

A workshop meeting of the City Commission was held on February 21, 2012 at 5:00 p.m. in the Commission Chamber at the Municipal Administration Building. The meeting was called to order by Mayor Michael S. Carter.

COMMISSIONERS PRESENT: John Paul Rogers; Jonathan Thornhill; Betty Wojcik; Terry Y. Howell; Mayor Michael S. Carter.

COMMISSIONERS ABSENT: None.

CITY REPRESENTATIVES PRESENT: Terry Leary, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk;

[Meetings are recorded but not transcribed verbatim]

Agenda Item 2. Procurement Procedures Review (Contracts)

The full staff memo is incorporated into the minutes.

[Begin Agenda memo]

SYNOPSIS: Staff answering concerns posed by Ed Bowlin and Commissioner Rogers.

BACKGROUND

Staff received a copy of a letter dated January 16, 2012 from Ed Bowlin addressed to Jerry Hill; State Attorney asking the State Attorney to investigate the City's procurement practices. As soon as staff received this letter we began addressing the issues and obtained answers to all of the concerns. The City Manager met with Mayor Carter and Mr. Bowlin to discuss these concerns.

The City Manager assumed she had addressed all of his concerns until it was brought to our attention that Mr. Bowlin had forwarded his concerns to the Attorney General.

On February 13, 2012 a list of concerns was forwarded to the City Clerk regarding procedures and contracts. Attached are staff's responses to these concerns.

[End Agenda Memo]

[Begin concerns by Ed Bowlin and responses by staff as presented in the agenda packet]

- I. Contract with Andy Easton & Associates - Reviewing the Memorandum of December 27, 2011, p2 (*attached*), shows that there was communications [negotiations] during the sealed bid proposal process by city staff, prior to commission approval to negotiate with the highest-ranking bidder in violation of the sealed bid proposal process of Sec. 2-486. Under these circumstances, Andy Easton & Associates should have been disqualified from bidding and the staff member disciplined: "Andy Easton has agreed to lower his proposal from \$45,000 to \$44,000." "He has asked that the City take into consideration the expense that was involved in the development of the grant application which included conducting a door-to-door survey of about 300 households which was done at his expense."

Staff response

Staff did **not** negotiate with Andy Easton until the bids had been evaluated by the selection committee and staff was preparing the agenda memo. Staff did fail to have the City Manager take this to Commission for permission to negotiate with the highest ranked proposer. However no negotiations were done during the sealed bid process. I was not on the selection committee. All I did was tally the points brought to me from the

committee. Staff has a letter from the DEO dated February 8, 2012 and their review of the procurement process and the contract had no findings or concerns.

- II. Contract with Fort Bend Services for purchase of polymer (See Memorandum of December 15, 2009, Re: Bid to Fort Bend Services). The contract provides for an annual renewal for up to "three (3) additional one (1) year periods. This provision violates City Ordinance Sec. 2-406 that provides that contracts may only be renewed for on a yearly basis for a period of up to two (2) years after the initial contract or for a period no longer than the term of the original contract. (Note: the initial contract was only for eight months). This contract also provided for automatic renewals, in violation of city ordinances. In addition, there were two extensions of this contract, in violation of Sec 2-418(f), which allows only one extension. A unauthorized price increase was offered to the company in the July 20, 2011 "Agreement to Extend Bid"

Staff response

The City is not into the 3rd year of the contract with Fort Bend Services and will go out to bid this year. Staff was already aware of this. The initial contract was only for eight months because we awarded the bid in January and all of our contracts expire on September 30th. Each party had to elect to renew the contract for another year so it was not automatic. **We don't extend contracts we renew them.** In the agreement to extend the bid the City was amenable to an annual increase in cost equal to the Federal Consumer Price Index.

- III. Contract with Appalachian Material Services, Inc. (See Memorandum of December 15, 2009, Re: Appalachian Material Service, Inc.). The contract provides for an annual renewal for up to "three (3) additional one (1) year periods. This provision violates City Ordinance Sec. 2-406 that provides that contracts may only be renewed for on a yearly basis for a period of up to two (2) years after the initial contract or for a period no longer than the term of the original contract. (Note: the initial contract was only for eight months). This contract also provided for automatic renewals, in violation of city ordinances. In addition, there were two extensions of this contract, in violation of Sec 2-418(f), which allows only one extension. A unauthorized price increase was given twice to the company in the July 20, 2011 "Agreement to Extend Bid"

Staff response

The City is not into the 3rd year of the contract with Appalachian Material Services. We will go out to bid this year. The contract does renew annually upon the agreement of both parties. It is not automatic because both parties have to agree to renew. We did not extend this contract we renewed it. The City was amenable to an annual increase in cost equal to the Federal Consumer Price Index.

- IV. Contract with Highland Oil Company expired October 31, 2011, and there is no new or signed renewal (See Memorandum of September 14, 2011, Re: Award of Contract).

Staff response

A letter was signed by Highlands Oil to renew the contract for 1 year. This contract does not expire until September 30, 2013.

- V. Contract with Mid Florida Diesel (Generator Repair) has a renewal provisions for two one-year periods, but has been renewed three times. Second, this contract did not go out for bid, in violation of Sec 2-417(a).

Staff response

Mid-Florida Diesel. The original contract ran from 10/1/2008 to 9/30/2009. The first renewal ran from 10/1/2009 to 9/30/2010. The second renewal runs from 10/1/2010 to 9/30/2011. We did fail to go out to bid for this in 2011. We will go out to bid this year.

- VI. Contract with Odyssey Manufacturing Inc. (See Memorandum of December 15, 2009, Re: Odyssey Manufacturing Inc.). The contract provides for an annual renewal for up to "three (3) additional one (1) year periods. This provision violates City Ordinance Sec. 2-406 that provides that contracts may only be renewed for on a yearly basis for a period of up to two (2) years after the initial contract or for a period no longer than the term of the original contract. Second, the contract was renewed 2010 with an increase equal to the CPI, but the initial contracts guarantees a set price through December 2012. Third, the contract was renewed with unauthorized price increases; the contract provided a fixed quoted price for up to December 31, 2012.

Staff response

The contract with Odyssey Manufacturing did say renewals **up to 3** additional one year periods. We are not in the 3rd year of the contract and will go out to bid this year. We were already aware of this.

- VII. All contracts over \$15,000 must have a legal review and approval pursuant Sec. 2-418(k) and Sec 2-417(h), none of the contracts go through this process.

Staff response

All contracts and agreements are reviewed by the City Attorney As to Form. Section 2-41 Review of contract states that each contract for contractual services costing more than the threshold amount for Category One (\$10,000) shall be executed in a form of agreement provided by the city **OR** shall receive legal review and approval as to content before the contract is executed

- VIII. Sec 2-417 (Commodities or contractual services not exceeding the threshold amount for Category Two—Twenty-five thousand dollars) does not provide for renewals or extensions for contracts under \$25,000.

Staff response

We only go out for sealed bids for commodities or contractual services exceeding the threshold amount of \$25,000. I cannot find in Sec 2-417, "Commodities or contractual services not exceeding the threshold amount for Category Two- \$25,000, do not provide for renewals or extensions for contracts under \$25,000." Sec 2-217 refers you to Sec 2-406 which says In accordance with the requirements of Sec 287.058, F.S., every procurement of services in excess of the threshold amount for Category One, (\$10,000) shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which provisions and conditions shall, where applicable, include, but shall not be limited to:.....

[End concerns by Ed Bowlin and responses by staff as presented in the agenda packet]

Purchasing Director Bonnie Hodge said the memo she prepared for the meeting was in response to questions raised by Commissioner Rogers and Ed Bowlin. The only thing she found as a valid concern was the failure not to rebid the Mid-Florida Diesel contract. It was renewed three times when it should have been rebid before the end of the second renewal. Ms. Hodge said it slipped by her and she will rebid it this year.

Commissioner Rogers said he was approached by a committee made up of a group of citizens that were concerned about the City's procurement contract procedures. They said they were not trying to embarrass anyone, they simply wanted to point out mistakes they would like to see corrected. Commissioner Rogers said he held no animosity toward any commissioner or staff member, but he will always address concerns posed by citizens.

Commissioner Wojcik asked why they had to go through the exercise when all the questions raised were answered by staff and or the city attorney. The State's Attorney's office and DEO (Florida Department of Economic Opportunities) provided an opinion showing no problem, except for the one staff had

acknowledged. Commissioner Rogers said Mr. Bowlin wanted to point out some new concerns through his presentation that he found to be very informative. Commissioner Wojcik said there should be no additional information because at the last meeting she had asked that all information be provided to staff, commissioners, and the city attorney beforehand to allow them the opportunity to prepare answers to the questions. Commissioner Rogers said it would be better to review this and lay it to rest one way or the other. If Mr. Bowlin brings up something that needs to be acted on, then we need to act on it. Any time a group of citizens asks to be heard, it is the job of the Commission to allow them to do so.

Commissioner Rogers said it was the State Attorney's opinion that there was no criminal intent, but Mr. Bowlin never alleged any criminal intent. He said he would like Mr. Bowlin to make the presentation. Mayor Carter said he was okay with it and would like to see where it goes.

Commissioner Wojcik said she wanted to make sure it was on record that she thought the presentation was a waste of time because they already looked at it and determined there were no problems.

Commissioner Rogers asked everyone to view the presentation with an open mind. He said if it was determined that there were no problems then he would apologize to the Commission.

Ed Bowlin, the citizen making the presentation, said the State Attorney's letter did say there were no potential criminal violations in the issues raised, but he had never alleged that anybody did anything criminal. He was only making the presentation at the request of Commissioner Rogers who felt the concerns needed to be discussed in public. Mr. Bowlin said that after the present meeting, city staff and the City Commission will not have to worry about him bringing up issues in the future because he didn't believe it was worth it. Instead, he will redirect his time and energy to more fruitful endeavors.

POWERPOINT PRESENTATION

Mr. Bowlin began his PowerPoint presentation showing slides of documentation as he explained.

Contract with Florida Refuse

Mr. Bowlin said his concern for the Lake Wales' Procurement Policy arose when the franchise agreement and the contract was recently given to Florida Refuse. A group of individuals within the city decided to form an informal committee, made up of no commissioners or city staff, to investigate some of the contract issues they saw.

Mr. Bowlin said that under Florida's "home rule" municipalities may determine by ordinance its own procedures for purchasing commodities and services. When a municipality adopts a procurement policy, an agreement or contract awarded in violation of the procurement policy renders the contract void and the bidder acquires no rights. Sec. 2-400(c) of the City's procurement ordinance says, "The city commission recognizes it is essential that city procurement procedures comply with state statutes where required; and that city procurement procedures be consistent with the intent of state statutes where strict compliance is not required." Mr. Bowlin said we [the City] adopted the State procurement statutes virtually word for word. With that in mind, the committee purchased the Florida Procurement Handbook, and reviewed the Florida Statutes and case law. Mr. Bowlin said he contacted the city attorneys from Miami, Tampa, Orlando, and Lakeland, and to be sure those attorneys were absolutely correct, spoke multiple times with the Florida League of Cities.

Mr. Bowlin made the following comments regarding the contract with Florida Refuse:

- The contract did not go out to bid. Mr. Bowlin said he was present at the meeting when city staff told the City Commission that under the current contract they have an obligation to "negotiate in good faith." He explained that in 2000, the "negotiate in good faith" issue was addressed by the Florida Courts [State of Florida, Department of Corrections v. C & W Food Service, Inc., 765 So.2d 728 (2000)]. Mr. Bowlin said the city has the same exact wording in that contract as presented in this case: "Contracts may be renewed based on mutual agreement."
- Mr. Bowlin said that the legal opinion rendered in the Case was as follows:

- The obligation to negotiate renewal in good faith is, at most, an agreement to agree on something in the future.
 - They do not have an enforceable contract for that period.
 - A renewal does not create a contractual right to review.
- Mr. Bowlin said that the obligation to “negotiate in good faith” was concerning the renewals. All the renewals in the Florida Refuse contract expired. The current contract is a completely new contract. The Commission is not bound by this provision even if it hadn’t been struck down by the courts in 2000.
 - Mr. Bowlin said the next excuse from city staff regarding the contract with Florida Refuse was that they did not have to go out to bid because it is a franchise. He said that the Florida League of Cities and the four city attorneys he contacted who handle refuse service said we [the City] absolutely must abide by the procurement ordinances when having a refuse service contract. Individually, each said we, [the City] gave an exclusive franchise for refuse service, which was a possible anti-trust violation. Mr. Bowlin said the gentleman that he talked with from the Florida League of Cities said that lack of bids will eventually subject the city to a lawsuit.
 - Mr. Bowlin said there is no “annual appropriation” clause in the Florida Refuse contract. Sec. 2-406(a) of the procurement ordinance which says, “No agreement or contract shall be executed which binds the city for the purchase of services or commodities for a period in excess of one (1) fiscal year, unless the following statement is included in the contract: The performance of the City of Lake Wales and its obligation to pay under this contract is contingent upon annual appropriation by the City Commission of Lake Wales.” Mr. Bowlin said the reason we adopted this State Statute into our ordinance was because governments operate from year-to-year. It is based on the taxes received and how it’s spent.
 - The terms in the Florida Refuse contract provide for a renewal of “two (2) additional three (3) year terms.” Mr. Bowlin said this is a common discrepancy with contracts. Sec. 2-406, procurement ordinance, says, “... contract may be renewed on a yearly basis for a period of up to two (2) years after the initial contract or for a period no longer than the term of the original contract, whichever is longer...” Mr. Bowlin said that City ordinances do not allow for multi-year renewals.
 - Mr. Bowlin said that Florida Refuse offered a \$500 campaign contribution toward Commissioner Rogers’ when he ran for Mayor last year and did in fact send former Commissioner Jack Van Sickle a \$500 check toward his campaign when rerunning for his seat last year, though Mr. Van Sickle returned it. Mr. Bowlin commented that it might not be illegal to do this, but it seems funny that Florida Refuse did not give to their campaigns prior to the expiration of its contract. That smells!

City Attorney Chuck Galloway said that before addressing the contracts to which Chapter 2 is applicable, he would like to address the fact that Chapter 2 is not applicable to the Florida Refuse franchise agreement. Chapter 2 is a legislative enactment of this body that says, “This is how contracts are to be constructed.” Chapter 17 is also a legislative enactment, an ordinance that says, “This is how we will treat this franchise with this entity.” This body approved that. When you have two competing ordinances or legislative enactments, the one that is narrower, which this agreement is, or the one that is later is the one that controls. Chapter 2 does not apply to the Florida Refuse franchise agreement ordinance. It does apply to these other contracts and that has been addressed in a memorandum in response to this. Just for the record, “Chapter 17 is not governed by Chapter 2.”

- Mr. Bowlin said for the record, “four city attorneys: Orlando, Miami, Tampa, and Lakeland; and the Florida League of Cities said we must abide by it.”

Mayor Carter said for the record, “Our city attorney said this is not the case.” Mr. Bowlin said he understands.

Contracts governed by Chapter 2

Mr. Bowlin reviewed six contracts that are governed by Chapter 2 of the City's procurement ordinance: Andy Easton & Associates; Fort Bend Services; Appalachian Material Services; Highlands Oil Company; Mid-Florida Diesel; and Odyssey Manufacturing, Inc.

Mr. Bowlin explained that extension of contracts is not the same as renewal of contracts. This is important to understand because there are provisions in the City ordinances that govern both an extension and renewal of contracts. We don't extend contracts we renew them.

Contract with Andy Easton & Associates

Mr. Bowlin explained the following:

- The Memorandum from staff dated December 27, 2011, p2, shows that there were negotiation communications with the highest-ranking bidder during the sealed bid proposal process by city staff, prior to commission approval in violation of the sealed bid proposal process of Sec. 2-486(e)(2)(c), City procurement ordinance. [This is the memorandum provided by staff in the January 10, 2012 City Commission agenda packet.]
 - The Florida Procurement Handbook says that once a bid has been submitted and opened it cannot be changed. This is a State Statute that we [the City] adopted. It was said in the memorandum that Andy Easton agreed to lower his proposal from \$45,000 to \$44,000.
 - City of Lake Wales Purchasing Manual [p17], paragraph F, says, "...To ensure a proper and fair evaluation of any bid proposal, ex parte communications initiated by a bidder prior to the time a bid decision has been made are prohibited....All *ex parte* communications from a bidder are to be noted by the recipient and reported to the Purchasing office in writing for file in the City's bid file. *Ex parte* communications may be grounds for disqualification. Mr. Bowlin said the Manual also states that City staff may only contact a bidder just for clarification when making clerical mistakes.
 - City of Lake Wales Purchasing Manual, [p18], paragraph I, says "No bids can be revised or changed during the bid opening."
 - The Florida Procurement Handbook says, "The actual unit prices included in the bid shall not be changed under any circumstances."
 - City of Lake Wales Procurement Ordinance, Sec. 2-400, Legislative Intent, [paragraph (a)] says, "The city commission recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation and monitoring of the procurement process are important means of curbing any improprieties and establishing public confidence in the process by which property and services are procured."
- Mr. Bowlin said that in the same Memorandum dated December 27, 2011, there was a quote that says, "He has asked that the City take into consideration the expense that was involved in the development of the grant application which included conducting a door-to-door survey of about 300 households which was done at his expense." Mr. Bowlin said this sounds like an apparent opportunity for favoritism. All the other companies were not given the chance to say, "We want you to consider how much money we've spent." All these companies spent money putting these proposals together, which take time, resources, and money to do. He said in his opinion, this is unfair persuasion and it surely does not inspire public confidence.
- Mr. Bowlin said that in the letter staff submitted in the meeting agenda packet from the Florida Department of Opportunities (DEO) it says, "The contract with Andy Easton & Associates for grant administration services was reviewed. There are no findings or concerns." Mr. Bowlin said he never attacked the contract, only the procedure that was used. He said he contacted Mr. Doherty [Roger J. Doherty, CLEP, Planning Manager, Small Cities CDBG Program], who wrote the letter, and asked if he had reviewed the procedure before signing off on it. Mr. Bowlin said he informed Mr. Doherty, and read to him the memo explaining what happened. Mr. Doherty seemed quite shocked and said he did sign off on the memo but the case manager reviewed the process.

Mr. Doherty said he would have the case manager call him. Mr. Bowlin said she [the case manager] called today and inquired about the situation, which he explained. She asked that all questions be in writing, which he sent it to her today and is awaiting a response.

Bonnie Hodge, Purchasing Director, read the last sentence of the letter from the Florida Department of Economic Opportunity (DEO) as follows: "This letter also documents compliance with your FFY 2011 grant agreement program condition #3." Ms. Hodge explained that condition #3 is basically saying that we have provided all procurement documentation to the DEO and that we were in compliance with all those conditions, which is basically our procurement process. Mr. Bowlin said that may be correct and he is sure her [case manager] decision was based on the documents she received and that she has since received more. He said he does not know because he had no contact back yet.

Contract with Fort Bend Services

Mr. Bowlin commented the following:

- The Contract with Fort Bend Services provides for an annual renewal of up to "three (3) additional one (1) year periods."
 - Sec. 2-406, procurement ordinance, says, "...contract may be renewed on a yearly basis for a period of up to two (2) years..."

Mr. Bowlin said this is a very common thing. We are renewing contracts when we are not authorized to do so and our ordinances do not allow them. He then referenced to the court case again [State of Florida, Department of Corrections v. C & W Food Service, Inc., 765 So.2d 728 (2000)].

- Unauthorized price increases were offered to the company in the 2010 and the 2011 "Agreement to Extend Bid."
 - Procurement ordinance, Sec. 2-418(a)(3) & (b)(3) says, "If the renewal of the contract is contemplated, it shall be so stated in the invitation to bid, and the bid shall include the price for each year for which the contract may be renewed."
 - Procurement ordinance, Sec. 2-418(g) says, "Renewal of a contract shall be in writing and shall be subject to the same terms and conditions set forth in the original contract."
- Both agreements to extend the bid are fixed bid contracts that made no provision whatsoever to give a price increase, a Federal Consumer Price Index (CPI). This increase was offered in 2010 and then again in 2011.

Mr. Bowlin said the City Commission is the body that appropriates money, and yet City staff is giving away money in these contracts that the City Commission did not approve by throwing in these price increases when renewing.

Contract with Appalachian Material Services

Mr. Bowlin commented the following:

- The Contract with Appalachian Material Services provides for an annual renewal for up to "three (3) additional one (1) year periods."
 - Sec. 2-406, procurement ordinance, says, "...contract may be renewed on a yearly basis for a period of up to two (2) years..."
- Unauthorized price increases were offered to the company in 2010 and the 2011 "Agreement to Extend Bid."

- Procurement ordinance, Sec. 2-418(a)(3) & (b)(3) says, "If the renewal of the contract is contemplated, it shall be so stated in the invitation to bid, and the bid shall include the price for each year for which the contract may be renewed.
 - Procurement ordinance, Sec. 2-418(g) says, "Renewal of a contract shall be in writing and shall be subject to the same terms and conditions set forth in the original contract.
- Staff continues to give increases to these companies when the contracts do not provide for them.

Contract with Highland Oil Company

Mr. Bowlin commented the following:

- The contract with Highlands Oil Company expired October 31, 2011, and there is no new or signed renewal. Mr. Bowlin said he made two document requests and no contract renewal could be found.

Ms. Hodge explained that the contract with Highlands Oil Company does not expire until 2013. She contacted Highlands Oil for a copy of the renewal because she was unable to locate it. She said she does not see where the ordinance was violated because the City Commission approved the contract as a one (1) year contract with the option to renew for two (2) one (1) year terms upon mutual agreement of both parties.

Mr. Bowlin said it concerns him because our ordinance requires renewals to be in writing. Referring to a record's request for emails to and from the City Attorney from 2009 to present, he said he come across an email from the City Attorney responding back to the City Clerk, who asked if we needed a new contract signed by all parties for each of the renewals. In response, the City Attorney said the renewal is considered to have occurred based upon the actions of the parties. Mr. Bowlin said he does not agree with that for the following reasons according to the purchasing ordinance:

- Sec. 2-418 (g), "Renewal of a contract shall be in writing..."
- Sec. 2-406(c), "The written agreement shall be signed by the city manager and the contractor prior to the rendering of any service..."
- Sec. 2-406(d), "...evidence by documentation..."
- Sec. 2-417(c), Documentation. "All purchases will be documented and authorized on standard forms or vouchers..." "...will be required prior to the purchase of commodities."

Contract with Mid-Florida Diesel

Mr. Bowlin made the following comments:

- Unauthorized price increases were offered to the company in the August 18, 2010 Agreement to Extend Bid, which in violation to:
 - Sec. 2-418(a)(3) and (b) (3), "If the renewal of the contract is contemplated, it shall be so stated in the invitation to bid, and the bid shall include the price for each year for which the contract may be renewed."
 - Sec. 2-418(g) "Renewal of a contract shall be in writing and shall be subject to the same terms and conditions set forth in the original contract."
- The original contract has a renewal provision for two (2) one (1) year renewals, but was renewed three times.
- The contract did not go out for bid, which is in violation of Sec. 2-416.

Ms. Hodge said the contract slipped by her. It should have gone out to bid last year; and she will bid it out this year. Mr. Bowlin said he understands that, but he had prepared the PowerPoint beforehand. He questioned whether we should wait until next year to go out to bid because the Florida courts

have said that contracts made in violation of our ordinance are null and void. Therefore we currently have no contract.

Contract with Odyssey Manufacturing, Inc.

Mr. Bowlin made the following comments:

- The contract with Odyssey Manufacturing Inc. provides for an annual renewal for up to “three (3) additional one (1) year periods.”
 - Sec. 2-406, procurement ordinance, says, “...contract may be renewed on a yearly basis for a period of up to two (2) years...”
- The contract was renewed in 2010 with an offer to an increase equal to the CPI, but the initial contracts guarantees a set price through December 2012.
 - Sec. 2-418(a)(3) & (b)(3), “If the renewal of the contract is contemplated, it shall be so stated in the invitation to bid, and the bid shall include the price for each year for which the contract may be renewed.
 - Sec. 2-418(g), “Renewal of a contract shall be in writing, and shall be subject to the same terms and conditions set forth in the original contract.
- In the bid proposal, Odyssey agreed to fix the price through December 31, 2012 regardless of the economy and inflation. Then, for the renewal in 2011, the company increased its price due to the economy and inflation which City staff accepted along with offering the company a CPI increase. The contract was renewed with unauthorized price increases.

Mandatory Provisions

Mr. Bowlin discussed two of the mandatory provisions in the purchasing ordinance:

- Sec. 2-417(h), Review of contract. “No contract shall be approved which does not include the minimum provisions required by Sec. 2-406.”
- Sec. 2-406(a), “No agreement or contract shall be executed which binds the city for the purchase of services or commodities for a period in excess of one (1) fiscal year, unless the following statement is included in the contract: “The performance of the City of Lake Wales and its obligation to pay under this contract is contingent upon annual appropriation by the City Commission of Lake Wales.” Mr. Bowlin said this is the most important provision and it is in none of the contracts that he received.

Mr. Bowlin said the City Commission controls the budget. He asked what happens when the City faces hard economic times and it has to start cutting services it does not want to cut. This is why these provisions are supposed to be put into contracts. We may very well be facing this situation next year with our shortfall. Hopefully, the Commissioners will be able to come up with a solution to fix it so we won't have to face it. Government runs from year to year, which is why we have a budget, why these provisions are supposed to be in the contracts, and why we adopted them from State Statutes.

Referring to a record's request for emails to and from the City Attorney from 2009 to present, Mr. Bowlin read an email dated December 18, 2009 from the City Clerk to the City Attorney. In the email the City Clerk referenced City Code of Ordinances, Sec. 2-406(a), Contract document: “No agreement or contract shall be executed which binds the city for the purchase of services or commodities for a period in excess of one (1) fiscal year, unless the following statement is included in the contract: The performance of the City of Lake Wales and its obligation to pay under this contract is contingent upon annual appropriation by the City Commission of Lake Wales.” The City Clerk asked the City Attorney if he thought a contract approved by the City Commission, which includes an extension, needs to be brought back to the City Commission for approval if this statement is not in the original agreement. The City Attorney responded back and

said we need to make sure the language exists in future contracts or the Ordinance needs to be changed.

Mr. Bowlin said the ordinance has not been changed and staff fails to include the appropriate language in the contracts.

Conclusion of PowerPoint presentation

Mr. Bowlin said we have not followed our city ordinances. The current contract system fails to include the following:

- Fails to include required "annual appropriation" clauses
- Fails to adhere to the "yearly basis" renewal terms
- Fails to distinguish between "extension" and "renewal"
- Fails to prevent unauthorized price increases in renewals
- Fails to prevent unauthorized renewals (number of times)
- Fails to ensure sealed bid price integrity
- Fails to prevent ex parte communications (sealed bid process)
- Fails to prevent the appearance of favoritism
- Fails to require all contracts to be written
- Fails to ensure signed contracts prior to rendering of services
- Fails to include the required "minimum provisions" (City Code, Sec. 2-406)

Mr. Bowlin thanked the City Commission for its time.

City Commission Comments

Commissioner Rogers said he felt the presentation had not been a waste of time and made the following comments:

- Mr. Bowlin showed in black and white, the problems needing correction.
- Future contracts must be correct.
- We need to start using the Purchasing Manual
- Staff should not be angry or vindictive and should not make up excuses when problems are pointed out, but instead, act on them.
- The Commission and staff have not always done their job in making sure contracts are correct.
- The City Manager is the Purchasing Agent according to our City Charter but may delegate the duties to someone else.
- By City Charter, the City Manager as purchasing agent needs to review all contracts prepared by staff for accuracy and, if need be, to have the City Attorney review them.
- The purpose of contracts is to avoid problems.
- The City Attorney needs to create contracts that avoid problems
- The City Commission has to approve the contracts from year to year. By doing so, it can save the City from breach of contract lawsuits.

City Attorney Chuck Galloway commented the following:

- The current contracts that are being produced are coming forth with the annual appropriation language in it because he saw it.
- Renewals described by Mr. Bowlin have come back to the Commission for consideration.
- Contracts can be amended at any time by the Commission. If the amendment is approved by the Commission, it becomes a new agreement.
- It is certainly appropriate to point out issues. When you review the responses in the memorandum prepared by Ms. Hodge, you will find that she is complying, this body is complying, and we don't have the kind of huge monumental problem that Mr. Bowlin suggests exists.
- The Florida Refuse contract is a different type contract; it is legislative in nature.

Mr. Galloway said staff, the city manager, and he have spent a significant amount of time over the last week to address these questions. If you read the responsive memo you will see that compliance is taking place, and that efforts are being made to comply with the City's ordinances and to protect the public. He said that in his opinion, this has been a little over the top.

Commissioner Howell commented the following:

- Jerry Hill, DEO, and the city attorney have said we are not out of compliance.
- The presentation was informative. It pointed out that we need to make sure the appropriate language is in the contracts when coming before the Commission for approval, extension, renewal, etc.

Mr. Galloway said he thought this was an opportunity for staff to focus on making sure each provision is found in every contract that comes forward. He said he was confident that they are, particularly on the one about annual appropriation, because he has seen it there for many months. It's been there since the adoption of the addition made to the ordinance [December 20, 2011], which was after Chapter 2 was adopted. Some of this may relate to previously created contracts but he knows the ones Ms. Hodge is preparing now includes the necessary language, particularly that protective language saying if we don't have money in the budget, we can invalidate the contract.

Commissioner Howell asked if all contracts with three-year provisions would be corrected. Mr. Galloway said not at this stage. He said there was only one instance with a three-year provision but that mistake had been acknowledged. We, as the City, and the vendor have continued to honor the contract, and it will go out to bid. Ms. Hodge said the other two contracts that had the three-year renewal have not reached the third year, so will go out to bid this year.

Commissioner Howell asked if all unauthorized price increases would be corrected. Mr. Galloway said that when the contracts came back to the City Commission and the price increase was approved by them, it became a new agreement, changing the terms of the existing agreement. That was done at Commission level and not at staff level.

Commissioner Wojcik asked if the CPI increase was a result of negotiations at the time of renewal. Ms. Hodge said she did not know. That was handled by Utilities. Commissioner Wojcik asked if both parties, the city and vendor, agreed to the changes. Ms. Hodge concurred.

Utilities Project Administrator Sarah Kirkland explained that she got the wording from one of the county contracts because she had never done a renewal that way before and did not know how to word it. She included the CPI increase in the renewal because that language was included in the county's agreement. Ms. Kirkland said there was only one company that actually raised their price, which she missed. Commissioner Wojcik asked if after putting the contract together it goes to the City Manager for review. Ms. Kirkland said no. She said she sends it to Mr. Galloway, but because the renewal was a letter, she did not send it to him because in her mind it was not a contract. The original contract already stated the additional renewals. Only the original contract goes before the Commission, not the renewals.

Commissioner Howell said that according to the ordinance, renewals must be in writing. Ms. Kirkland said that is the reason for the letter. Commissioner Howell asked if there were anymore contracts that are not supposed to be in letter form. Ms. Kirkland said not that she is aware of.

Commissioner Wojcik said it was her understanding that, as a result of all that, staff went through to make sure all the contracts were in compliance. The ones found out of compliance would be revisited. Ms. Hodge said that was correct.

Commissioner Howell said for all those watching the meeting on television she wanted them to be aware that we have done nothing wrong, we are in compliance, and the presentation tonight was only informative in nature to make them aware that there could be something wrong if we're going by Chapter

2. Mr. Galloway said that Florida Refuse Chapter 2 does not apply to Chapter 17. It is two completely separate legislative enactments. Chapter 17 is later in time and controls franchise agreements. The provisions in Chapter 2 do not apply.

Commissioner Wojcik said all the other contracts apply to Chapter 2 and that staff looked at the contracts to make sure we complied with Chapter 2. Mr. Galloway said it was his understanding that it was part of what staff has been doing; going through them and making sure that they are in compliance to what is set forth in Chapter 2. Ms. Hodge said she will be taking the Mid-Florida Diesel contract out to bid now and after approval it will expire September 30, 2012, with the option to renew for two addition one-year periods. The contracts are usually rebid so that they can start October 1, the beginning of the new fiscal year.

Commissioner Wojcik asked for confirmation that the purpose of the annual appropriation clause is to make sure the Commission is looking at that yearly cost in that year's budget so if there is a problem with the budget, the Commission can choose not to renew it. Mr. Galloway said that was correct. He explained that the provision is used to invalidate a contract if there are no funds available in the budgetary process. That way, we know there will be no claims for breach of contract. Commissioner Wojcik, for clarification, said the Commission is renewing them on an annual basis so that if the Commission decides that we can't go forward with a contract in the coming year's budget, it will not be renewed. Mr. Galloway said that was correct, for that was the purpose for bringing it forward.

Commissioner Thornhill said it was good that they viewed the presentation so they could see what changes needed to be made or to hear staff confirm that they are doing contracts properly. He said he does not think it was a waste of time because they needed to know these things ahead of time.

Mayor Carter said it seems like staff is following the procedures and doing everything to make sure that the public is protected, and will continue to be protected.

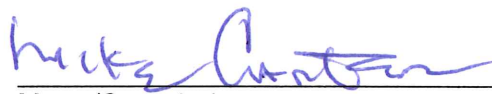
Mayor Carter said it might be worthwhile to consider developing some kind of checklist for contracts prepared by staff to make sure that everything outlined in the presentation is included in all contracts. Commissioner Rogers said that was a good idea.

Commissioner Rogers said problems with contracts have been going on for a long time. He said that Commissioner Van Sickle approached former City Manager Tony Otte about it when he first became a commissioner, and he, himself, mentioned it to Mr. Otte and to former City Manager Judy Delmar a number of times. Commissioner Rogers said he did not feel the presentation was a waste of time because we can correct the problems. He apologized for any hard feelings he may have caused and said that he will continue to bring concerns raised by citizens forward to the Commission.

Opened to public comment

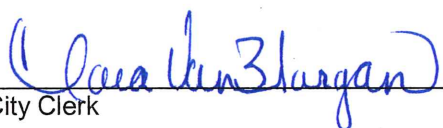
There were no comments by the public.

There being no further business, the meeting was adjourned at 5:52 p.m.



Mayor/Commissioner

ATTEST:



City Clerk