



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

**4:00 PM Wednesday, June 25, 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  
Amy Dukes, Legal Counsel, Lewis Longman & Walker, P.A. (via telephone)  
Faith Doyle, KLWTD Board Clerk

## **GUESTS PRESENT**

Monroe County Commissioner Murray Nelson  
Donna Hanson, Executive Assistant to Commissioner Nelson  
David Refling, P.E. DEE, Boyle Engineering  
Doug Eckman, P.E. Boyle Engineering  
Peter Kinsley, The Haskell Company  
Walter Messer, D.N. Higgins, Inc.  
Robert E. Burt, Key Largo Resident  
Michael Longenecker, Key Largo Resident  
Joe Peternit, Brown & Caldwell  
Tim Bergin, CDG

### A. Call to Order

Vice Chairman Jerry Wilkinson as Acting Chairman called the meeting to order at 4:04 p.m.

### B. Pledge of Allegiance

The Pledge of Allegiance was recited.

### C. Additions, Deletions or Corrections to the Agenda

Acting Chairman Wilkinson suggested that items D-1 and D-2 be postponed until the arrival of Chairman Tobin.

Commissioner Brooks suggested that item E-2 be moved to action item D-7 because it is of a timely nature.

Acting Chairman Wilkinson approved the amended agenda as stated.

#### D. Action Items

1. Execution of the KLP Construction Agreement with D.N. Higgins, Inc.

Please see below

2. Execution of the KLTV Design/Build Agreement with The Haskell Company

Please see below.

3. Approval of the Engineering CCNA Rankings and Recommendations

Acting Chairman Wilkinson brought the Engineering CCNA Rankings and Recommendations to the floor for discussion. Mr. Robert Sheets stated that the evaluation of the 13 engineering submittals had been completed. He informed the Board that the evaluation committee members unanimously approved the recommendations. The individual scoring sheets completed by the committee members and a memorandum providing narratives on the top eight ranked firms were also provided. Mr. Sheets stated that the main focus was to identify firms that provide water and wastewater expertise. Mr. Sheets stated that he would answer any questions on the scores and rankings. Mr. Sheets stated that the recommendation includes requesting the Board to negotiate the standard engineering contract with the top five ranked firms. Mr. Sheets noted that the contract does not guarantee work but provides engineers of record to request proposals for future projects. The other recommendation is to request the Board to approve staff to begin negotiating a scope of service for retaining the firm to work as project manager on the KLP and KLTV construction. The committee recommended that Weiler Engineering Company (WEC) be selected as the projects' construction manager. Mr. Sheets stated that WEC was uniquely qualified because they were one of the top five firms reviewed, they have worked in the Keys and have done vacuum systems. Mr. Sheets stated that if the Board authorizes the negotiations the Board would be made aware of the appointed project manager and have the opportunity to interview them. If the candidate is deemed not qualified, then another can be selected. Mr. Sheets stated that the recommendations also request the Board to consider a firm for planning and developing a strategic plan for assistance in securing future funding. The committee recommends Malcolm Pirnie, Inc. be selected for the planning tasks. Mr. Sheets stated that if the Board would not act on the recommendations today, it would not impede the process of getting the projects on line. However, one should be selected as soon as the Notice to Proceed (NTP) is issued.

Commissioner Bauman stated that as a member of the evaluation committee he looked for firms with current water and wastewater experience and suggested that prior to assigning specific tasks, an interview with the principal engineer would be of benefit. This would assist the Board in determining if the firm and the principal engineer was sufficient for the task and if not the Board could request another firm be looked at for either planning or construction management.

Acting Chairman Wilkinson stated that he has concerns with the recommendation and that he would prefer to use all 13 submitting firms because the future projects have not been determined. Commissioner Wilkinson was also concerned with WEC being listed as a team member of The Haskell Company in their proposal and if chosen as the KLWTD's engineer of record, there could be a conflict of interest. Mr. Peter Kinsley of The Haskell Company stated that WEC was listed on the Haskell team as a subcontracted peer reviewer for Brown and Caldwell and that this was a minor roll. Mr. Kinsley added that Haskell would not have any reservations should WEC contract with the KLWTD. Mr. Kinsley stated that WEC is not presently under contract with Haskell because a contract would not have been issued to them until Haskell was awarded the KLWTD contract, which was being executed at this meeting.

Mr. Sheets stated that not all 13 submitting firms were qualified for the specific needs of a wastewater district and that some have little or no wastewater experience. The review was conducted to identify those firms who could respond to the KLWTD's particular needs.

Commissioner Bauman added after spending 20-25 hours reviewing the 13 submittals, he would not recommend having all 13 firms as engineers of record because asking for scopes of work proposals would be too time intensive.

Commissioner Brooks asked Commissioner Bauman concerning the choice of construction project managers if he had met with any of the firms. Commissioner Bauman stated that he had not met personally with them but had reviewed the resumes of the key personnel that were provided in the submittals. Commissioner Brooks asked if the WEC project manager would meet with the Board before being contracted with. Mr. Sheets stated that they could be asked to make a presentation to the Board.

Commissioner Brooks asked: if action was taken today would there be five firms under contract? Mr. Sheets stated that a standard contract with each firm would be presented to the Board for approval and then a work authorization would initiate individual tasks. Commissioner Brooks asked if the Board would approve all of the work authorizations. Mr. Sheets stated that all contracts and work authorizations required Board approval. Commissioner Brooks asked how would the cost for their services be identified. Mr. Sheets stated that would be determined after the scope of work is developed and they propose a price. Commissioner Brooks asked if the Board has discretion on the scope of work. Mr. Sheets answered affirmatively. Commissioner Brooks stated that he agrees with the recommendation of the evaluation committee.

Mr. Sheets responded to Commissioner Wilkinson's concern with a conflict of interest with WEC stating that if engineering firms who had previous working relationships with these contractors most of them could not be considered. Mr. Sheets stated that once WEC contracts with the KLWTD they are bound by the engineering code of ethics to represent the KLWTD. Commissioner Wilkinson stated that WEC has vacuum system experience and does great work and that his concern was with the fact that they were rated as part of the Haskell team.

Chairman Tobin joined the meeting at 4:25 p.m. and requested that Commissioner Wilkinson continue to Act as Chairman until the conclusion of the discussion on this agenda item.

Commissioner Wilkinson and Mr. Sheets provided an update on what had been presented and discussed to this point of the meeting.

Chairman Tobin stated concern that he had not had enough time to review the information and requested that it be tabled until the next meeting.

Discussion ensued on the evaluation process and the scoring and ranking procedure. Commissioner Bauman commented that the review was conducted on what was submitted. For example, the PBS&J submittal did not communicate that they had wastewater experience. Mr. Sheets stated that the evaluations were done independently with communication between the committee members and that evaluators weren't told how to weight their scores. Chairman Tobin stated concern with the process and that he was not comfortable with the method of advertising because in his opinion it was not broad enough to contact engineers. Chairman Tobin was also concerned because the cost for engineering services has not been identified and he does not want to pay excessively for supervision of the projects. Chairman Tobin asked for a brief description of what the construction project manager's scope of work would include.

Commissioner Wilkinson stated that the project manager would be involved with reviewing and approving every invoice and oversight of all facets of the project. He believes that the engineer should be in the District on a consistent basis.

Commissioner Bauman stated that the action requested of the Board today was to begin negotiations for a standard contract with five capable firms to be used for individual tasks as needed. Commissioner Bauman stated that Mr. Charles Sweat had contacted local firms concerning their interest.

Commissioner Beaty questioned the cumulative scores and the separation between the top three firms and the rest. Mr. Sheets stated that the top three gave information that was pertinent and easy to identify. Commissioner Beaty asked what benefit there was to contracting with five firms instead of eight. Mr. Sheets stated that the industry standard for this type of contract is three years in length and he does not anticipate the District requiring sufficient work to warrant eight engineers of record.

Chairman Tobin expressed concern about WEC having been listed as a sub-consultant on the Haskell proposal. Mr. Sheets and Mr. Kinsley reiterated the previous discussion for the Chairman's benefit.

Commissioner Brooks stated that he believes the process was sound and that the committee has selected two local firms that have successful experience and for the Board to not move forward at this point seems unnecessary.

Discussion ensued concerning the repercussions of postponing action or starting the CCNA process again. Chairman Tobin asked for a summary of what the oversight of the projects would involve. Discussion ensued on the observation process, the involvement of the engineer of record and his reporting process.

Commissioner Brooks raised a point of order concerning the discussion of an item without a motion on the floor for discussion. Acting Chairman Wilkinson entertained a motion to continue the discussion. Acting Chairman Wilkinson made a motion to table the item until July 9th. Chairman Tobin stated that he needs to understand the firm's role before selecting an engineer and that he believes a local engineer could be more involved. Mr. Kinsley

noted that on a design/build project, from an owner's perspective, the engineer of record verifies that Haskell is doing what the KLWTD is paying for and checks on the value engineering to protect Board interests, they review invoices, pay requests and value engineering decisions.

Chairman Tobin tabled the item until the July 9, 2003 meeting. Mr. Sheets requested direction from the Board. Mr. Sheets stated that he wants to address the concerns of the Board and the he does not want the Board to feel they have lost options through this process.

Chairman Tobin stated that he would feel more comfortable with an indication of how many local firms showed interest. Mr. Sheets stated that four Miami firms submitted qualifications but did not possess the expertise that the District requires. Discussion ensued. Chairman Tobin asked what the next step in the process would be after approving the recommended rankings. Mr. Sheets stated that a blanket contract with general terms and conditions would be brought to the Board for approval and the Board, via work authorization with a defined scope of service, would approve the actual work tasks.

Acting Chairman Wilkinson turned the floor over to Chairman Tobin at 5:35 p.m.

**Chairman Tobin brought Item D-1, the execution of the KLP Contract with D.N. Higgins, to the floor. Chairman Tobin, Commissioner Bauman, Commissioner Beaty and Commissioner Wilkinson signed the document in view of the public. Commissioner Brooks abstained from signing indicating that he gave his consent to entering into the contract by means of his motion at the June 11, 2003 meeting.**

**Chairman Tobin brought Item D-2, the execution of the KLTV Contract with The Haskell Company, to the floor. Chairman Tobin, Commissioner Bauman, Commissioner Beaty and Commissioner Wilkinson signed the document in view of the public. Commissioner Brooks abstained from signing indicating that he gave his consent to entering into the contract by means of his motion at the June 11, 2003 meeting.**

Chairman Tobin requested that Ms. Amy Dukes give a legal report. Ms. Dukes had no official report to present this week. Ms. Dukes requested to remain on the telephone line during the discussion of the Betancourt settlement offer.

#### 4. Approval of the External Auditor Recommendation

Mr. Sheets stated that one of the statutory requirements of all Florida units of local government is to obtain an annual audit of the financial results of the entity based upon the fiscal year that runs from October 1 through September 30. The first fiscal year for the Key Largo Wastewater Treatment District will expire September 30, 2003.

Mr. Sheets informed the Board that on May 28, 2003, staff opened the technical proposals received from four audit firms, located in Florida. The Board of Directors appointed Board Member Cris Beaty and CFO David Miles to review the proposals and provide recommendations for award to the Board of Directors. Upon completion of the evaluation of the technical proposals, the financial proposals were opened on June 16, 2003. Both evaluators then completed their ranking of the four firms.

Provided for the Board was a spreadsheet showing the financial proposals from each of the four audit firms and the rankings performed by Chris Beaty and David Miles.

The highest ranked firm, Mull & Associates, submitted a proposed cost without the single audit of \$8,500, which would be under the FY 2003 budget of \$10,000. In later years when a single audit would be required, their proposed price would be \$15,100. There is also a CPI adjustment in the draft contract.

Mr. Sheets recommends the Board to enter into contract negotiations with the top-ranked firm. The final price is an item that is open to negotiation as the contract is finalized. Mr. Sheets proposes bringing a final contract for Board approval by the second meeting in July. In the event a successful contract cannot be negotiated with the top-ranked firm by July 31, 2003, staff requests authorization to enter into contract negotiations with the second and third ranked firms, in turn, until a satisfactory contract can be achieved.

**COMMISSIONER WILKINSON MADE A MOTION TO ACCEPT THE RECOMMENDATIONS AS STATED. COMMISSIONER BROOKS SECONDED THE MOTION FOR DISCUSSION, Chairman Tobin asked Commissioner Beaty for his opinion on the selection process. Commissioner Beaty stated that he believes the process was thorough and the top-ranked firm would have their principle accountants conducting the audit, which would insure consistency of those doing the actual work during the term of the contract. With no further discussion Chairman Tobin called for a vote. ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.**

5. Approval of the Pending Payments List for June 25, 2003

Mr. Sheets presented the pending payments list noting that the \$16,000 payment would be included in the June payments once the settlement amount is approved by the Board and upon receipt of the executed letter from Gartek. Commissioner Brooks asked if there are sufficient funds available to include the \$16,000 payment to Gartek. Mr. Sheets answered in the affirmation.

**COMMISSIONER BROOKS MADE A MOTION TO APPROVE THE JUNE 25, 2003 PENDING PAYMENTS LIST. COMMISSIONER WILKINSON SECONDED THE MOTION. ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.**

6. Approval of the Gartek Counter-offer Amount and Payment Thereof

**COMMISSIONER BROOKS MOTIONED TO ACCEPT THE LETTER OF FINAL OFFER IN THE AMOUNT OF \$16,000.00 AND that the offer contained herein is not an admission by the District of any liability for payment of the amount in controversy but an offer to compromise and resolve all pending claims and disputes between the District and you and your firm and that by Gartek's signing of the letter they are agreeing to accept the offer of compromise as full and final settlement of any and all claims by Mr. Betancourt or Gartek arising out of your employment agreement with the District and waive any and all future claims that may arise out of that agreement and that payment would be made after the General Manager receives a signed copy of the letter. COMMISSIONER BEATY SECONDED FOR DISCUSSION. WITH NO FURTHER DISCUSSION CHAIRMAN TOBIN REQUESTED A ROLL CALL VOTE.**

**COMMISSIONER BAUMAN**

**NO**

COMMISSIONER BEATY	YES
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	NO

**THE MOTION CARRIED WITH A VOTE OF THREE IN FAVOR AND TWO AGAINST.**

Mr. Michael Longenecker, a Key Largo resident, requested to address the Board stating that in his opinion it is not appropriate to pay Gartek anything over the amount contracted for.

Ms. Dukes disconnected from the meeting.

**CHAIRMAN TOBIN BROUGHT ACTION ITEM D-7 TO THE FLOOR (DISCUSSION OF THE RESPONSE TO KEY WEST CITIZENS ARTICLE ON TOXIC WASTE DUMPING). COMMISSIONER BROOKS MOTIONED TO APPROVE THE LETTER WITH THE CORRECTIONS INDICATED BY COMMISSIONER BROOKS. COMMISSIONER WILKINSON SECONDED THE MOTION. CHAIRMAN TOBIN STATED CONCERN WITH ISSUING A RESPONSE FROM THE BOARD AND SUGGESTED THAT INDIVIDUAL RESPONSES WOULD BE MORE APPROPRIATE. WITH NO FURTHER DISCUSSION CHAIRMAN TOBIN REQUESTED A ROLL CALL VOTE.**

COMMISSIONER BAUMAN	YES
COMMISSIONER BEATY	NO
COMMISSIONER BROOKS	YES
COMMISSIONER WILKINSON	YES
CHAIRMAN TOBIN	NO

**THE MOTION CARRIED WITH A VOTE OF THREE IN FAVOR AND TWO AGAINST.**

E. General Manager's Report

1. Presentation of the Interim Financial Reports for KLWTD, May 31, 2003

Mr. Sheets presented the Interim Financial Reports for the KLWTD as of May 31, 2003 and invited questions. Chairman Tobin asked when the next budget workshop would be held. Mr. Sheets stated that it would be held on July 9, 2003.

Mr. Sheets will present the revised Monroe County loan agreement on July 9, 2003.

2. Discussion of the Response to the Key West Citizen Concerning the Dumping of Toxic Waste in the Gulf Stream

Please see above.

3. Status Report on the Haskell Company's KLTV Preliminary Project Schedule

Mr. Sheets informed the Board that this schedule would be updated to reflect the receipt of the notice to proceed and the adjustment to the dates as a result of the delay in executing the agreement. Mr. Sheets stated that Mr. Kinsley, the FDEP and FEMA representative

would be meeting concerning the draw down schedule after the notice to proceed was issued.

Chairman Tobin brought action item D-3 back to the floor for the Board's consideration.

**COMMISSIONER BAUMAN MADE A MOTION TO ACCEPT THE RECOMMENDATION OF THE CCNA EVALUATION COMMITTEE TO ENTER INTO STANDARD CONTRACTS WITH THE FIVE TOP RANKED FIRMS. COMMISSIONER BROOKS SECONDED THE MOTION. CHAIRMAN TOBIN ASKED FOR ANY FURTHER DISCUSSION. CHAIRMAN TOBIN ASKED IF THE BOARD WOULD HAVE ANY OBJECTION TO NEGOTIATING WITH THE TOP EIGHT. DISCUSSION ENSUED. COMMISSIONER BAUMAN AMENDED HIS MOTION TO INSTRUCT THE MANAGER TO NEGOTIATE STANDARD CONTRACTS WITH THE TOP EIGHT RANKED FIRMS. COMMISSIONER BEATY SECONDED THE AMENDED MOTION. ALL WERE IN FAVOR AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Mr. Sheets stated that the next recommendation was to direct staff to approach WEC for a scope of work and fee for the task of being engineer of record and construction manager for the KLP and KLTV projects.

**COMMISSIONER BROOKS MOTIONED TO DIRECT THE MANAGER TO REQUEST A SCOPE OF WORK FROM WEC FOR THE TASK OF CONSTRUCTION MANAGER FOR THE KLP AND KLTV PROJECT. COMMISSIONER BAUMAN SECONDED THE MOTION FOR DISCUSSION. Chairman Tobin asked if Board could vote to begin the bidding process with more than one of the eight top firms. Mr. Sheets stated that although his opinion is not a legal one he is aware of a State statute that might permit simultaneous negotiation but it is not the industry standard. Discussion ensued. Mr. Sheets stated that the only other firm he would recommend for construction management would be Boyle Engineering. Chairman Tobin asked if there could be a selection process between the two firms. Mr. David Refling stated that it is not the normal operating procedure for public entities and that once ranking of the CCNA submittals is complete then a scope of work is negotiated with the top ranked firm and if the negotiations fail then you request a scope from the next firm. This is the CCNA process for public entities. A private company has more flexibility in negotiations. Chairman Tobin asked if per the CCNA statutes it precludes simultaneous negotiations. Mr. Doug Eckmann of Boyle Engineering stated that per engineering ethics and Florida Statute it is illegal to submit prices for services that another firm is negotiating on and it is illegal to use another firm's previously defined scope of service. It was suggested that the Board request the firm's current rate schedules for informational purposes. CHAIRMAN TOBIN ASKED FOR ANY FURTHER DISCUSSION. THERE BEING NONE HE CALLED FOR A VOTE. ALL WERE IN FAVOR AND THE MOTION WAS UANANIMOUSLY APPROVED.**

Commissioner Wilkinson expressed concerned with not having approval from FEMA on the plant site. Mr. Sheets states that FEMA will pay every invoice submitted from six months ago regardless of the site approval for phase one, there will be no phase two if the site is not approved and it will be federal tax dollars wasted, not KLWTD funds. Mr. David Refling of Boyle Engineering suggested the Board consider issuing a notice to proceed for the design phase only. Discussion ensued.

**COMMISSIONER BAUMAN MOTIONED TO INSTRUCT THE MANAGER TO START NEGOTIATIONS WITH MALCOLM PIRNIE AS PLANNING ENGINEERING AND**

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

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.