

Special City Council Meeting  
Wednesday, July 31, 2019

**Opening:**

Medina City Council met in special, open session on Wednesday, July 31, 2019. The meeting was called to order at 5:00 p.m. by President of Council John Coyne, in the Council Rotunda.

**Roll Call:**

The roll was called with the following members of Council present B. Starcher, J. Coyne, E. Heffinger, B. Lamb, P. Rose, J. Shields and D. Simpson.

Also present were the following members of the Administration: Mayor Dennis Hanwell, Keith Dirham, Greg Huber, Patrick Patton, Nino Piccoli, Chief Kinney, Dan Gladish, Kimberly Marshall, Janson Wehrley and Jonathan Mendel.

**Unfinished Business.**

Mr. Coyne asked Law Director Greg Huber if he had an update on the status of the parking deck and a recommendation. Mr. Huber replied, as Council knows, received bids from three contractors. One was from Mr. Coates, one was from CPS and one was from Ruhlin. The complication with respect to the bid process had to do with assumptions that Ruhlin attached to their bid. The assumptions were objected to by Mr. Fratto. We stopped the process at that point so that I could look at it. He stated he asked Atty. Greg Beck to also analyze the issue, he represented us involving the previous litigation concerning the bid process and I'm going to ask him to address the Council and he will tell you his legal reasoning as to what we are going to recommend.

Atty. Greg Beck introduced himself. He stated, as Greg indicated, I was involved in the initial federal litigation so I had a chance to look at all of these documents and so forth and as you know historically, the original bids were presented in March and ultimately Ruhlin had proposed an alternative and that was accepted by Council, but then that process was sort of redone. The whole package was resent and everyone had a chance to rebid. This time around, Ruhlin, CPS and Coates they presented their proposals for the orientations and so forth, but what Ruhlin had chosen to do this time was what they did the first time, which was not only with their cost proposal did they set forth what they felt it would cost to do the deck, but they attached what they called "assumptions" which materially altered the request for proposal. What happened was is that when Ruhlin's initial proposal was reviewed by Desmond, your consultant, Desmond noted that the assumptions attached to the Ruhlin proposal the very first time, were in conflict with the RFP. The way that works procedurally is, that under Ohio law, based upon your bid documents, you cannot modify a proposal once it's been presented. What that means is that when Ruhlin made this new proposal, it also contained the same assumptions and, in my opinion, those assumptions are in conflict with your request for proposal. Which means that that technical proposal by Ruhlin should be rejected. The reason is that you cannot now modify, allow Ruhlin to withdraw those assumptions, because that would be fundamentally unfair and would fly in the face of the whole competitive bid process. When you have your RFP that says specifically there can be no modifications once the bids are submitted, you have to follow that rule. Now, when you look at the Ruhlin proposal, and both Desmond and everyone looking at it suggests that their proposal is to modify the actual cost that they bid because of these assumptions, there is nothing you can do about it and the bid is now, in my opinion, in conflict with the RFP and needs to be rejected, so it is my recommendation that Council should reject the bid proposal of Ruhlin and then decide what you are going to do from there.

Mr. Coyne asked if there has been any discussions with our consultant Desmond Consulting. Do we have any more information from him?

Mr. Beck stated he spoke with John Judge (Desmond) today because he had written him an email because I wanted to know sort of the sequence of events and the way the timing worked is that you know that a technical proposal is made by all of the contractors and then the interview and the committee process occurs. When that's done then the actual cost proposal is presented. The timing of that was that after they had done their evaluations, then the cost proposals were opened and that's when those assumptions should have been identified. What Mr. Judge acknowledged was that at that instant, there should have been some action on their part to alert Council to the fact that despite their evaluation and picking Ruhlin as the best and lowest, there should have been an immediate acknowledgement that that cost proposal bid was outside the RFP, which would have been switched out, I believe, their analysis of who was the best and the lowest. If you really read the assumptions, what it means is that Ruhlin is allowed to deviate from the cost, so that's the problem. That's what happened and I think, Desmond did not do that, and they acknowledged they didn't do that. That kind of puts us in this dilemma which is why I am going through this lengthy process of saying that had that been done, I believe the same recommendation would have been made by Mr. Huber if you would have been alerted immediately once that cost proposal was opened and then you would have moved accordingly. But now, we are where we are, so I believe that we just, my suggestion is that you just reject the Ruhlin proposal.

Mr. Coyne said, so if that's the recommendation about rejecting that proposal, is the next recommendation, as far as the award of the successful bidder, to follow the second in line, or what happens because we already ranked them I guess based upon the technical proposal and the cost proposal. I would assume what you're saying is that if we reject the first in line, you go to the second in line.

Mr. Beck responded, yes and I am assuming in that analysis, and I would of course defer to Mr. Patton on that, that both the second and third in line are at least in compliance with the RFP and, assuming that that's true, then I believe you should follow in that order.

Mr. Coyne asked if Council had any questions.

Mr. Lamb said the question he has is, are the other two in compliance?

Mr. Patton stated yes they are.

Mr. Coyne stated that the recommendation from the administration would be to follow the rankings we've had and I guess the second in line would be CPS, is that correct?

Mr. Patton stated, that is correct, based on our evaluation, they did come in second in terms of our point total for both technical and cost proposals.

Mr. Simpson asked, I believe it was a representative from CPS, I don't know if he's here tonight,

at the last meeting when we stated that one of the reasons the recommendation was for Ruhlin was because they were actually the ones with the most parking spaces and the representative from CPS stated that, well it's the same block, same dimensions and he felt that the parking spaces were too small in Ruhlin's estimate, but if that's what you want, we can put as many parking spaces in as Ruhlin. Does that conflict with, I just want to make sure, if I'm voting for the #2 choice, that I still want, one of the goals is the most parking spaces. Are they allowed to modify their submission for the number of parking spaces that they submitted to add more?

Mr. Beck stated no, we are not going to go down that road. I believe that if you accept the CPS Construction proposal, you accept it as it is and you know when you do so you are acknowledging..

Mr. Simpson stated, ok you answered my question, thank you.

Mr. Coyne stated there is the updated determination, everybody has seen the drawings, we went through the technical at the last meeting. We found this issue that came up so we tabled it until this meeting, and so what I'm going to do is I'm going to put a proposal in an ordinance to accept the second bidder and then you will vote yea or nay on that, everybody understand?

**Ord. 114-19:**

**An Ordinance authorizing the Mayor to execute a Design-Build Contract with CPS Construction, Inc. for Design and Construction of a City Hall Parking Structure.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 114-19, seconded by Mr. Simpson. Mr. Shields moved that the emergency clause be added to Ordinance/Resolution No. 114-19, seconded by Mr. Simpson. The roll was called on adding the emergency clause and was approved by the yea votes of B. Lamb, P. Rose, J. Shields, D. Simpson, B. Starcher, J. Coyne and E. Heffinger. The roll was called on Ordinance/Resolution No. 114-19 and was approved by the yea votes of J. Coyne, E. Heffinger, B. Lamb, P. Rose, J. Shields, D. Simpson and B. Starcher.

**New Business.**

**Ord. 116-19:**

**An Ordinance of the Council of the City of Medina, Ohio certifying that when a municipal obligation was incurred sums were lawfully appropriated in the funds to satisfy the obligation and sufficient sums currently exist to satisfy this obligation.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 116-19, seconded by Mr. Simpson. Mr. Shields moved that the emergency clause be added to Ordinance/Resolution No. 116-19, seconded by Mr. Simpson. Mr. Huber stated that they need a P.O. for Baker Dublikar in order to pay them for the work that they've done in connection with this bid process and litigation that took place in federal court. The roll was called on adding the emergency clause and was approved by the yea votes of P. Rose, J. Shields, D. Simpson, B. Starcher, J. Coyne, E. Heffinger and B. Lamb. The roll was called and Ordinance/Resolution No. 116-19 passed by the yea votes of B. Lamb, P. Rose, J. Shields, D. Simpson, B. Starcher, J. Coyne and E. Heffinger.

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**Adjournment:**

There being no further business before Council, the meeting adjourned at 5:31 p.m.

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Kathy Patton, CMC - Clerk of Council

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John M. Coyne, President of Council