

TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING HELD ON MONDAY, SEPTEMBER 12, 2011

1 **I. CALL TO ORDER AND ROLL CALL**

2
3 The Public Works Committee meeting was called to order on Monday, September 12,
4 2011 at 1:00 p.m. in the Town Council Chambers. On roll call, Chairman Pucillo and
5 Committee Member Kleid were present.
6

7 **II. APPROVAL OF AGENDA**

8
9 **Motion was made by Committee Member Kleid and seconded by Chairman Pucillo to**
10 **approve the Agenda. On call for a vote, the motion carried unanimously.**
11

12 Town Clerk Owens administered the oath to all those who would be providing testimony.
13

14 **III. PUBLIC COMMENT - None**

15
16 **IV. REVIEW OF THE A-39 TO A-7 SANITARY SEWER FORCE MAIN**
17 **REPLACEMENT PROJECT AND THE ACCELERATED CAPITAL**
18 **IMPROVEMENT PROGRAM.**
19

20 **A. HISTORY OF THE ACCELERATED CAPITAL IMPROVEMENT PROGRAM**

21
22 Director of Public Works Brazil provided an overview of the Capital Improvement
23 Program, and how the A-39 to A-7 Sanitary Sewer Force Main Replacement Project fits
24 within it. He stated that the pipes were 50 years old, and emphasized the need to replace
25 the aging sewage force main system and to upgrade the sewage pump stations.
26

27 **B. CONTRACTING OPTIONS**

28
29 Bud Goblisch, Jacobs Engineering, provided a brief summary of the contracting options
30 for this project.
31

32 Committee Member Kleid asked for clarification on the Construction Manager at Risk
33 (CM-AR). Director Brazil responded that the additional fees charged in the CM-AR
34 option guaranty a maximum price for the project, and protect the Town from liabilities
35 due to change orders, claims and litigation, and increased equipment and labor fees. Staff

1 feels it is in the best interest of the Town to use a mix of CM-AR for larger projects and
2 the design/bid/build process for smaller projects.

3
4 Town Manger Elwell requested that Burkhardt Construction advise the Committee as to
5 how they ought to analyze the pros and cons of the CM-AR option so that the Town
6 Council can make a policy decision as to whether or not the \$617,000 in CM-AR fees is a
7 wise investment, and whether or not the Town stays with the CM-AR option or changes
8 course.

9
10 Vince Burkhardt, Burkhardt Construction, responded that he has been working in water
11 and wastewater construction for 30 years, and that unforeseeable situations requiring
12 change orders come up every day. The industry standard for costs associated with
13 change orders is about 3.5% of the overall project cost. He advised that this 3.5% does
14 not include litigation costs, which can triple a project's original budget.

15
16 Chairman Pucillo requested clarification on what change orders would be the contractor's
17 responsibility, and what change orders would be the Town's responsibility under the CM-
18 AR option. Director Brazil replied that if the contractor missed something in the bid or
19 should have known that something was there, it's the contractor's problem. If it is a
20 changed condition in the field, it will be the Town's responsibility. Director Brazil
21 affirmed that, under CM-AR, if a contractor loses time on the job due to changed
22 conditions, it will be the contractor's problem. Under the design-build method, the
23 contractor can sue the Town for that lost time.

24
25 Committee Member Kleid stated that the issue comes down to a policy decision on how
26 much self-insurance the Town should have. He asked whether or not the potential claims
27 and costs to the Town could reasonably be expected to exceed \$617,000. Director Brazil
28 stated that the potential exists, but that he could not guarantee it. Committee Member
29 Kleid asked Director Brazil if he thinks there is a reasonably prudent risk that we should
30 protect ourselves against, in excess of \$617,000, for claims that may occur due to
31 possible delays in this project. Director Brazil responded that he does, and that is why he
32 recommended this option.

33
34 Chairman Pucillo read from a report submitted by Matthews Consulting Engineers
35 (MCS), stating that they feel that there is not \$849,000 worth of risk involved with this
36 project; that this number can be drastically reduced. Burkhardt reduced the number to
37 \$617,000; however, MCS feels that there is only about \$400,000 worth of risk involved.
38 He questioned the different estimates.

39
40 Director Brazil explained that, in staff's experience of building in the Town, there is a
41 very strong possibility that we will run into the unforeseeable, resulting in change orders
42 and the claims associated with them.

43
44 Chairman Pucillo asked for MCS to respond to staff's comments. Rene Matthews, MCS,
45 responded that they were pleased to see that the fee had been reduced to \$617,000. She
46 stated that she has seen a trend in the market over the last two years whereby contractors

1 have been closing their businesses. The CM-AR fee includes these risks as well as the
2 claims staff has brought up. In the case where the contractor does not or cannot complete
3 the project, the CM-AR is responsible for getting another contractor on board to finish
4 their piece of the project. In an open bid situation, the contractor isn't going to turn
5 around and hire another contractor to finish his job for him. The Town will have to
6 negotiate with that contractor or his bonding company, or cancel the contract and get
7 someone else on board.

8
9 Committee Member Kleid asked why we require contractors to put up bonds. Ms.
10 Matthews responded that, if the contractor does not complete the project, the bonding
11 company comes in and takes their bond fee and hires someone else to finish the project.
12 Unfortunately, this process adds a substantial amount of time to completing the project.
13 The "at risk" part relates to the contractor who is actually performing the work on the
14 project, in this case it would be Burkhardt's subcontractors.

15
16 Committee Member Kleid asked if the subcontractors are required to put up bonds. Mr.
17 Burkhardt responded that they were. Committee Member Kleid asked what would
18 happen if Burkhardt went bankrupt. Ms. Matthews responded that the risk fee covers the
19 contractors below Burkhardt, not Burkhardt itself.

20
21 Town Manager Elwell clarified that the risk fee does not cover the Town if Burkhardt
22 fails to complete the project. It only covers their subcontractors' failure to complete their
23 portion of the project.

24
25 Mr. Burkhardt responded that, if Burkhardt goes bankrupt, the Town is still guaranteed to
26 have the project completed for the original guaranteed maximum price (GMP) by
27 Burkhardt's bonding company. They will step in and act as the completing surety,
28 thereby assuming every obligation that Burkhardt had.

29
30 Chairman Pucillo asked if this would be true if we went with either the CM-AR or
31 Construction Manager (CM) route. Mr. Burkhardt responded that it would not
32 necessarily apply to both. If the Town assumes a CM only, Burkhardt would assume no
33 risk and they would not have any subcontracts. All subcontracts would contract directly
34 with the Town, making all the subcontractors prime contractors. Burkhardt would end up
35 managing those contractors and get a management fee in that case.

36
37 Mr. Burkhardt clarified that the \$617,000 risk fee is not an insurance premium; a portion
38 of that money is their profit. The profit is not going to go away if the Town chooses not
39 to go the CM-AR route. If the Town chooses the design-build method, the prime
40 contractor's profit would be included in each of the unit prices spread across the entire
41 project.

42
43 Chairman Pucillo discussed options for the amount of contingency if the Town chooses a
44 Construction Manager (CM) route. Director Brazil stated that staff and the consultants
45 would have to look into how much the CM process would cost, but to date we haven't
46 talked about anything but CM-AR.

1 Committee Member Kleid asked that, if we change gears to the CM process, will we have
2 any problems in keeping to our schedule. Town Manager Elwell stated that, due to the
3 revised start date, changing the process would not affect the schedule.
4

5 David Rosow, Town Council President, asked Mr. Burkhardt how much of the at risk fee
6 was their profit. Mr. Burkhardt stated that it was approximately half of the \$617,000. In
7 response to Mr. Rosow, Mr. Burkhardt stated that the amount of profit worked into the
8 price would be roughly the same if the Town chose to go the CM route. Mr. Rosow
9 inquired about the costs for individual items listed in the bid documents and whether they
10 were truly necessary; he suggested that some of them could be removed or revised.
11

12 Town Manager Elwell added that some of the items in the bid documents were Palm
13 Beach standards that over the years, and at the direction of prior Town Councils, have
14 been required for all projects in Town, but would not necessarily be required elsewhere.
15 If the Committee wishes, staff can go back and look at those areas where there are
16 requirements in Palm Beach that are not requirements in other communities. We would
17 have an opportunity to find additional savings; but, the impact to the community would
18 be greater. Committee Member Kleid stated that he did not want to pursue that particular
19 avenue.
20

21 Committee Member Kleid expressed concern over the traffic closures. Director Brazil
22 stated that some areas will require full lane closures, some will not. He added that the
23 Town will attempt to restore traffic at night in some areas.
24

25 William Diamond, Town Council Member, requested that the Committee look into our
26 procedures and how we got here in the first place. He stated that we cannot hold
27 meetings like this for every major contract that comes before the Town Council.
28

29 Committee Member Kleid referenced staff's comment in the agenda backup regarding
30 scheduling more frequent Committee meetings. If the Committee chooses to go over
31 every project, then it would have to meet as much as monthly. There has to be a happy
32 meeting ground between what projects we review now and how many projects we will
33 review in the future.
34

35 Chairman Pucillo commented on the criticisms of Burkhardt by the Matthews' report,
36 and asked Burkhardt if they would be comfortable working with Matthews on this job
37 going forward. Both Burkhardt and Matthews answered that they absolutely would.
38

39 Discussion ensued regarding having multiple levels of protection by contracting for
40 additional field inspectors. Staff stated that the CM-AR process provides a third layer of
41 protection.
42

43 Michael Ciminero, Crowe Horwath Internal Auditors, stated that they are in the process
44 of issuing a final report on this process as it relates to procurement and construction. We
45 have looked at the Town's documented policies and procedures, and internal controls.

We do feel that there are opportunities to improve the documented procedures behind this sort of process.

The Committee discussed the following options:

A) Accept the CM-AR proposal negotiated with Burkhardt Construction as of August 29, 2011. Town staff, Consultant and Burkhardt will continue to seek value engineering, whenever the opportunity arises, all the way through project completion.

B) Proceed with a CM and have the Town assume additional risk on the project by eliminating the at risk fee. If this alternative is selected, Town staff recommends that the owner's contingency be increased from 10% to 15%. Burkhardt would still provide the construction management services with monthly reporting.

After hearing what he heard today, Chairman Pucillo states Option "B" is not a realistic option. It would not simply remove the \$617,000 at-risks fee as some of that is their profit, which would be worked into the new estimate. However, staff would need some time to work with Burkhardt to revise the project and to get an estimate for the CM option.

Chairman Pucillo stated that he doesn't see how the Committee can recommend option "B", since we don't know how much it would cost.

Town Manager Elwell stated the Committee could direct staff to fully develop "B" so that you know what it looks like side by side with option "A". You would be armed with that information in October plus the Crowe Horwath report, and you could make an informed decision then.

Robert Wildrick, Town Council President Pro Tem, stated that he has seen the draft audit report, without the Management responses, and the process will need some procedural and system enhancements and changes, which he does not think would affect the decision to go with a CM. The question is do we have the infrastructure and internal resources in place to manage a project of this magnitude without a CM at this time. He spoke regarding items in the bid response that he thought Burkhardt was nickel and diming the Town on.

David Rosow, Town Council President, stated that there was an option "D". The Town could reject Burkhardt's proposal, cancel the contract with them, and negotiate with the second highest ranked firm.

Chairman Pucillo expressed his concern that the process started to look like we were starting to do something that was a competitive bid process without the bids. He stated that we really haven't heard from the other firms; we have not tested it in the marketplace. The overall question that creates is whether we are really

1 getting the best price we can get here. He asked Mr. Burkhardt if he felt we were
2 getting the best price, and if so why.
3

4 Mr. Burkhardt responded that there are not cheaper prices out there than the
5 \$7,324,000, and that there is not a better value out there. We have proved
6 ourselves on the Worth Avenue project. In reference to Chairman Pucillo's
7 previous remarks, Mr. Burkhardt stated that the lion's share of the cost has been
8 put out on a publically advertised, competitively bid basis. We may be able to
9 find some nickel and dime savings. The beauty of this kind of contract is that if
10 the Town Council wants to remove an item, they can do so.
11

12 Chairman Pucillo asked Ms. Matthews about the differences between their cost
13 estimate and Burkhardt's. She stated she sees these numbers to be an apples and
14 oranges comparison. When we put together our estimates, they were based on the
15 project being competitively bid, not a CM-AR. The difference is that our
16 numbers assume contractors are bidding this job with very sharp pencils. The
17 CM-AR number is a GMP, and includes some safety factors for quantities. Our
18 number is based on the low bid. With a CM-AR project, there are typically
19 quantities that are not used, but are included in the estimate. You can typically
20 see a five to eight percent return at the end of the project because not all of the
21 quantities are used. This is why our numbers are not paralleling.
22

23 Mr. Burkhardt added that they only bill what the actual costs are. The Town may
24 not actually pay the GMP; the project could come in at what Matthews has
25 estimated. He stated that on the Worth Avenue project, they actually came in at
26 over \$300,000 under the GMP.
27

28 Chairman Pucillo asked Mr. Burkhardt whether or not his firm would bid if the
29 Town put the project back out to bid. Mr. Burkhardt responded that his firm
30 would not bid because they are not in competition with true underground utility
31 contractors. When we publically advertised, we had a very strict process that we
32 worked very closely with staff and we pre-qualified all of those prime utility
33 contractors. If they were not already pre-qualified with the Town, we pre-
34 qualified them in conjunction with Town staff. That is the exact same procedure
35 the town would go through if it went back out to bid. Since all of the numbers are
36 already public and out on the street, I would be shocked if Johnson Davis bid
37 again, they were already very low in their bid. The market is starting to pick up,
38 especially for utility contractors.
39

40 Chairman Pucillo asked Mr. Burkhardt, if the Committee recommends to the
41 Town Council that we should continue with the CM-AR process but that we need
42 to get the number lower, would his firm be able to squeeze some more dollars
43 here without sacrificing the quality of construction. We don't want to see corners
44 cut by using substandard materials, but maybe we can cut corners with how many
45 streets are open, we could possibly discuss the liaison, etc.
46

Mr. Burkhardt stated that he did not want to say if they could or couldn't, but they would give it a good shot. The cost savings of our new estimate has been a result of many hours of doing exactly that. The estimate we have provided is a very fair price for what we are guarantying.

Gail Coniglio, Mayor, expressed her concern that, due to the age of this system, it will not be a simple project; you are going to come across unforeseen problems. This may not only increase the costs, but it may also cause the project to extend across two summers instead of one.

Committee Member Kleid stated that he has not given up on option "B". We don't have to make a decision today, we can do a little more research and wait for the Auditor's report, and we can get more information on the actual costs. If we are only talking about saving two or three hundred dollars by moving away from option "A", then he would be in favor of going with option "A".

Chairman Pucillo requested that Burkhardt come back with a real plan for option "B" so that we can get a clear comparison between the CM-AR and CM processes. In regard to option "A", he asked Burkhardt to "sharpen their pencils" and look for cost savings. He stated that it seems to him that, if the numbers are reasonable, a few of his colleagues will be prepared to go along with the CM-AR.

- C) Terminate the contract with Burkhardt Construction, and proceed with a low bid process.

Director Brazil stated that this option would take the longest to get cost estimates as the project will have to go back out to bid.

- D) Reject Burkhardt's proposal and negotiate with the second highest ranked firm.

Chairman Pucillo requested that Director Brazil provide further input on options "C" and "D". He asked that, if we went one of these routes, would we still be able to complete the project in one summer, and how these options would affect the estimates that come in.

Director Brazil responded that staff thinks that with an aggressive schedule we could still start building this summer or we could wait until the following summer; however, he could not guarantee that the prices would not go up if we waited. He recommended not rushing through the project. If we choose "C" or "D", then let the process work out the way it needs to. If we are not ready to go this summer, then he recommends waiting until the following summer.

Chairman Pucillo then discussed further option "D", rejection of Burkhardt's proposal. There were other good firms that bid. Whiting-Turner was only 16/100^{ths} of a percent behind Burkhardt, and Hedrick Brothers Construction was not that far behind them. We could go with option "D". He asked Director Brazil

if we could still get this project completed in April, and if there would be any impacts to the cost if we went with this option.

Director Brazil responded that he doubts we could do it this April, but that he expects that the costs would be similar. The scope of work for them is going to be the same as it was to Burkhardt.

The consensus of the Committee was to submit this to the Town Council with a recommendation that each of these options be considered. "D" is theoretically on the table, but is probably not a likely scenario. "A" is a possibility, with a sharpened pencil. "B", we need to know what the numbers are. "C", we ought to have a discussion with the Town Council about the consequences of going out to bid. Chairman Pucillo stated that his recommendation is to have further discussion on "A", "B", and "C", that we get further information as we've requested from Burkhardt and Town staff; and, that the Committee not recommend any specific proposal.

Chairman Pucillo expressed that he still has concerns over the CM-AR. He still views it, to some extent, as an insurance policy. He still has questions as to whether or not it is an insurance policy that has, almost, a built in conflict in it; but, I think I understand it better in terms of the benefits that it provides as well.

Committee Member Kleid stated that he agreed with all of the Chairman's recommendations. This was a very fruitful endeavor. He agreed that we should keep all these options on the table.

Chairman Pucillo clarified that it was the Committee's intention that this issue go before the Town Council at their October meeting.

The consensus of the Committee was that, if the Town proceeds with this project in April, a Public Works Committee meeting should be scheduled in December or January. The Public Works Committee should meet every 60 to 90 days while this project gets started. In October the issue of having additional Public Works Committee meetings will be revisited.

Committee Member Kleid stated that he would agree with that. This is such a major project, with all kinds of repercussions, that he would like the Public Works Committee to keep abreast of it and hold more meetings than we have been in recent years.

C. HISTORY OF THE A-39 TO A-7 FORCE MAIN PROJECT

Incorporated into the discussion above.

D. CURRENT STATUS OF THE A-39 TO A-7 FORCE MAIN PROJECT

Incorporated into the discussion above.

V. RECOMMENDATIONS FOR TOWN COUNCIL ACTION

A. DECISIONS REGARDING THE A-39 TO A-7 FORCE MAIN PROJECT

Public Works Director Brazil stated that there were three additional items that required Committee approval:

1. Approval of a Waiver of Section 42-199, Hours of Construction Work, to allow evening and weekend work between April and December, 2011, as necessary, to facilitate completion of the A-39 to A-7 Force Main Project within one summer.

Motion was made by Committee Member Kleid and seconded by Chairman Pucillo to recommend to the Town Council that they approve of a waiver of section 42-199, hours of construction work, to allow evening and weekend work between April and December, 2012, as necessary, to facilitate completion of the A-39 to A-7 Force Main Project within one summer. On call for a vote, the motion carried unanimously.

2. Authorization for contractor to use, as a lay down area for the A-39 to A-7 Force Main Project, FDOT right-of-way on the Southern Boulevard Causeway.

Motion was made by Council Member Pucillo and seconded by Council Member Kleid to recommend to the Town Council that they authorize the contractor to use, as a lay down area for the A-39 to A-7 Force Main Project, FDOT right-of-way on the Southern Boulevard Causeway. Upon call for a vote, the motion carried unanimously.

3. Authorization to formalize the retention of Matthews Consulting to provide onsite inspections and to rescind Resolution No. 83-11, awarding Mock Roos & Associates a contract for these services.

Both Committee Members agreed that this subject be sent to the Town Council, without a recommendation from the Committee. Further discussion with the Town Council is needed on this.

B. DECISIONS REGARDING THE REMAINDER OF THE ACCELERATED CAPITAL IMPROVEMENT PROGRAM

Director Brazil stated that he had two additional items, but that they can be addressed after the A-39 to A-7 Force Main Project issues have been resolved:

1. Completion of the next section of the Force Main Project.

Director Brazil stated that we need to start making a decision as to how we are going to move forward with this project.

Committee consensus was to defer this item per staff's request.

2. Selection Committee for the Sanitary Sewage Pump Stations Projects.

Director Brazil stated that staff has recommended that those projects be done as a CM-AR. Based upon the A-39 to A-7 Force Main Project concerns, he informed the Committee that staff has put this item on hold.

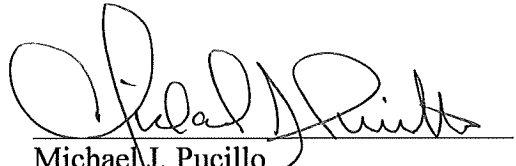
Committee consensus was to defer this item per staff's request.

VI. ANY OTHER MATTERS - None

VII. ADJOURNMENT

There being no further business, the Public Works Committee meeting was adjourned on Monday, September 12, 2011, at 3:20 p.m.

APPROVED:



Michael J. Pucillo
Chairman