the public.

NEXT MEETING

July 21 at 7:30 p.m. in the Council Chambers. Meeting Agenda to cover Task 2 of the Scope of Work:

2. Application of City policy to the Piedmont Hills Underground Assessment District
 - a. Explanation of the engineering process for the district including the use of multiple firms
 - b. Timeline of expenditures including the development of "rock" issue
 - c. Available alternatives at the time rock was discovered
 - d. Timeline for seeking legal counsel (notification of the City Council and notification of the public)

The Subcommittee's Third Task:

3. Recommendations for the future
 - a. Limitation of financial exposure of the City from beginning stages through construction
 - b. Determination of tasks to be done in-house and those that should be contracted

- c. Process of early identification of problems and the reporting obligations
- d. Frequency and distribution of progress reports
- e. Process for review of contracts prior to signage by Mayor
- f. Applicability of these recommendations to other capital projects

will be addressed during the writing of the final report.

Judge Kawaichi requested staff to provide copies of City personnel rules and the job descriptions for the city clerk, public works director and city engineer. He also provided staff with documents provided by the Piedmont Hills Steering Committee, requesting that this document package be made available for public review at the City Clerk's Office.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 9:50 p.m.