

CONTRACT REVIEW COMMITTEE  
MEETING  
WEDNESDAY, OCTOBER 20, 2010  
PRESCOTT, ARIZONA

MINUTES OF THE MEETING OF THE CONTRACT REVIEW COMMITTEE held on WEDNESDAY, OCTOBER 20, 2010, in the CITY HALL BASEMENT CONFERENCE ROOM, located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

A. Call to Order.

Member Hanna called the meeting to order at 5:08 p.m.

B. Roll Call

CONTRACT REVIEW COMMITTEE MEMBERS:

Present:

Member Steve Blair  
Member John Hanna

Absent:

Laura Lopas

GUESTS PRESENT: Joe Baines, John Turner, Jerry Carver, Ed Miller, Mike Fann, Mike Taylor, Tom Devereaux.

C. Discussion of boilerplate contract format.

Member Hanna asked if everyone had read the proposed contract. They had and there was a discussion about whether they thought it would help. They all agreed that it would not. It was agreed that the contract was so strict that it would scare off any competition; or contractors would just sign it and sue later because they felt that the wording would not stand up in court.

It was suggested that there should be a hard bid contract that went out to contractors. If they could get a bond, the contractors could come to a prebid construction conference. The City should show the minimum standards and let them know that the lowest bid would get the job.

There was a discussion about the Spire/Demerse job. The contractors felt that the contract was good but the City should have moved the utilities first. It was stated that the City should own the fact that they would have to pay the contractor to find the utilities. It was suggested that the excessive litigation was due to the economy, and if the contractor felt that they were at risk for legal fees, they might have a different perception. It was noted that contractors bid low and know that they will make up the money with change orders.

There was a discussion on prequalifying contractors, and there was opportunistic bidding that the City had no defense for. Member Blair was concerned with solving disputes early in the job before they got out of hand. They did not feel that prequalifying Spire would have helped the case.

Public Works Director Mark Nietupski arrived at 5:44 p.m.

The group had a discussion about allowance items. They talked about what the determining factor was that decided the amount of money that should be in the contract for those items. Member Hanna asked why Mr. Nietupski had to come before Council for change orders. Mr. Nietupski noted that the allowance had not been big enough to begin with. He noted that 95% of the work came in under the contract amount.

Mr. Nietupski said that some people were coming to the City to discuss ground penetrating radar to locate utilities. He noted that the equipment was more effective in sandy soils than in rock and clay. He also said that the Council had asked for a contract with more restrictive language, which was what they were currently looking at. He felt that the old contract was more in line with industry standards and allowed for negotiations for delays. He felt that the old contract could be improved and the new one did not solve any of the current problems.

There was a discussion about how much to include in the contracts concerning running into rock or water. The group thought that there should be some soft wording about it, but not too strong as to scare potential bidders off or to create bids that were unnecessarily high.

Member Hanna felt that the City was getting sued so often because the contracts were going out before the City was ready. Mr. Nietupski noted that Williamson Valley Road did not have a utility design yet. He was not going to let the contract out until he had it. He said that utility relocation was critical to the project and there had been pressure to get jobs done quickly in the past. Member Hanna asked why the Council was not asked to slow down.

It was suggested that the majority of lawsuits were related to utilities. Mr. Nietupski agreed. It was noted that all of the utilities would never be found, but the City should do more potholing, and the City should also do a thorough review when the gas company says that they were out of the way, to make sure that they really were. It was suggested that the City should take the burden on for the utility companies.

Member Blair asked what needed to be fixed in the contract. Comments were made that there were two things; plan preparation and knowing that the plans were complete. They felt that prequalifying contractors with no unit pricing for rock, making the rock excavation the contractor's responsibility, was also good.

It was suggested that on complex jobs, there should be mandatory prebids with a check list, and there should also be a prebid meeting to let the contractors know that they will encounter rock. Mr. Fann mentioned that Mr. Carver was a great resource for information and should be used.

Member Hanna said that they were trying to benefit everyone with the contract and would like to get together with Mr. Nietupski and Mr. Kidd next week so they could hear from the group.

There was a discussion about where the Spire job went wrong. Mr. Nietupski said that when the City denied their request for rock, the relationship went south. Mr. Carver asked if the contractors had a "termination for convenience" in their contracts. Mr. Nietupski said that it was in the City contract. Mr. Fann said that he could not think of a time when it was ever used.

There was discussion about arbitrations and the use of expert witnesses. The group agreed that the City had to have an expert witness to stand up against the expert witness of the plaintiff. Mr. Nietupski said that dispute resolution needed to be included. They discussed who might be a good middle person to use before the case got into the lawyers hands.

The group agreed to meet Thursday, October 28, 2010, at 5:00 p.m.

D. Adjournment

There being no further business to be discussed, the Contract Review Committee meeting of October 20, 2010, adjourned at 7:02 p.m.