

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

Regular Meeting  
February 26, 1987

Councilors Present: Mike Bonner, Tanya Collier, Tom DeJardin,  
Jim Gardner, Gary Hansen, Sharron Kelley,  
Corky Kirkpatrick, David Knowles, Mike  
Ragsdale, George Van Bergen and Richard  
Waker

Councilors Absent: Larry Cooper

Also Present: Executive Officer Rena Cusma

Staff Present: Eleanore Baxendale, Dennis Mulvihill,  
Vickie Rocker, Jim Shoemake, Judith Mandt,  
Jill Hinckley, Kim Duncan, Janet Schaeffer,  
Becky Crockett, Ray Barker, Tuck Wilson,  
Dick Engstrom, Jon Allred, Sandy Bradley,  
Chuck Stoudt, Cathy Thomas, Bob Porter,  
Neil McFarlane, Marc Madden, Richard  
Brandman, Ed Stuhr, Kay Rich, Jennifer  
Sims, Carol Nelson

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

None.

3. EXECUTIVE OFFICER'S COMMUNICATIONS

Solid Waste Functional Planning. Executive Officer Cusma invited Jim Sitzman, Chair of the Land Use Transition Team, to address the Council regarding the process for developing a functional plan for solid waste management. Mr. Sitzman distributed a memo to the Council from the Team on the same subject. He explained the Council would be requested to take action towards implementing a solid waste functional plan at their meeting of March 12, 1987. He then reviewed the document which included the Team's specific recommendations and process.

Presiding Officer Waker explained the Council had previously adopted an ordinance which defined a planning procedure for designating areas and activities for which functional plans could be adopted

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(Ordinance No. 86-207, adopted September 25, 1986). He said he had envisioned the Council's Solid Waste Committee would review the preliminary functional planning document and make a recommendation to the Council.

Councilor Gardner, Chair of the Solid Waste Committee, reported the Committee had reviewed the draft functional planning document but were not able to reach a consensus of opinion. Two members, he explained, questioned whether the functional planning process was strong enough to withstand local government opposition to solid waste plans and facilities. Metro's authority had not been tested, it was uncertain if the District could win such a test, and the decision process would be lengthy. The remaining two members advised Metro asking the State Legislature to clarify the District's authority in siting solid waste facilities and to shorten the appeal process.

Mr. Sitzman said although the functional planning process was not a fail-safe system, the Council owed it to themselves and to their public to build a thorough program for gaining public acceptance. He pointed out that even super-siting was subject to appeal.

In response to the Presiding Officer's question, Councilor Gardner suggested the Council decide the process it would follow for siting solid waste facilities.

Councilor Ragsdale acknowledged the functional planning process was slow and laborious, but recommended the Council adopt the process in order to build a constituency.

Legislative Update. Kim Duncan distributed a report dated February 26, 1987, regarding current Metro-related State legislation. The report contained information on bills for Metro reorganization and a bill for landfill siting extension. She reported SB 629, regarding separation of powers, was the only bill which had been scheduled for a hearing (March 16, 1987, 7:00 p.m., at the Metro Council Chamber).

Councilor Ragsdale requested Ms. Duncan keep abreast of the legislative deadlines for introducing functional planning legislation, should the Council choose that option.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Judy Dehen, 2965 N.W. Verde Vista Terrace, Portland, representing the Columbia Group of the Sierra Club, distributed a newsletter to

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the Council about the environmental risks of operating garbage burners. She urged the Council to read the information and to not build facilities that would damage the region's environment.

Councilor DeJardin asked Ms. Dehen to provide the Council with documentation the dangers actually existed as reported in the newsletter. Ms. Dehen said she would provide that information.

Rick Lewis, 507 17th Street, Oregon City, addressed the Council regarding the safety and function of the Clackamas Transfer & Recycling Center (CTRC). Mr. Lewis said he had worked at the Center for over three years and had quit last month after longstanding disagreements with his boss. He wanted the Council to be aware of the following situations: 1) PCB's had been dumped and hosed into drains, transferred to the Marion County Garbage Burner, or thrown into the pit in the form of electrical components; 2) dust levels were unacceptable; 3) large amounts of recyclable cardboard were routinely thrown into the pit; 4) CTRC was licensed to handle 800 tons a day and tonnages of up to 1,000 to 1,200 were handled on weekends; 5) employers did not enforce safety gear procedures nor were employees educated about certain safety procedures; and 6) equipment did not meet acceptable safety standards. In conclusion, Mr. Lewis said that after three years of experiencing working at CTRC, he firmly believed that Metro was not capable of managing the solid waste problem of the region.

Presiding Officer Waker asked Mr. Lewis if we would provide the Council with a copy of statement he had just read. Mr. Lewis said he planned to give the statement to The Oregonian and Metro could contact the newspaper if they wished a copy of the statement.

In response to Councilor Hansen's questions, Mr. Lewis replied he was an employee of the contractor which managed the CTRC facility and he had attempted to address his concerns to his supervisors including Eric Dutson, Norm Wietting and Jim Shoemake.

Councilor DeJardin noted there were two sides to every story and suggested CTRC staff respond to Mr. Lewis's claims. Presiding Officer Waker said the Executive Officer would provide a response.

## 6. CONSIDERATION OF MINUTES

Presiding Officer Waker announced the minutes of January 29, page 6, should be corrected to read Ken Lewis rather than Ken Martin.

Councilor Kelley noted she had been erroneously recorded as being absent at the meeting of January 29, 1987.

Motion: Councilor DeJardin moved, seconded by Councilor Van Bergen, to approve the minutes of January 22, 1987, and the minutes of January 29, 1987, as corrected.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried and the minutes were approved as corrected.

7. CONSIDERATION OF A CONTRACT with Zimmer Gunsul Frasca Partnership for Design of the Oregon Convention Center

Tuck Wilson, Convention Center Project Manager, introduced two members of the Project Design Advisory Committee -- Tom Walsh, Chair, and Harriett Sherber. He then reviewed the contractor selection process as detailed in staff's written report.

Mr. Walsh named other Design Committee members who participated in the selection process and discussed the recommended contract. The fixed sum contract totaled over \$3 million and he was confident the document represented a "clear meeting of the minds." Mr. Walsh referred the Council to Exhibit D of staff's report which listed extra work not included in the contract fee for Metro's One Percent for Art program, acoustical testing, telecommunications, post-construction warranty reviews, and display model for marketing purposes.

Councilor Ragsdale, Chair of the Council Convention Center Project Committee, reported the Committee had met earlier in the evening and had unanimously recommended the Council approve the contract.

Motion: Councilor Ragsdale moved the design contract with Zimmer Gunsul Frasca for design of the Oregon Convention Center be approved. Councilor Knowles seconded the motion.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The contract was approved.

Presiding Officer Waker expressed appreciation to all Councilors and citizens involved in the Convention Center project and said he was most enthusiastic about taking this step toward making the Convention Center a reality. Executive Officer Cusma, Councilor Ragsdale and Mr. Walsh expressed similar appreciation and enthusiasm.

8. CONSIDERATION OF ORDER NO. 87-13, Authorizing the Executive Officer to Enter into a Lease Agreement with Turner Construction Company for Space at 2000 S.W. First Avenue, Portland, Oregon

The Presiding Officer announced because the lease was under \$50,000, the matter had been referred to the Council Management Committee for consideration. Councilor Gardner, Chair of the Management Committee, reported at their meeting earlier in the evening, the Committee unanimously approved the Order.

9. CONSIDERATION OF RESOLUTION NO. 87-736, for the Purpose of Providing for the Assessment of Dues to Local Governments for FY 1987-1988

Councilor DeJardin, member of the Intergovernment Resource Committee, reported most members of the the Committee recommended maintaining the 51¢ per capita dues amount. A few members, however, had advised decreasing FY 1987-1988 per capita dues. That recommendation had been made because the Intergovernmental Resource Center (IRC) had received an unanticipated grant the previous fiscal year which would result in a FY 1987-88 budget carryover of approximately \$100,000.

Marc Madden, Acting IRC Administrator, reported he had reviewed work programs and staffing levels over the past two months and would propose restoring 1.5 FTE to handle the unusually heavy workload in the department. Given that workload and the high regard for Metro's services throughout the region, Mr. Madden thought maintaining the 51¢ dues level most reasonable.

Presiding Officer Waker noted the dues program would sunset in two years and another funding source would have to be found to finance services to local governments.

Motion: Councilor DeJardin moved Resolution No. 87-736 be adopted and Councilor Collier seconded the motion.

Vote: A vote on the motion resulted in all twelve Councilors present voting aye. Councilor Cooper was absent.

The motion carried and Resolution No. 87-736 was adopted.

10. CONSIDERATION OF A CONTRACT with Bishop Contractors to Construct the Africa Bush Exhibit, Phases I and II

Kay Rich, Zoo Assistant Director, introduced Bob Porter, Zoo Construction Manager, and Bill Conway and Les Anderson of Bishop

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Contractors, Inc. Mr. Rich then reviewed the project's bid history as detailed in the written staff report. Two bids were initially received on July 31, 1986, and the low bid was \$775,000 over budget. It was determined to reject the bids, redesign and rebid the project.

Bids for the redesigned project were received on February 5, 1987, from four construction firms and Bishop Contractors, Inc. submitted the low bid. At that bid opening, a Basis for Bid Award Summary document was distributed to those present. The document detailed eight progressive steps for determining the low bidder starting with the lump sum and all alternatives and ending with the lump sum only. The alternates were prioritized before the bid opening to eliminate any potential bias in the selection of the low bidder based on the selection of alternates.

Mr. Rich reported Bishop Contractors, Inc., with a lump sum bid of \$6,357,000, was the apparent low bidder based on the announced method of selected alternates. He said Bishop had met Metro's Disadvantaged Business Enterprise (DBE) and Women-Owned Business Enterprise (WBE) goals. Therefore, staff recommended the Council authorize the Executive Officer to execute a construction contract with Bishop Contractors, Inc. for the total sum of \$6,480,000. That sum, he explained, included the lump sum project plus Alternates 3, 6 and 2 as identified in staff's written report.

Margaret R. Garza, representing Impact Business Consultants of Portland, addressed the Council about the DBE aspect of the Africa Bush construction contract. She was especially concerned about the participation of EBA Sheetmetal, a subcontractor proposed to be used by Bishop for mechanical work. Ms. Garza said she had talked to the owner of EBA Sheetmetal and had learned the owner had originally intended to enter into a joint venture with Pioneer Mechanical to provide about \$30,000 worth of work. However, Bishop had eventually listed EBA as providing \$396,500 worth of work. Ms. Garza questioned whether Bishop had actually met DBE goals since the bulk of the subcontract sum would merely be passing through the DBA firm, EBA, to a non-DBA firm, Pioneer.

Presiding Officer Waker asked for clarification on the amount of work EBA would be providing. Executive Officer Cusma said Bishop had confirmed a total of about \$396,000 would be awarded to minority subcontractors.

Ms. Garza again asserted that when she had met with EBA Sheetmetal owner, Mr. Aguire, on February 13, 1987, he had said he could not provide all the work indicated by Bishop.

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Ed Stuhr, Grants/Contracts Officer, reported he was at the February 13 meeting and confirmed what Ms. Garza had stated. After the meeting, Executive Officer Cusma had asked her assistant, Ray Phelps, to inquire into the facts. As a result, Mr. Agguire appeared at another meeting with Metro officials and said he thought EBA Sheetmetal would perform \$396,000 worth of work on the project. Mr. Stuhr said he would be closely monitoring the project to ensure EBA actually performed \$396,000 worth of work.

Councilor Hansen asked staff how they would monitor EBA's expenditures. Staff answered the question after Charles Butler testified.

Charles Butler, 6385 S.E. Yamhill, Portland, testified he was with the firm MetalFab who performed the same type of work as EBA Sheetmetal. He questioned why EBA, who would perform \$396,000 worth of work, had been awarded the mechanical work subcontract when his firm had bid \$130,000.

In response to Councilor Hansen's earlier question, Mr. Porter, Zoo Construction Manager, said he would monitor payments to EBA Sheetmetal by working closely with the architect in reviewing progress payments to Bishop to ensure the payments correctly reflected the actual work performed.

Councilor Hansen asked staff what work was included in the \$396,000 EBA subcontract. Mr. Porter said that work could be clearly identified from contract report documents and by review of prevailing wage certificates.

Bill Conway, President of Bishop Contractors, reported EBA Sheetmetal would provide materials, equipment, and perform work related to sheetmetal work, fire protection, and heating, ventilation, and air conditioning (HVAC).

Councilor Gardner requested Mr. Porter give particular attention to the work performed by EBA Sheetmetal when reviewing payment report. Mr. Porter assured the Councilor he would.

Les Anderson, owner of Bishop Contractors, testified he had discussed the matter of Metro's DBE program requirements with Metro's General Counsel, Eleanore Baxendale. Ms. Baxendale had told him the 10 percent DBE goal was not an absolute requirement. Mr. Anderson suggested Metro better define their policy to avoid future problems. He estimated about half EBA's subcontract was for equipment and materials and the other half for labor costs.

Chad Debnam, 3802 N.E. Union, Portland, President of Oregon Citizens League and Trade Association, testified EBA Sheetmetal was not certified as an HVAC contractor and therefore, should not be permit-

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ted to perform the subcontract. He said to approve the contract with EBA performing the mechanical work would be in violation of the public trust.

Presiding Officer Waker explained because Metro's DBE program had goals, not set-asides, the Council could not reject a contract on the basis goals had not been met.

Mr. Debnam said he was not asking for set-asides, but was asking for fair participation. He said "good faith" should be defined to mean if qualified minorities existed in a particular field, those qualified firms should be used. He urged Metro to resolve problems with the DBE program and to send out a strong message to the community.

Councilor Gardner noted the spread sheet in staff's report listed DBE information for all bidders except Bishop Contractors, Inc. Mr. Porter responded that summary listed only the information contractors had reported on their bid forms.

Mr. Stuhr explained Metro's DBE program goals were 10 percent DBE and 3 percent WBE participation. He said Bishop had met that goal. Signed letters of agreement with subcontractors were on file to certify that fact. He added that should Metro learn EBA Sheetmetal was not in compliance with program regulations, Metro would require Bishop to replace EBA with another DBE or show good faith efforts to do so.

Councilor Knowles was concerned about the \$30,000/\$396,000 subcontract sum differential discussed earlier by Ms. Garza. He said he was not impressed with Metro's DBE program track record and was concerned about lack of effort to achieve program goals. It was Metro's responsibility, not the contractor's, to improve DBE participation, he said. The Councilor thought, however, that until it could be clearly demonstrated the contract was not in compliance with Metro's DBE program, the Council had to approve it. He invited Mr. Debnam to work with Metro officials to ensure DBE goals were met.

Councilor Hansen asked if EBA Sheetmetal were certified as a minority contractor by the Department of Transportation. He also asked if a legal distinction existed between a sheetmetal contractor and an HVAC contractor.

Mr. Stuhr replied Metro's code only required MBE's and WBE's be certified under Federal 4 CFR 23 requirements and that the prime contractor was obligated to subcontract with qualified firms.

Harold Williams, President of Pen-Nor, a DBE mechanical contractor, former State of Oregon Affirmative Action Director and Labor Relations Manager for former Governor Victor Attiyeh, testified he



objected to Metro pitting minorities against each other. He said Pen-Nor was a minority firm qualified to do all phases of the mechanical work. He said it was insulting to contract with firms identifying themselves as minority-owned when in fact the majority of the work would not be performed by qualified minorities. That practice, he said, made a mockery of every female and minority. Mr. Williams urged the Council to use their power to slow down the process and reassess what had happened.

James E. Casan, 1771 N.E. Bryant, Portland, reported he had bid on a Metro contract for on-call refrigeration equipment maintenance several years ago in which the only requirement was to be the low bidder. Mr. Casan said his firm had submitted the low bid but Mr. Porter of the Zoo did not want to award him the bid. However, after Mr. Casan contested the situation, he was awarded the Zoo contract but was called much less often and therefore paid substantially less than the previous contractor.

Councilor Knowles pointed out Pen-Nor had submitted the second highest bid for mechanical work. In response to that statement, Harold Williams read a letter from Bishop Contractors to Metro which stated that if EBA Sheetmetal were deemed unqualified to perform the mechanical work, Pen-Nor would be used. He noted it was the discretion of the general contractor to choose who would perform subcontract work and that they could negotiate with subcontractors. He questioned why Bishop would have written that letter if they were confident about EBA's qualifications.

Bill Conway, President of Bishop Contractors, said the letter from Bishop to Metro referred to by Mr. Williams had been written almost at the point of extortion by Pen-Nor. He also noted that if EBA Sheetmetal were not used, Bishop Contractors would pay the difference between subcontract amounts if another subcontractor charged a higher fee.

Nathaniel Hartley, 2330 N.E. Alberta Street, Portland, urged the Council not award the contract without investigating the MBE participation question further. He said too many unresolved issues remained. He raised the issue of EBA's initial bid of \$30,000 increasing over ten-fold to \$396,000, and whether Metro's 10 percent MBE goals had actually been met. He said the Council would perpetuate the problem unless they could be assured the EBA Sheetmetal subcontract was legitimate.

Bob Miller, co-owner of Pen-Nor, testified he had met with Bishop Contractors prior to bid time to determine how to bid. Pen-Nor's bid was prepared and they were not the low bidder. He said EBA Sheetmetal had not bid the project but were brought into the project after Pioneer Mechanical, a majority-owned firm, got the low bid.

Mr. Miller noted that two legitimate MBE contractors had bid the mechanical work and that the facts as reported on paper were not true. He said that situation was insulting.

Dan Howard, 5340 S.W. Dunn Lane, President of Pioneer Mechanical, testified his firm bid the mechanical subcontract in conjunction with EBE Sheetmetal. Pioneer was a new company, he said, in business only two months, even though the individuals involved had a lot of experience in the field. He said Pioneer could handle the job and that EBA/Pioneer were a team, not a joint venture. He said he knew EBA's owner and trusted him and that the project was not complex enough to require a mechanical contractor to purchase materials and equipment.

Nathaniel Hartley again asserted that EBA Sheetmetal was actually providing only \$30,000 in work. He urged the Council to correct the unfair situation immediately.

Chad Miller explained the working relationship just described by Mr. Howard was that of a classic "front" organization. Impropropriety, he said, was the only real issue before the Council.

Motion: Councilor Gardner moved, seconded by Councilor Collier, to postpone consideration of the Bishop Contractors, Inc. construction contract in order for the following issues to be investigated: 1) Bishop Contractors, Inc. to provide a detailed breakdown of EBA Sheetmetal's participation in the prime contract including how much of EBA's work was for equipment and materials purchase; 2) after the above information was received, to conduct an investigation of EBA's capabilities to do the work described to the Council; and 3) to clarify whether EBA was certified as an HVAC contractor (included in the motion at Councilor Hansen's request). All findings should be reported to the Council prior to making a decision regarding contract award.

Councilor Hansen thought it very important to clarify EBA's area of certification because if they were listed or could be listed as an HVAC contractor, other minority firms qualified to perform HVAC related work would also be allowed to bid on the subcontract work.

Councilor Knowles asked Counsel if Bishop Contractors had met Metro's basic contract Code requirements. Ms. Baxendale replied Bishop had met the basic requirements both on the basis of meeting the established DBE/WBE goals and on the basis of meeting the Metro's good faith effort standards. She explained Metro's procedures were federal rather than state procedures and were the same

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procedures reviewed by the Council annually each September. She again stated the Council had no legal basis to deny award of the contract to Bishop.

Councilor Knowles asked Counsel if Metro had the ability to postpone approval of the contract. Ms. Baxendale said the Council could hold up approval of the contract as long as the bid bonds were valid (60 days).

Councilor Knowles asked if the Council approved the Contract with Bishop at this meeting, would it have the ability to direct Bishop to change subcontractors if the Council's investigation, as proposed by Councilor Gardner, revealed that the EBA Sheetmetal subcontract was a sham. Ms. Baxendale responded that the only basis for rejecting the subcontractor would be if they could not perform the work. The contract could not be rejected based on the sham because the issue was whether EBA Sheetmetal met Metro's DBE/WBE requirements. She said competence, not the business arrangement, would be the only basis on which the award could be made or denied. She further explained if it were determined EBA were not competent to perform the work, Metro would require Bishop to replace EBA in compliance with Metro's DBE/WBE program requirements.

Councilor Gardner asked if the Council were to conclude, after awarding the contract to Bishop, that EBA Sheetmetal was not competent to perform the subcontract work specified, and Bishop identified another minority subcontractor to perform the same work but at a higher cost, would Bishop still be the lowest bidder. Ms. Baxendale first explained Bishop would not be bound to identify another minority contractor to perform the work. They would, however, have to bid the work according to Metro's DBE/WBE program requirements. Bishop would be bound by the price they originally bid and would have to absorb the loss if another subcontractor bid higher than EBA for the work.

Councilor Bonner asked if the Council awarded the contract at this meeting and it was later learned EBA constituted a pass-through situation, was it true the Council would have no recourse unless the subcontractor were found to be incompetent. Ms. Baxendale said that analysis of the situation was correct. She explained even if the identified portion of the work were subcontracted to a non-minority, the Council would have to award the contract to Bishop because Bishop had met other portions of the DBE goals.

Councilor Van Bergen expressed concern the Council had gone through this same process with other contracts. He summarized the situation as one of Bishop having complied with Metro's good faith effort requirements and no evidence having been presented that EBA Sheetmetal was not qualified to do the work. The other statements made

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about EBA were unsubstantiated, he said. He explained unless the Executive Officer wanted to withdraw the contract from consideration, he would not support the motion and would accept Counsel's opinion. He said nothing would be served by the Council attempting to involve itself in administration of contracts. In summary, the Councilor said to postpone consideration of the contract would be to "walk into Bishop's bedroom." Subcontracting for the project was clearly their business, he explained.

Councilor Kirkpatrick asked staff to explain the negative effects of postponing the contract award. Mr. Rich replied staff was on a tight construction schedule and that two week's delay would have an impact.

Councilor Collier expressed regret staff could not respond to the charges that the EBA Sheetmetal contract was a pass-through arrangement and was concerned whether Metro had conformed to its own policies. She did not want Metro's DBE/WBE program to be one of phony goals and was not prepared to award a contract until all relevant questions had been answered.

Councilor Ragsdale asked staff to comment on the full range of testimony received at this meeting. Specifically, he asked staff if any new facts had been presented not already been investigated. Executive Officer Cusma reported that to her knowledge, no new information had been presented. Both Ed Stuhr and Ray Phelps had met with the contractor and subcontractor, had investigated the charges against EBA Sheetmetal, and had determined there were no grounds to deny the bid. The Executive Officer said she was sympathetic to the problem but she did not believe there were sufficient grounds to deny the Bishop bid. She said she was committed to take a hard look at Metro's DBE/WBE goals and contracting procedure to prevent these types of problems from happening in the future. In conclusion, she said it was her understanding, based on information received from Counsel and the Grants/Contract Officer, that Metro had no standing on which to deny Bishop's bid.

Councilor Gardner said he agreed with the Executive Officer and by making his motion, was not suggesting the Council deny the bid. He explained he proposed his motion because there were too many unanswered questions about EBA Sheetmetal.

Presiding Officer Waker said he would vote against the motion for the reasons stated earlier by Councilor Van Bergen. He said, however, it would be worth while to investigate the general issues raised about Metro's DBE/WBE program.

Bob Porter, Zoo Construction Manager, reported if the contract were delayed, staff would have to adjust animal relocation plans at an additional expense.

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Vote: A vote on the motion resulted in:  
Ayes: Councilors Bonner, Collier, Gardner, Hansen and Knowles  
Nays: Councilors Kirkpatrick, Ragsdale, Van Bergen and Waker  
Absent: Councilors Cooper, DeJardin and Kelley

The motion carried and consideration of the contract was postponed until investigations could be completed.

Councilor Hansen asked staff to report back to Councilors within two weeks in order to resolve the issue at the February 26 Council meeting.

There being no further business, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,



A. Marie Nelson  
Clerk of the Council

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