

Oct. 26 2010

for next City Council Audit Sub-Committee

Valley Utility irregular bid item.

I presented a letter to the City Council Audit Committee on July 8, 2010 that highlighted Valley Utility's unusually high line 38 bid amount. Line 38 is the open ended "bedrock clause" that permitted the change work orders costing Piedmonter taxpayers over two million dollars. I asked why Senior City Staff accepted Valley Utility's bid knowing of this irregular line item. In response to my comments and General Contractor Neil Teixeira's similar comments, Geoff Grote stated (see 7/8/2010 video at about 30 minutes): "An irregular bid or a non-responsive bid, absolutely we have the legal authority to throw them out, and I think in our history we have . . . over my twenty some years . . . Nobody on my senior staff including myself, at the time (of opening the PHUUD bids) knew this was an irregular bid . . . What we were aware of on the senior staff was the analysis performed by the engineer."

Mr. Grote then refers to the Mar. 3, 2010 Russ Moore of Harris Associates to Larry Rosenberg email a day after the bids were opened. Harris recommends awarding the trenching contract for both PHUUD and Hampton-SeaView (H-SV) to Valley Utility. That email from Harris Associates also states: "You (Larry Rosenberg) informed me that MCH Electric withdrew their bids for Piedmont Hills and Hampton Sea View." The MCH bid for PHUUD contained a very high line 38 bid at \$6,000 per yard and limited the amount of bedrock at fifteen yards. The MCH bid was irregular and non-responsive. In the same email Harris lists seven items they will be checking for before awarding the contracts. Checking for irregular line items is not on the list. Harris Engineering is not involved with MCH's bid withdrawal.

The outrage of Piedmont taxpayers has been focused on no geotechnical work being done, either before or during the construction as massive amounts of bedrock were found in the first week. The outrage is justified as there are scores of geotechnical reports on file at City Hall showing the presence of bedrock at a shallow depth at various construction locations in both PHUUD and the terminated H-SV Utility district. The existence of significant amounts of bedrock was well documented and should have been known to Senior City Staff. All contractors bid knowing that no geotechnical work had been done. In the bid specifications all quantity items are fixed except for the line 38 "bedrock clause" and line 37 concerning fill at the bottom of the trench. Given that no preliminary geotechnical work has been done, the critical factor in controlling cost overruns and limiting risk to Piedmont taxpayers then becomes accepting a contract with a reasonable line 38 bid. As noted above Valley's line 38 is grossly irregular. With MCH's bid withdrawn, Valley Utility's line 38 bedrock amount exceeded other bidders by minimally 219%. Compared to the next lowest overall bid, Tennyson Electric, Valley's line 38 was 1,460% higher.

If Harris Associates was not required to check for irregular line items, who was responsible for examination and comparison of the line items and any irregular amounts? Why wasn't this critical aspect of Harris' work required?

Rick Schiller

To: Piedmont City Council Members & PHUUD Audit Committee. 11-2-2010
Re: Administrators Geoffery Grote's Public Contract Award

As a result of your inquiry of the two million dollar taxpayer bailout of the Piedmont Hills Underground Utility District (PHUUD), a critical issue remains unresolved. Either City Administrator Geoff Grote or City Engineer/Harris & Assc failed to abide by the Cal-Trans bidding guidelines, California Public Bidding Laws and section 25.0 (Rejection of Bids) of the PHUUD bidding documents. Valley Utility's irregular line 38 bid unit price of \$ 2190.00 per cubic yard for the removal of rock went unnoticed and unaddressed by both Administrator Geoff Grote and Harris Assc. This blatant collapse of basic public bid analysis resulted in the mis-award of the PHUUD construction contract to Valley Utility by Administrator Grote. This significant executive error is in violation of the Piedmont City Charter section 4.11, California Business & Professional code section 20415 and California Public Contract code sections (20161 & 20162), etc. There are over 100 more competitive bidding statues in California. All these statues are laws that are intended to protect the public and bidders by eliminating favoritism, fraud and corruption in the awarding of public contracts.

Both judicial case law and existing statues mandate that all public work projects must be awarded to the "lowest responsible bidder". Valley Utility's unit bid (line 38 rock) was glaringly irregular, thus their bid was non-responsive, based on State public bidding laws. Valley Utility's lower base bid amount was irrelevant and subordinate in relationship, to a "lower responsible bidder". Tennyson Electric was the "lowest responsible bidder" at the \$425.00 per cubic yard unit (line 38) for the rock removal and \$ 1,830,000.00 on their base bid element.

At the July 8th Audit Committee meeting Administrator Grote agreed. He stated that nobody on his senior staff, including himself had knowledge of any irregular unit numbers. That it was Harris Assc, that failed to recognize the irregular bid submitted by Valley Utility and it was Harris Assc contractual analysis that blinded Mr. Grote's judgment. I believe, based on Mr. Grotes 22 year pattern of awarding public contracts and Harris Assc March 3 email to Larry Rosenberg, that it was Administrator Geoffery Grote's sole administrative duty to screen-out/disqualify any bidders proposals with irregular or unbalanced unit numbers and to validate the contract award to the legitimate bidder. The seven analyzed items specified in Harris Assc Mar. 3rd email, do not include screening for irregular unit bid items.

The City of Piedmont and Harris & Assc are currently in litigation/mediation to resolve the law violations that occurred. If Mr. Grote claims are correct, then Harris Assc will be found culpable for failing to identify the irregular/non-responsive bid unit rock prices of Valley Utility and Piedmonters will be made-whole, with a financial settlement from Harris & Assc in the amount of 1.3 million dollars. If not?
The Piedmont City Council Members have a sworn duty to all the Citizenry of Piedmont to hold those responsible, accountable for their actions.

Neil Teixeira
