

MINUTES
ORMOND BEACH CITY COMMISSION SPECIAL MEETING
HELD AT CITY HALL COMMISSION CONFERENCE ROOM

June 30, 2014

5:30 p.m.

City Commission Conference Room

Present were: Mayor Ed Kelley, Commissioners James Stowers, Rick Boehm, and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager and Public Works Director Ted MacLeod, City Attorney Randy Hayes, Finance Director Kelly McGuire and City Clerk Scott McKee.

A G E N D A

1. CALL TO ORDER

2. STAFF ACTION ITEMS

A. SOLID WASTE COLLECTION AND DISPOSAL

Staff Contact: *Theodore MacLeod, Assistant City Manager (386-676-3200)*

3. ADJOURNMENT

Item #1 – Meeting Call to Order

Mayor Kelley called the meeting to order at 5:32 p.m.

Item #2 – Solid Waste Collection and Disposal

Ms. Joyce Shanahan, City Manager, stated that in March the city was unable to reach an agreement with Waste Management for the renewal of their third five-year agreement. She explained that the city then requested bids be submitted for those services whereby three proposals were received. She stated that the lowest responsive bidder was Waste Pro. She explained that the same level of service was to be provided and that the current level of service included twice per week collection by manual pickup, as well as recycling and yard waste services. She stated that Waste Pro's bid amount was \$5,052,170, which was higher than the city's current contract and in order to phase in the adjustment to citizens, staff recommended the increase be phased in at 80 cents per month for the first three years. She explained this recommendation was not part of the issue being voted on tonight, but that she wanted to mention it to the Commission for informational purposes only. She stated that currently citizens paid \$16.81 for these services which would initially increase to \$17.61.

Ms. Shanahan explained that by state statute staff had to send out their intent to award the bid and must send it seven days prior to the bid award. She stated that staff was recommending that the City Commission award the bid to Waste Pro. She noted that if that was the will of the Commission, then tomorrow staff would send their intent to award the bid and then bring the contract to the City Commission on July 29, 2014, for their consideration.

Ms. Kelly McGuire, Finance Director, noted that staff had received confirmation from Waste Pro that while they bid \$5,052,170 for manual pickup services, they would do it for the price they bid for containerized services. She explained that the contract price would then be \$4,957,130.

Mayor Kelley stated that he would accept responsibility for not being strong enough with regards to arguing against going out to bid for the contract. He stated that he believed the current service level was not evaluated carefully, nor was the competitive rate the city had for the services, noting that the city had the lowest rate in Volusia County. He explained that Waste Management was a partner with the city for almost 15 years and provided a great level of service. He noted that the vote to go out to bid was not unanimous but that it had passed. He explained that the bids came in and the lowest bid came in at almost a million dollars a year more than the current contract. He noted that there might have been a feeling that a bid would come in under what they were currently

paying. He lamented that he was not persuasive enough in his oral arguments against going out to bid.

Ms. Janie Coleman, Waste Management, thanked the Commission for allowing her to speak to them tonight and thanked them for allowing Waste Management to serve the city. She stated that Waste Management had requested an extension of their agreement with the city and at that time made some offers which were rejected. She stated that the City Commission made the decision to put out a Request for Proposal (RFP) in anticipation of receiving a lower rate. She noted that at that time she had said that the city's current rate was below the market average and that the RFP responses proved her statement to be true. She stated that the City Commission may recall that her competitor, Waste Pro, had spoken at that City Commission meeting and told the Commission that their commercial rate was currently too high and that they could save the city money by going out for bids. She noted that Waste Management's commercial rate was \$5.26 a yard and Waste Pro's commercial rate came in at \$7.78 a yard.

Ms. Coleman stated that Waste Management's drivers in Ormond Beach had the highest safety record of anyone in their company. She noted that those drivers celebrated 144,000 hours without an accident in Ormond Beach that week. She stated that it was a value to the city that those drivers drove the streets like they were their own and provided timely service. She stated that the drivers, mechanics, and helpers with Waste Management had great jobs and were paid good benefits. She noted that Waste Management contributed over \$10,000 per year towards those benefits for their workers and families. She stated that Waste Management provided consistent service day in and day out without the potential for the city's phones to ring with calls about missed routes and stops. She stated that city staff had been fair but firm to Waste Management. She explained that staff had expressed their expectations with regards to service and that Waste Management had met those expectations.

Ms. Coleman stated that she believed that the City Commission had three options before them. She explained that the City Commission could choose to throw out all of the proposals received and negotiate in good faith with Waste Management under the current contract, with no disruption in service and without any customer upsets or complaints. She noted that she believed that if the Commission chose that option that they would be able to negotiate something lower than any of the proposals that they received. She stated that the second option would be to award the contract as presented to Waste Pro and pay more money, lose a great contractor for the city, and run the risk of the city incurring routes not being completed.

Ms. Coleman stated that the third option would be to vote to negotiate with Waste Management as the second lowest proposal. She noted that the RFP allowed for the Commission to do so. She cited a recent City Commission meeting where a bid was awarded to a landscaping company that was the second lowest bidder as an example. She noted that Waste Management knew they were not the lowest bidder but explained that their employees provided a superior level of service that the city's residents and commercial customers had grown to expect. She stated that Waste Management would like the City Commission's vote to be to continue doing business with them.

Mr. Tim Dolan, Regional Vice President, Waste Pro, stated that Waste Pro was well founded in Volusia County and operated an office out of Daytona Beach. He stated that Waste Pro operated in South Daytona, Daytona Beach, Port Orange, and New Smyrna Beach, among other municipalities. He noted that Waste Pro had an excellent service reputation and recommended that the city contact those municipalities to inquire about their service. He stated that Ms. Coleman had mentioned several options but Waste Management had already had an opportunity to renew their contract and had also participated in the RFP process and turned in a bid like everyone else, noting that they were significantly higher than Waste Pro in their bid response.

Mayor Kelley stated that he had spoken to the City Attorney and that two of the options mentioned by Ms. Coleman were not actually options. He stated that the third option mentioned by Ms. Coleman, negotiating with the second place bidder, was not discussed.

Mr. Randy Hayes, City Attorney, clarified that the City Commission did have the ability to reject all bids but explained that the problem in doing so would be that if they did that then the next RFP put out would have to be substantially different from the initial rejected one. He noted that the option of negotiating with Waste Management was also not an option and further noted that the city had spoken with Waste Management's council. He

explained that the other option available would be to award a third five-year contract renewal to Waste Management under the existing terms of the current contract. He noted that opportunity was presented to Waste Management which was not something that they wished to do. He explained that the Commission did not have the ability to skip the bid provided by Waste Pro and negotiate directly with Waste Management. He reiterated that the only options available were to accept the lowest bidder or reject the bids if Waste Management wanted to honor the third five-year renewal of their current contract.

Mayor Kelley stated that he did a forward-looking schedule taking Waste Management's current cost and providing them with the 1.5% increase they requested, which the Commission had rejected when their renewal was initially discussed. He explained that projecting those figures forward, even with a 3% increase, would allow the cost to come in under \$4.6 million. He stated that if they accepted the lowest bidder, it would put the city close to where they would have been five years from now with Waste Management's contract, even with the increase they requested being approved. He explained that he had expressed to Mr. Hayes his desire to throw out all the bids and go out for the RFP again, as well as the desire to extend the contract offer to Waste Management, and was told that both of those courses did not seem to be options. He noted that accepting the lowest bid would not be of cost savings to the city. He asked if anyone else had any ideas or options.

Commissioner Partington stated that unfortunately he did not see any other options. He stated that if Waste Management would accept the five-year renewal under their current terms that would be something that he would be willing to discuss, but he noted that Waste Management apparently did not have any interest in doing so. He explained that he thought that the Commission knew this outcome was a possibility. He stated that the one positive thing from this process would be having the residents pay the cost of the service over the next three years and not having the city continue to subsidize the service costs.

Commissioner Boehm agreed with Commissioner Partington. He stated that Waste Management had their opportunity. He clarified that the example of the landscaping bid cited earlier was a different situation, as the lowest bidder in that circumstance submitted a bid that was unresponsive to the bid specifications. He noted that he had not seen evidence that Waste Pro's bid was an unresponsive bid. He explained that if they started rejecting bids because they liked a certain provider better or wanted to do the RFP over, then the city's bidding process would become useless. He stated Waste Management decided to raise their cost by 50% with their bid submittal. He noted that at the City Commission meeting where their contract renewal was discussed, they had requested an increase of 1.47%. He explained that Waste Management had made a corporate choice and were professionals who knew what the market was. He noted that if Waste Management was closer to \$10,000 over Waste Pro's bid, then perhaps there would be an argument; but he clarified that Waste Management's bid was \$1 million over Waste Pro's. He stated that he would be voting to accept the low bid.

Ms. Shanahan explained that staff would hold Waste Pro to the same standards that they had held Waste Management to. She noted that was part of the contract and that they had every expectation that the transition would be seamless for the residents. She explained that if it was not, then Waste Pro would be held accountable.

Commissioner Stowers stated that calling it an unfortunate set of circumstances would be an understatement. He noted that Waste Management had done quality work in the community for years. He stated that, as he said when Waste Management had requested the extension, the City Commission had the cost-of-living adjustment increase discussion last fall. He explained that he was not happy that Waste Management attempted to bootstrap that previous decision into their five-year extension request. He noted that, as Commissioner Boehm had said, that was their corporate decision. He explained that Waste Management made another corporate decision with their RFP response. He stated that he did not feel good about this outcome for the city, noting that they would be losing a quality representative and that the city would now be paying more for waste collection services.

Mayor Kelley stated that it would be difficult for him to personally support accepting the lowest bid. He stated that he would prefer to reject all bids and try and find a different solution. He noted that the city had always received good service from Waste Management. He explained that the problem the city was faced with was that they were in a situation where they were basically forced to accept the lowest bid since Waste

Management did not want to continue the current contract, noting that was the only other legal option available. He explained that rejecting the proposals and creating a new RFP would be a challenge, as he understood that the new RFP would have to be substantially different from the last one. He noted that the challenges facing them were a result of being in the public sector and that if the city were a private business they could do as they wished. He stated that he felt for the Waste Management employees, who had done a great job. He stated that it was sad that they were lead to believe that the city would save money by going out for bids, primarily on the commercial rate, and in fact the commercial rate came in almost 40% higher than their current rate.

Ms. Shanahan noted that the contract, if awarded, would not take effect until October.

Commissioner Partington moved, seconded by Commissioner Boehm, to approve staff's recommendation to award the bid to Waste Pro for twice per week manual collection and direct the City Attorney to draft a contract which would provide for formal award and approval, to be presented at the July 29, 2014, City Commission Meeting.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Other Business – Litigation Matters

Mr. Hayes noted that he needed to mention some pending litigation matters. He explained that statutes allowed for attorney-client sessions to discussion pending litigation matters, in which he would seek advice concerning those matters. He stated that the city currently had two such matters on the trial docket, Shirley Day vs. City of Ormond Beach and City of Ormond Beach vs. 1545 Ormond Beach LLC, 1545 Operations Inc. and Olivia Newman. He noted that he would be scheduling meetings to discuss both of those matters with the City Commission.

Mayor Kelley asked if any of the audience members who did not fill out comment cards wished to have the opportunity to speak. He noted that no one wished to speak.

Item #3 – Adjournment

The meeting was adjourned at 5:56 p.m.

APPROVED: July 29, 2014

BY:

Ed Kelley, Mayor

ATTEST:

J. Scott McKee, City Clerk