

**GRAND JUNCTION CITY COUNCIL  
MINUTES OF THE REGULAR MEETING**

**March 2, 2007**

The City Council of the City of Grand Junction convened into special session on the 2nd day of March 2007, at 3:12 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Gregg Palmer, Jim Spehar, Doug Thomason and President of the Council Jim Doody. Absent was Councilmember Bruce Hill. Also present were City Manager David Varley, City Attorney John Shaver, and City Clerk Stephanie Tuin.

President of the Council Doody called the meeting to order.

**Discussion of the Construction Bids for the Ranchmen's Ditch Flood Control Project, Phase I**

City Attorney John Shaver explained the reason for calling the meeting was the receipt of a letter from Scott Contracting asking that City Council reconsider the award of the contract for Phase I of the Ranchmen's Ditch Flood Control Project. The company owner has retained local counsel, Joe Coleman, who subsequently sent a letter to City Council with supporting arguments. The purpose of the meeting is to decide on whether the matter should be reheard or if Staff should proceed with the direction given at the last City Council meeting, which was to rebid the contract. The City Council has been provided with the bid tabulation sheets and had available to them the bid specifications. The bid specifications have certain language that states the Staff has the ability to negotiate terms with the low bidder. The manner on how to proceed is up to the City Council.

Councilmember Spehar asked about the procedure if the Council decides to reopen the consideration. City Attorney Shaver said a motion from a member that voted in the majority on February 21, 2007 would be required. If that motion passes, then Council has the discretion on how to proceed.

City Attorney Shaver advised that at this point, the readvertising for the rebid has begun. Councilmember Coons asked, if the Council wanted to award the bid at this point, what action needs to occur first.

City Attorney Shaver advised that the bids did not change, but based on a protest from Mendez that the bid was unbalanced, Staff went to Scott Contracting to address Mendez's concern. Scott Contracting offered to then take that item in dispute off the table in order to alleviate the concern that the bid was unbalanced. The bids were not technically changed but rather costs were reallocated.

Councilmember Coons asked for clarification on the protest from Mendez, that is, has a formal protest been lodged. City Attorney Shaver said Staff believes that there was

some concern expressed by Mendez when they were the second lowest bidder, the concern was expressed via email to Councilmember Hill and other Councilmembers. Mr. Shaver listed the reasons a bid can be rejected; items being unbalanced is one reason. A formal protest was not filed; however, Mendez's legal counsel did send a letter stating the complaint.

Councilmember Thomason asked how and when the bidders are notified as to the apparent low bid. Mr. Shaver advised the bid opening is a public process and once opened, the bids become public record.

Councilmember Palmer asked what happens if the scope of work changes or the negotiations end up with another contractor being the low bidder. Mr. Shaver responded that may well be the essence of an unbalanced bid. There are lots of variations that can occur in bids which is why the City Manager has the authority to determine whether or not a bid is unbalanced.

Councilmember Beckstein asked if it is not unusual for Staff to get clarifications on a bid before bringing it to Council. Mr. Shaver said that it is not only not unusual, it is expected so there are no contract disputes down the road. There are three general criteria: responsiveness, responsibility, and price.

Councilmember Coons asked if price ever changes. Mr. Shaver said Staff many times will sit down with the low bidder when all bids are over budget and rework the scope of the project to bring the costs down.

Councilmember Coons asked if the bid was awarded to Scott Contracting, is there a formal protest process for Mendez to follow? Mr. Shaver answered there is always a legal avenue. The current proceeding is an administrative process.

Councilmember Beckstein asked about a possible change order, how that works. City Attorney Shaver said changed conditions or unforeseen conditions constitute valid reasons for change orders. If it is a changed condition, the City looks very closely at that. If there was an unforeseen condition or something was missed, then those change orders are considered favorably. Councilmember Beckstein asked about change in the cost of materials. Mr. Shaver said it depends on whether it is material where the cost is known to be volatile.

Councilmember Thomason moved for the Council to reconsider the action taken February 21, 2007 that directed Staff to rebid the project. Councilmember Spehar seconded. Motion carried with Councilmember Palmer voting NO.

Councilmember Spehar moved to award the contract to Scott Contracting as the low bidder. Councilmember Thomason seconded.

Discussion then ensued.

Joseph Coleman, legal counsel for Scott Contracting, addressed the City Council. He noted that the Staff is the expert at looking at construction bids. Staff did their job. He is not an expert; he is here to be heard as a paid partisan for contractor. The low bidder gets the invitation to the table to negotiate the contract. In order for the City to continue getting good and qualified bids, the process must be fair and that is what Staff does.

Andrews Peters, Peters and Nolan, filling in for Attorney Bill Kane, representing Mr. Mendez and Mendez, Inc., addressed the City Council. He said they do not agree with Mr. Shaver's representation of how the negotiation took place. On February 15<sup>th</sup>, Mr. Mendez reviewed the apparent low bidder's bid. There was only ½% difference in Mendez's bid and the low bid. Mr. Mendez had concerns on the fill material. After that, Staff went to Scott Contracting and allowed them to rebalance the bid. He referred to the bid documents and the "ground rules" in those documents. He said City Staff allowed Scott Contracting to amend his bid. He said the bid was unbalanced. He referred to previous testimony by Engineering Manager Trent Prall that said it is unusual to allow this to occur. The bids opened on February 13<sup>th</sup> should be the bids. Once the bid has been awarded, then negotiations can take place. He asked that Council rescind the motion to rebid the project (all numbers are known now) and they will acknowledge that Scott Contracting was the apparent low bidder but the Mendez bid is in the best interest of the City because it takes into consideration certain variables. Mr. Peters referred to those certain items, one being the granular stabilization material; if more material is needed then the change in price is considerably more for Scott Contracting. Mr. Peters contended that was the purpose of the higher price by Scott Contracting was that they were banking on that quantity going over and they would make up the money lost on having a lower bid through a higher cost on the fill material.

Councilmember Coons noted that this issue was discussed at the February 21<sup>st</sup> meeting and how Scott Contracting incorporated other items in that unit cost. Those same items are in the Mendez bid in other areas. Mr. Peters went to the bid documents that stated those items had to be included in that line item.

Engineering Manager Trent Prall said that in order to quantify that work in the field, the unit cost includes the labor associated with the cost. There is still variability on putting the material in the ground itself. Mr. Bower (who figured Scott Contracting's bid) explained at the previous meeting why Scott Contracting came up with that unit cost. There were other varied costs. It is difficult construction, in a trench which is thirteen feet deep and thirty-five to forty foot wide.

Councilmember Coons asked if there are other line items variances. Mr. Prall compared mobilization costs, Scott was under \$100,000, Mendez, Inc. was over \$300,000. He identified a number of other areas those variances can occur.

Mr. Peters said the distinction is that the other variable amounts will not change but the stabilization material amount can change; it will be easy for the amount of rock to increase.

City Attorney Shaver said Staff is not advocating for either contractor. Establishing the public policy for Staff is the issue. The current policy is based on those three issues mentioned before. He offered to Mr. Mendez to rebalance his bid, as long as the bottom line does not change. It won't change who is the low bidder.

Councilmember Beckstein said rebalancing is not common but it did happen with the Duck Pond Park project. She asked if that is the same principal. Mr. Shaver said yes but it is subject to the unique circumstances. The question of the bid being unbalanced is not a usual circumstance which is the question Engineering Manager Prall answered.

Councilmember Coons asked what will happen if additional fill material is needed. City Attorney Shaver answered this is the way things are handled all the time. If the amount needed is more, the City will pay more. If it is less, then there will be savings. He recommended leaving it to the experts (Staff).

Engineering Manager Prall said Staff identified the granular stabilization material as being an issue before Mr. Mendez brought it up so Staff had discussed the amount of material specified. With a geotechnical engineer, the amount was determined as the worst case scenario. There are other ways to fill the hole besides the material; the use of fabric is another option, using pit run under the fabric. Staff is comfortable with the quantity of fill material in the bid documents.

Councilmember Spehar stated the intention of making the motion is to make the approval on the bottom line and not address the unit cost of the stabilization material. So the unit price would stay at \$42 per ton. Staff can negotiate after the award of the bid.

Councilmember Spehar said he did not see the bid as unbalanced; if there is going to be reallocation, Staff will do what their expertise allows them to do. He disagrees with Mr. Peters' contention that the City Council should be concerned with the line items in the bid. The low bid is a good deal by \$41,000 and the taxpayers are getting the best deal. He supports awarding the bid to Scott Contracting.

Councilmember Coons agreed and said it was unfortunate that Staff had to clarify the policy to increase the Council's comfort level. She agreed they should not rebid. She supported awarding the contract to Scott Contracting.

Councilmember Thomason said he should have spoken up at the last meeting; the process was just and not tainted. He is comfortable with the low bid.

Councilmember Palmer disagreed. He thought that Staff's actions demonstrated that Staff was concerned with the bid. He thinks the contract should be rebid. His problem is with Staff, any bid with a problem should be brought forward. It was a disservice for Staff to manipulate numbers.

Councilmember Beckstein said she has concerns as to what happened on February 21<sup>st</sup>; some of which occurred due to the new Councilmembers not being aware of the policy. She suggested a workshop on such policies. She noted other examples where bids were handled similarly. She supported the policy that is in place. She was not in favor of rebidding it on February 21<sup>st</sup>. She supports the award to Scott Contracting.

Council President Doody noted that Councilmember Spehar made the correct points early on and City Manager David Varley has the utmost integrity. He is going to support the award. He apologized to Staff for the use of the words “tinkering” and “manipulation” by members of City Council.

The City Clerk was asked to call the roll on the motion. The motion carried with Councilmember Palmer voting NO.

There being no other business, the meeting adjourned at 4:40 p.m.

Stephanie Tuin, MMC  
City Clerk