

**PINOLE / HERCULES
Wastewater Subcommittee**

**Minutes prepared by: Anita Tucci-Smith
January 15, 2015
8:30 A.M.**

The meeting was hosted by the City of Pinole in the Council Chambers of City Hall.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Tim Banuelos, Pinole Councilmember serving as Chair, called the meeting to order at 8:35 A.M. and led the Pledge of Allegiance.

2. ROLL CALL

Subcommittee Members Present:

Tim Banuelos, Councilmember, City of Pinole
Debbie Long, Councilmember, City of Pinole
Sherry McCoy, Mayor, City of Hercules
Dan Romero, Vice Mayor, City of Hercules

Subcommittee Members Absent:

None

Staff Present:

Belinda Espinosa, City Manager, Pinole
Hector de la Rosa, Assistant City Manager, Pinole
Benjamin Reyes, City Attorney, Pinole
Dean Allison, Public Works Director/City Engineer, Pinole
Mike Roberts, Public Works Director/City Engineer, Hercules

Members of the Public:

Anthony Gutierrez, Pinole
James Tillman, Wastewater Advocate, Pinole

3. CITIZENS TO BE HEARD – FOR ITEMS NOT ON THE AGENDA

There was no one to speak to items not on the agenda.

4. PREQUALIFICATION OF BIDDERS FOR PLANT UPGRADE: Receive a Presentation on the Prequalification Process

Mike Roberts, Hercules Public Works Director/City Engineer, offered a PowerPoint presentation on the prequalification process for the plant upgrade, reported that an updated prequalification document had been included in the Subcommittee packets, and explained that there was a legal basis for prequalifications codified into the State Public Contract Code.

Mr. Roberts explained that the process was intended to screen contractors and ensure that the contract would be awarded to someone with the financial ability and construction experience to complete the project. He highlighted the prequalification process, identified the prequalification criteria, the draft schedule, and a public hearing appeal process through staff if there was any protest of the action taken. Staff from both cities and Carollo Engineers, the Construction Managers, would conduct the prequalification review based on a scoring system.

Benjamin Reyes, Pinole City Attorney, responded to questions related to the appeal process, whether the recommended \$5 million liability insurance would be sufficient and appropriate, and how the coverage would be addressed given the two entities working on one project.

Jim Tillman, Pinole, suggested that the required bonds should be high enough to take care of any legal expenses as well as any construction expenses.

In response to Mr. Tillman as to whether the City of Pinole was more liable than the City of Hercules given that Pinole owned the land and the permit, **Mr. Reyes** stated there were adequate levels of insurance coverage on the project, not only through Contra Costa Municipal Pooling Authority coverage, but requiring the contractor to provide minimum levels of insurance appropriate to the project. Both Pinole and Hercules had a deductible of \$25,000 from the Pooling Authority which would be the full extent of the liability for the project before insurance coverage applied. He identified the numerous bonds, insurance, and indemnification involved that would protect the cities and explained that a contractor could not lien publicly owned projects.

On the discussion of the prequalification document itself, it was clarified that previous references to "owner" would be changed to "City of Pinole," there would be some renumbering, language that applied to Pinole would now also include Hercules, and references to the Redevelopment District would be removed.

When additional wordsmithing was requested by the Subcommittee, **Dean Allison, Pinole Public Works Director/City Engineer** emphasized the need for flexibility. The Subcommittee requested that a bidder's insurance history for at least five years be added to the requirements.

Jim Tillman, Pinole, suggested that the relationship of some contractors and subs could be problematic which could affect the project. He sought safeguards to protect the cities' interests.

With respect to further safeguards, **Mr. Reyes** stated the submittals and answers to the questions the contractors would submit pursuant to the questionnaire would be done under the penalty of perjury and audited financials had to be audited by an independent auditor. If a contractor committed fraud against a public agency there were criminal consequences.

On the question of whether there would be a point system for minority or women-based businesses, **Mr. Reyes** reported that the Supreme Court had ruled that race-based or gender-based metrics could no longer be used as a means of preference when awarding a public contract, although there would be a disadvantaged business enterprise goal that would have to be published as part of the State Revolving Loan Fund.

5. PROJECT UPDATE - Receive a Project Status Update on Project Schedule and Budget, and Results of Meeting with State Revolving Loan Committee

Pinole Public Works Director/City Engineer Dean Allison reported that staff from both cities had met with the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board (RWQCB), which published the deadlines affecting the project.

Mr. Allison explained that HDR was to have submitted 90 percent plans in December 2014, and while he had received the plans from HDR, they were not 90 percent plans. Given that the missed milestone could delay the project, meetings with HDR had occurred, most recently yesterday. While 50 percent of the budget with HDR remained and there were adequate funds to complete the project, there was a timing and resource issue, and the scheduled peer review by Carollo Engineers had been stopped. He had been advised by HDR that the plans would be in by the end of May 2015 in a complete way.

With respect to the meeting with the SWRCB, **Mr. Allison** had learned that the SWRCB had shifted from the environmental and technical issues to the legal and financial issues, and the City Attorneys would now be more involved in the process.

Hector de la Rosa, Pinole Assistant City Manager, reported on the status of the City's loan with the State Revolving Loan Fund, expected that everything would be in place by February or March, but noted that would not preclude going out to bid. He did not anticipate any problem with the loan and suggested that while not a concern the State may question whether rates were sufficient to pay back the loan.

Subcommittee members expressed concern for the missed milestone for the 90 percent plans.

Craig Olson, HDR Engineering, Inc., responded to the Subcommittee's concern for the missed milestone, acknowledged that he had previously spent 30 percent of his time on the upgrade project, after meeting with the cities he had now agreed to spend 50 percent of his time on the project, but explained that he could not spend 75 percent of his time, as requested by the Subcommittee, to catch up to the schedule because he did not have that level of time to commit to the project between now and May 2015.

Subcommittee Members expressed concern with the situation particularly given that the timelines and deadlines had been made clear to HDR, and HDR seemingly had insufficient resources to meet the agreed to deadlines. There were suggestions that HDR had breached the contract; concerns that the delay could jeopardize Carollo Engineers independent review of the plans; and concerns that it had taken HDR almost four months to complete 5 to 10 percent of the plans since the 65 percent plan submittal. The Wastewater Subcommittee:

- Requested a face-to-face meeting with HDR's Vice President to express its dissatisfaction with the lack of resources made available to complete the 90 percent plans as promised;
- Requested a face-to-face meeting with HDR's Vice President and the Hercules and Pinole City Managers and Public Works Directors by January 20, 2015 with an outline of the resources to be immediately provided;
- Expressed concern with Carollo Engineers in its attempt to proceed with its review of the 90 percent plans that were more like 70 percent plans, and requested a clarification as to the qualifications of the previously submitted 65 percent plans.

Anthony Gutierrez, Pinole, expressed concern with the discussion of a project schedule absent a Gann Chart. He recommended an updated project schedule to the March timeframe that was fully loaded, and if the resources were not available that should be shown on the chart.

Jim Tillman, Pinole, noted his understanding there had been two extensions to the RWQCB permit and asked what would happen if another extension was required; and if Pinole was fined who would pay that fine. He urged that HDR be required to hire the necessary resources to meet the deadline and to avoid jeopardizing the funding from the State Revolving Loan Fund. He wanted the item to be submitted to the Pinole City Council to bring the issue to the ratepayers to allow input, and recommended that HDR's principals be required to respond to the missed deadline.

Mr. Allison clarified that the City's RWQCB permit was a five-year permit, next due in 2017 when the plant would be under construction, that the RWQCB had been very cooperative, and that no fines had been mentioned. The RWQCB had been apprised of the missed deadline and the RWQCB had tasked the City to put together a letter identifying the milestones to get the project back on track.

6. MEETING DATE FOR SUBCOMMITTEE. Consider revising the meeting date for the Subcommittee

Given that the Wastewater Subcommittee meetings scheduled for the third

Thursday of each month conflicted with Public Works Directors meetings, **Mr. Allison** asked that the meeting dates be changed. He recommended that the Subcommittee meet on the second Thursday of each month, at 8:30 A.M.

7. ADDITIONAL COMMENTS AND REQUESTS FROM THE SUBCOMMITTEE

Pinole Councilmember Long commented that there had been a problem with the recording equipment in the Hercules Council Chambers, which was why the minutes from the December 18, 2014 meeting were not available. Given the importance of the meetings, she requested that the issue of the equipment be addressed, hopefully prior to the next meeting.

8. ADJOURNMENT

The meeting adjourned at 10:45 A.M. to a new meeting schedule for the second Thursday of each month, meeting next on February 12, 2015 at 8:30 A.M. in the City of Hercules.