

COMMISSIONER BEATY SECONDED THE MOTION FOR FURTHER DISCUSSION. COMMISSIONER WILKINSON BELIEVES THE ACTION IS PREMATURE. MR. SHEETS STATED COSTS CANNOT BE INCURRED FOR PLANNING UNTIL THE NEW BUDGET YEAR AND IF NEGOTIATIONS FAIL WITH MALCOLM PIRNIE THEN ANOTHER FIRM COULD BE LOOKED AT. COMMISSIONER BAUMAN IS CONCERNED WITH GETTING THE PLAN STARTED AS SOON AS POSSIBLE. DISCUSSION ENSUED ON WHICH FIRMS ARE CONSIDERED PLANNERS. CHAIRMAN TOBIN STATED THAT HE WOULD LIKE THE FIRMS TO MAKE PRESENTATIONS. MR. SHEETS SAID HE WOULD RECOMMEND HAVING MALCOLM PIRNIE, BOYLE AND PBS&J. WITH NO FURTHER DISCUSSION CHAIRMAN TOBIN REQUESTED A ROLL CALL VOTE.

COMMISSIONER BAUMAN	YES
COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	YES

ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.

F. Legal Counsel's Report

Please see above.

G. Engineer's Report

A report was not presented.

H. Commissioner's Items

Minutes 06/25/2003

There were no commissioner's items.

I. Minutes – Draft May 28, 2003, Draft June 4, 2003, Draft June 11, 2003 and Draft June 18, 2003

Commissioner Wilkinson made a motion to approve the May 28, June 4, June 11 and June 18, 2003 minutes. Commissioner Bauman seconded the motion. All were in favor and the motion was unanimously approved.

J. Meeting Adjournment

Chairman Tobin adjourned the meeting at 6:45 p.m.

**KLWTD Board Meeting
June 25, 2003**

**Minutes – Draft
June 11, 2003**

DRAFT

**Key Largo Wastewater Treatment District
Board of Commissioners Meeting Minutes**

4:00 PM Wednesday, June 11, 2003

Key Largo Civic Club

209 Ocean Bay Drive

Key Largo, Monroe County, Florida

COMMISSIONERS PRESENT

Chairman Andrew Tobin
Commissioner Gary Bauman
Commissioner Cris Beaty
Commissioner Charles Brooks
Commissioner Jerry Wilkinson

STAFF PRESENT

Robert Sheets, General Manager, Government Services Group, Inc. ("GSG")
Terry Lewis, Esq., Legal Counsel, Lewis, Longman & Walker, P.A. (via telephone)
Amy Dukes, Esq., Legal Counsel, Lewis, Longman & Walker, P.A. (via telephone)
Faith Doyle, KLWTD Board Clerk

A. Call to Order

Chairman Tobin called the meeting to order at 4:04 p.m.

B. Pledge of Allegiance

The pledge was recited.

C. Additions, Deletions or Corrections to the Agenda

Mr. Robert Sheets requested that several status report items be added to the General Manager's Report. They included an update on the SFWMD \$100,000 loan, the Engineering CCNA, and the loan agreement with Monroe County.

Chairman Tobin requested they be labeled Items E 1, 2 and 3.

Chairman Tobin stated there were several small changes required to the Higgins contract. Chairman Tobin requested that a letter of confirmation from Mr. Messer of Higgins be made part of the contract. The letter would confirm that Higgins would provide a locator pipe and 6" pipe from the vacuum pit to the property line versus a 4" pipe as required in the specifications. Mr. Messer has faxed a letter of confirmation that will be incorporated into the contract.

Chairman Tobin stated that section 7.1.1 concerning compensation on fixed fees will be reworded to clarify that the engineering and professional fees would be billed separately but are included in the price and section 7.1.2 'compensation for the engineer is to include preplanning' will be in parenthesis.

Chairman Tobin stated that the Board will have the ultimate decision making control on USBF or SBR and Airvac or Roevac, 'jointly' will be removed and it will only say the 'District will chose SBR or USBF and Airvac or Roevac. Chairman Tobin stated that Haskell wants to investigate and analyze the reasoning prior to the final choice and that the County has done a study and wants uniform USBF in the County. Contractor wants to review it more closely and provide us a recommendation. Chairman Tobin stated that for other major subcontractors and vendors Haskell wants to make the recommendations but if there is an additional cost incurred because of the Board decision against their recommendation the Board would be required to pay the difference in cost. Commissioner Bauman stated concern for the additional costs that may be incurred. Chairman Tobin states the fiduciary responsibility is on Haskell and he believes this provision protect the District. Mr. Kinsley of Haskell stated that bid contracts would be issued to the subcontractors so that they would submit proposals. Haskell would then review the submittals and ask the general manager to concur with the Haskell recommendation and if the KLWTD would prefer another more costly contractor Haskell wants to be compensated for the overage of the low bid. Discussion ensued on the selection of subcontractors and the specifics of the review process. Mr. Kinsley stated that Haskell includes a page document that qualifies subcontractors and narrows the field. All subcontractors are required to have a payment bond and Haskell carries the risk for the subcontractors.

Commissioner Wilkinson stated that for minor vendors (paving contractors) he believes the KLWTD Board doesn't need to be part of the decision process and that the review of the ~~submittals would be a major task. Mr. Kinsley responded that minor subcontractor will be~~ the general project managers recommendation and that the Board needs to trust his judgment of the contractor and there will be very few vendors they will need to be concerned with. Commissioner Wilkinson asked if Mr. Kinsley would coordinate subcontractors with the general manager. Mr. Kinsley stated that the vendor selection process was negotiated by the Board; however, he is being paid for attending to these details. Mr. Messer of Higgins adds that he will have a list of vendors that he will request the Board's engineer to review. Discussion ensued concerning the subcontractors bidding process. Mr. Kinsley stated that Haskell would be submitting the bid packages for the general manager's review.

Mr. Sheets stated that the contract assures the KLWTD Board having a voice and having a right in decisions like which the construction manager, project manager and the key personnel. There will be many opportunities to talk with Mr. Kinsley to insure the job is going correctly.

Chairman Tobin updated Mr. Terry Lewis and Ms. Amy Dukes who joined the meeting by phone at 4:20 p.m.

D. Action Items

1. Approval of the KLP contract with D.N. Higgins

Chairman Tobin requested legal counsel to explain the process of executing the contract. Mr. Lewis stated that 2 originals of the agreement with the amendments and attachments

(the original RFP and Higgins proposal) would be forwarded to Higgins for signatures the original package would be forwarded to the general manager along with a signature page that would be signed by the Board members. The signature page would be attached to the document. The general manager and the contractor would retain one original complete document. Mr. Lewis suggests that the agreement be signed in two counterparts. This same procedure would be used for the Haskell agreement also.

CHAIRMAN TOBIN ENTERTAINED A MOTION TO APPROVE THE KLP CONTRACT WITH D.N. HIGGINS. COMMISSIONER WILKINSON MOVED TO APPROVE THE HIGGINS AGREEMENT AS AMENDED BY THE INCLUSION OF MR. MESSER'S LETTER OF CONFIRMATION. THE MOTION WAS SECONDED BY CRIS BEATY. WITH NO FURTHER DISCUSSION CHAIRMAN TOBIN CALL FOR A VOTE.

COMMISSIONER BAUMAN	YES
COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	YES

THE MOTION WAS UNANIMOUSLY APPROVED.

2. Approval of the KLTV contract with The Haskell Corporation

CHAIRMAN TOBIN BROUGHT THE KLTV CONTRCT TO THE FLOOR AS AMENDED (SECTIONS 7.1.1. AND SECTION 8.3.3) AND ENTERTAINED A MOTION TO APPROVE THE CONTRACT AS AMENDED. COMMISSIONER WILKINSON MOVED TO APPROVE FOR DISCUSSION AND COMMISSIONER BAUMAN SECONDED. COMMISSIONER WILKINSON ASKED FOR CLARIFICATION OF SECTION 8.3. E. HE ASKED IF THE INVOICES FOR EQUIPMENT WOULD BE SENT TO THE KLWTD AND IF THE KLWTD WOULD DIRECTLY PAY THE VENDOR AND IF THESE ARE REIMBURSABLE. MR. SHEETS STATED THAT ULTIMATELY IT WOULD BE A KLWTD CHECK THAT IS SENT TO HIGGINS AND HASKELL. COMMISSIONER WILKINSON IS CONCERNED WITH THE DIRECT PAY STATEMENT. HASKELL STATED IT IS ADDRESSED UNDER THE KLWTD RESPONSIBILITIES SECTION. DISCUSSION ENSUED ON THE PROCESS. MR. SHEETS STATED THAT TWO CHECKS WOULD BE ISSUED, THE FIRST CHECK FROM THE FUNDS PROVIDED BY THE DEP, COUNTY OR SFWMD THEN THE KLWTD WILL CUT A CHECK TO THE VENDOR. THIS ASSISTS WITH THE SALES TAX. COMMISSIONER BROOKS QUESTIONED PAGE 28 SECTION 3.8.3, ASKING IF THERE IS ANY CONFLICT BETWEEN VALUE ENGINEERING AND ADDITIONAL COSTS. MR. LEWIS STATED THAT HE DOESN'T BELIEVE SO IT DOESN'T IMPACT VALUE ENGINEERING. IT IS THERE TO ADDRESS ANY ISSUE DURING THE SELECTION OF OVERRULING ANY SUBCONTRACTOR AND THE ADDITONAL COSTS. CHAIRMAN TOBIN ADDED THAT THIS IS THE SECTION THAT WILL BE REWORKED TO STATE THE BOARD HAS THE RIGHT TO CHOOSE USBF OR SRB AND ROEVAC OR AIRVAC AS DISCUSSED PREVIOUSLY. MR. LEWIS CONCURRED, STATING THAT THIS SECTION GIVES THE BOARD MORE CONTROL. COMMISSIONER BROOKS STATED THAT HE DID RESEARCH ON THE CONTRACT AND BELIEVES IN SIGNING THE CONTRACT WE ARE GIVING UP THE RIGHT TO CHOSE AND ASKED IF THERE IS ANYWHERE ELSE IN THE CONTRACT THAT GIVES THE CONTRACTOR THE RIGHT TO OVERRIDE THE BOARD. MR. LEWIS STATED THAT THERE IS NOT. COMMISSIONER BROOKS REFERRED TO PAGE 30 CONCERNING COMPLETION OF

BOTH JOBS AND BRINGING THEIR COMPLETION TOGETHER AND WOULD IT CHANGE OR RESTRICT VALUE ENGINEERING TO ONLY THE INTEGRATED PARK AND VILLAGE PROJECT. MR. LEWIS EXPLAINED THAT IN 'EXHIBIT A' THERE IS A COMMITMENT IN THE PROJECT TO GO TO COMPREHENSIVE VALUE ENGINEERING. MR. KINSLEY STATED THAT IT DOES NOT LIMIT THE VALUE ENGINEER FOR EITHER PROJECT. COMMISSIONER BROOKS QUESTIONED 'EXHIBIT F' AND THE MEANING OF THE ALLOWANCES CLAUSE ON PAGE 4. MR KINSLEY STATED THAT THE INTENT WAS FOR THE MONEY BUDGETED FOR LANDSCAPING WAS REDUCED AND CONSIDERED AN ALLOWANCE AND THAT THIS IS THE ONLY INSTANCE FOR AN ALLOWANCE AND IT IS NOT A GENERAL STATEMENT. COMMISSIONER BROOKS ASKED ABOUT PAGE 42 SECTION 7.2.1 CONCERNING THE INITIAL PAYMENT OF UP TO 5% (APPROXIMATELY \$400,000 ON 7.9 MILLION CONTRACT) AND WHERE THE MONEY WOULD COME FROM AND WHEN DOES IT NEED TO BE PAID. MR. SHEETS STATED THAT PER STATE AND FEDERAL LAW CERTAIN THINGS CANNOT BE PAID FROM STATE FUNDS AND SOME CANNOT BE PAID FROM FEMA FUNDS BUT REVIEWS WOULD BE MADE TO PAY AS MUCH AS IS LEGALLY ALLOWED FROM THESE FUNDS. COMMISSIONER BROOKS STATED THAT THE FEMA APPROVAL ON THE PLANT SITE WOULDN'T BE OBTAINED UNTIL AUGUST AT THE EARLIEST. MR. SHEETS STATED THAT PAYMENT FROM PHASE 1 FUND IS NOT CONDITIONED ON THE SITE APPROVAL. COMMISSIONER WILKINSON AGREED THAT THE WORD INITIAL DOES NEED TO BE INCLUDED. MR. SHEETS ANTICIPATES THAT AFTER FEMA REVIEWS IT THERE MAY BE A CONTRACT REVISION TO BE PRESENTED TO THE BOARD. MR. KINSLEY STATED THAT THE 5% ISN'T A HASKELL REQUEST AND THAT IT WAS IN THE CONTRACT ORIGINALLY. MR. SHEETS STATED THAT PAYMENT WOULD ONLY BE FOR REIMBURSEABLE PHASE 1 COST. MR. LEWIS STATED THAT ONLY COSTS THAT ARE ALLOWABLE BY LAW. CHAIRMAN TOBIN IS CONCERNED THAT AT THE SIGNING THE ~~CONTRACT WOULD BE BREACHED BECAUSE OF THIS SECTION AND WITHOUT FUNDS TO PAY WHEN THE AGREEMENT IS SIGNED.~~ CHAIRMAN TOBIN SUGGESTED A SIDE LETTER BE ATTACHED TO THE AGREEMENT. MR. SHEETS STATED THAT AN INVOICE COULD BE PROCESSED BUT WE CAN'T GAURANTEE A 5% PAYMENT. MR. KINSLEY SUGGESTED IT SHOULD BE WORDED "THAT THE CONTRACTOR SHALL SUBMIT AN INVOICE" VERSUS "BE PAID". MR. LEWIS AGREED, AS DID CHAIRMAN TOBIN. MR. LEWIS STATED THAT SECTION 7.2 WOULD ALSO BE AMENDED. COMMISSIONER BROOKS QUESTIONED PAGES 46 & 47 CONCERNING EXTRA WORK HAVING A 10% MARKUP. COMMISSIONER BROOKS STATED THAT THIS IS DIFFERENT THAN A 5% MARKUP ON LUMP SUM AS STATED IN THE PROPOSAL FROM HASKEL (Section 9.3.3). MR. KINSLEY STATED IT WAS COST PLUS 5% FEE ON THE PROJECT AND THE 5% WOULD CARRY OVER ON PURE FEE AS LONG AS IT IS NOT DIRECT COST ITEMS LIKE INSURANCE AND BONDS. COMMISSIONER BROOKS ASKED IF THIS SECTION SHOULD BE AMENDED TO 5%. MR. KINSLEY STATED THAT AS LONG AS IT DOES NOT INCLUDE DIRECT COSTS. COMMISSIONER BROOKS QUESTIONED "UNKNOWN CONDITIONS" A SECTION ON PAGE 47. COMMISSIONER BROOKS WANTS THE SUBCONTRACTOR TO BE AWARE OF KLWTD CONDITIONS THAT COULD RUN INTO ADDITIONAL COSTS BECAUSE OF THE AMBIGUITY OF THIS CLAUSE. MR. MESSER STATED THE HE BELIEVED THIS WAS FOR SITUATIONS WHERE THERE MAY BE GROUND STORAGE TANKS OR OTHER UNANTICIPATED ITEMS, SUCH AS CUT OFF TELEPHONE POLES. MR. KINSLEY STATED THAT THIS IS A NORMAL CLAUSE AND IS TO PROTECT BOTH PARTIES FROM DIFFERENT CONDITIONS. MR. KINSLEY STATED THAT IT IS HIS RESPONSIBILTY TO HAVE THE DIGING COORDINATED

WITH OTHER UTILITIES TO AVOID PROBLEMS. COMMISSIONR BROOKS FINAL QUESTION WAS ON 'EXHIBIT A'. HE STATED THAT DURING THE NEGOTIATION PROCESS HE SUGGESTED A REDRAFT TO TAKE OUT THE ESTIMATED 8.9 MILLION DOLLARS AND ALL ON THE NEGOTIATING TEAM HAD ALSO AGREED BUT IT IS STILL THERE. ALL AGREED THAT IT SHOULD BE REMOVED AS PER THE NEGOTIATING TEAM'S RECOMMENDATION.

THE MOTION WAS RESTATED TO INCLUDE THE FOLLOWING AMENDMENTS:

- 3.8.3 SUBCONTRACTS
- 7.1.1 PROJECT COSTS
- 7.2 INITIAL PAYMENT
- 9.3.E MARKUP
 - Unusual Geologic Conditions Clause
 - EXHIBIT A elimination of the 8.9 million dollars

MR. LEWIS STATED THAT ALL REVISIONS WOULD BE MADE PRIOR TO EXECUTION. DISCUSSION ENSUED ON THE LENGTH OF THE WARRANTIES. WITH NO FURTHER DISCUSSION CHAIRMAN TOBIN CALLED FOR A VOTE.

COMMISSIONER BAUMAN	YES
COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	YES

THE AGREEMENT WITH HASKELL WAS UNANIMOUSLY APPROVE.

~~Chairman Tobin called for a recess at 5:15 p.m.~~

Chairman Tobin reconvened the meeting at 5:25 p.m.

E. General Manager's Report

1. Mr. Sheets stated that he and Ms. Dukes would work ON the loan agreement with the County and give a recommendation on June 18th.
2. Mr. Sheets stated that the \$100,000 grant contract from SFWMD was received on Monday. A copy was provided to the Board for review. Mr. Sheets stated that he would give a recommendation on June 18th.
3. Mr. Sheets stated that 13 submittals were received from the Engineering CCNA process and that the final ranking would be presented to the Board at the June 25 meeting.

Mr. Sheets stated that the CCNA for external auditors has progressed and that Commissioner Beaty and Mr. Miles would have a recommendation for the June 25 meeting.

Mr. Sheets stated that the June 18 meeting includes a budget workshop and would begin at 4pm as advertised.

Chairman Tobin requested that an updated KLWTD calendar be provided that incorporates the budget schedule and the Haskell Schedule B dates.

Chairman Tobin requested that the "Haskell Preliminary Project Schedule B" be reviewed at each meeting and he requested that the clerk provide the document.

F. Legal Counsel's Report

Mr. Lewis stated that the revisions would be made to the agreements and they would be forwarded to the contractors for execution and that the contractors would forward the executed documents to Mr. Sheets to bring back to the Board for execution. Mr. Lewis would provide that the execution would be in counterparts.

Chairman Tobin requested that resolutions confirming the Board's approval of the agreements be drafted and provided for action at the June 18, 2003 meeting.

G. Engineer's Report

No Engineer's Report was presented.

H. Commissioner's Items

I. Minutes -- May 14, 2003

The May 14, 2003 minutes were tabled until the June 18, 2003 meeting.

J. Meeting Adjournment

Commissioner Brooks made a motion to adjourn. Commissioner Bauman seconded the motion. All were in favor.

Chairman Tobin adjourned the meeting at 5:55 p.m.