

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(RE: MUNICIPAL COMPLEX)**

December 2, 2010

4:00 PM

Mayor Gatsas called the meeting to order.

Mayor Gatsas called for the Pledge of Allegiance, this function being led by Alderman Craig.

A moment of silence was observed.

The Clerk called the roll.

Present: Aldermen Craig, Ludwig, Long, Roy, Corriveau, O'Neil, Lopez, Shea, DeVries, Shaw, Greazzo, Ouellette, Arnold

Absent: Alderman Osborne

Mayor Gatsas stated that the purpose of the special meeting is for discussion regarding the Manchester Municipal Complex contract. I thought it was important for us to all be here this evening because I know that we had discussed that we were going to bring a contract forward that you would all have in your agenda for review for the next Board meeting on Tuesday. As we started negotiating that contract on Tuesday I'll say there was a bump in the road, but I think everyone agrees that with any \$43 million project there are bumps in the road and we will get by this and we will get this built. With that, I will turn it over to Kevin and the

outside legal counsel that we hired because they were in the process of negotiating that contract. Kevin, if you want to give this Board an overview we can go from there. We will open it up for questions. I want everyone to understand that there is a Planning Board meeting in here this evening so if we can keep the questions to the point we will address those questions going forward.

Mr. Kevin Sheppard, Public Works Director, stated thank you, Mayor. To my right is Ken Viscarello who is representing the City in the negotiations or the drafting of the contract between the City and the construction manager. As you know, the last time we were before you we presented the project and at that time we were working with Harvey Construction, hopefully moving towards a contract document. In the past few days, we have come to a point where we feel that we may not be able to come to a meeting of the minds with Harvey Construction on our contract document. That being the case, what I have done is contacted the selection committee and the company that they identified as our second choice should we need it, the team of Suffolk and Anagnost. I met with them yesterday. We had open discussions. I gave them some information. I see us right now in the process of negotiation between, potentially, Harvey and the second team of Suffolk and Anagnost. I'm just updating the Board at this point. As I said, the last time we came before you we were talking with Harvey Construction, but now we have expanded that at this time.

Alderman Arnold stated I guess when I heard that this meeting was called I questioned whether or not this would be the appropriate forum to have this discussion, but since we are all here we might as well have it. Kevin, can you tell us what the issue is?

Mr. Sheppard replied I could tell you the specifics, but I agree with you about the forum. In general terms it deals mostly, I believe, with the hazardous materials that potentially could be on our site.

Alderman Arnold stated if my question is too specific and you're not comfortable answering please say so. Is there a number that we know what that issue represents?

Mr. Sheppard replied I don't have that answer. You never know. We have done a lot of subsurface investigation, but as most people know you can put a probe or a boring into the ground every ten feet and it could be the five foot mark that you don't know what is there. We feel comfortable, but we don't know for sure what is in the ground. We can't guarantee what is in the ground is probably a better answer.

Alderman Arnold asked Attorney Viscarello, is the provision in the construction manager contract that is the sticking point, currently written in such a way that it is so broad as to encompass this variable and that is the problem?

Mr. Ken Viscarello, City of Manchester External Counsel, replied the way the draft of the contract is drafted it is a provision that was drafted in accordance with the request for proposals that went out where the contractor would be picking up that liability.

Alderman Arnold asked is this something that is a deal breaker?

Mr. Sheppard replied I guess as part of the proposal process that was one of the requirements that went out to the construction managers. It is basically moving the risk from the City side over to the contractor's side. As part of the last

issuance that went out to the construction managers, we allowed them a \$2 million contingency which was to include hazardous materials and hazardous soils. They were to take the risk. That was our interpretation.

Alderman Arnold stated you had mentioned that you had contacted the back up choice. If I recall correctly, the bid numbers were different. Correct?

Mr. Sheppard replied correct.

Alderman Arnold asked I realize it is hypothetical at this point, but should we go with the backup choice? Will it cost more than \$2 million? What I am trying to figure out is if there is an option or some kind of resolution that we could come to that might not necessarily be what went out in the request for proposals that will get us somewhere with Harvey?

Mr. Sheppard replied I would assume that is always a possibility. As I said, we are in negotiations and at this point I feel we may be in negotiations with two construction managers. What we have given the second construction manager was the information, the number, and we are talking to them to see if they can do the project for that number.

Alderman Greazzo stated the immediate question that came to mind would be for the Finance Director and if he actually issued those bonds the other day.

Mr. Bill Sanders, Finance Officer, replied yes, we issued the bonds yesterday and I am pleased to report, setting aside for a moment this particular issue, the composite interest rate for the 30 year bond was 2.97%. I think that is probably about the lowest interest rate that we could have had in our imagination. We are pleased with the interest rate and we have issued the bonds.

Alderman Greazzo asked is there any way to reword the language in the contract and be able to make this an agreeable situation for both sides?

Mr. Sheppard replied I can only speak for our side, but obviously you can always negotiate a contract. I'm not sure how to answer that question. Contracts can be negotiated and that is the process that we are going through at this point. I believe, as the Mayor said, we are going to have a project at the end of the day, one way or another.

Alderman Greazzo asked is it your opinion that it is going to cost us more now because of this?

Mr. Sheppard replied no.

Alderman Greazzo stated I just have an issue, Your Honor. We have bonds, but now we don't have a contract. That is why I wanted to have a contract when we voted on this the other day.

Alderman Long asked in your opinion, is there a date certain when we should have a contract? If we start going through December, January, and February, the prices are going to escalate. In your opinion, when is the critical time? When do you start panicking if we don't have a contract?

Mr. Sheppard replied I'm not sure it is time to panic at this time. I think we do have some time, but not much time. I'm confident though, one way or another, we will have a contractor in the near future.

Alderman Long stated the number that we have been seeing from the contracts, some of the numbers have been locked in. They are guaranteeing numbers to a certain date. I don't recall that date. Was it through December? Do you know?

Mr. Sheppard replied I'm not sure of that answer.

Alderman Long stated some of the numbers were guaranteed through January 1st or what have you.

Mr. Sheppard stated the construction documents are going to be coming out in late January and early February. I think that is when the GNP is actually locked in, but the number that was presented to the Board of Mayor and Aldermen is the number that we are talking about.

Mr. Viscarello stated if I can just jump in, Kevin, we did put provisions in the contract where we thought that the numbers would be further refined and brought down and then we would go out to look at refining that GNP to make it even tighter than it was going in at this particular point in time.

Alderman Long asked in those negotiations, did the contractor say that if we are in January or February he would have to relook at the numbers? Do you feel that the numbers are pretty secure for December and January? That would be my only issue with expediting the process so we can get a contractor signed if numbers are going to start going up for a delay. That is a good reason for a contractor to increase his number. I don't want to be blamed for that. I don't want that to happen.

Mr. Sheppard stated I would like to think that in the next two weeks we will hopefully have a construction manager. Working on a timetable, we know how important this is and we'll do whatever it takes to negotiate and work to get a contract together.

Alderman Roy stated it comes as no surprise to me that it is a hazmat number. I think I questioned you on that during the last meeting. If I remember it was \$500,000.

Mr. Sheppard stated that is what Harvey Construction came up with.

Alderman Roy stated we know that there is asbestos over there and who knows what else has leaked into the ground. If my memory serves me right, somewhere around ten years ago there was discussion about selling this property that we are on now and moving somewhere else. I believe there was some interest in it and if I remember, the newspaper articles said that the State was going to be involved in the hazmat mitigation. Is that true? Was there some previous commitment from the State?

Mr. Sheppard replied back in 1985, I believe it was, when we removed our old fueling tanks because they were leaking we had a clean up at that time. Right now we are in the monitoring phase, but during construction, as you are digging for the footings to set the buildings, you may run into this material. We have talked to New Hampshire DES. The Police Station, as you know, is going on the corner of Valley and Maple Streets and that is in the area, the plume as they call it, and the State has told us, informally at this point, and we are meeting with them in the next few days, that any material excavated within the foundation of the footing of that that is due to it will be reimbursed from the Oil Fund Disbursement Board.

Alderman Roy asked but the rest of the property wouldn't fall under the same thing?

Mr. Sheppard replied correct. We don't believe so.

Alderman Roy stated I'm no expert with this, but Brownfield's, I know I have heard it at other projects. Is there any possibility to get in on some of that money?

Mr. Sheppard replied we have looked at Brownfields and where the City owns the property, typically Brownfields is not an option.

Alderman Roy stated previous projects that the City has done I know have run into problems. You may not have the answer for me and if someone else does I would love to hear it. One of them that comes to mind is the Derryfield Country Club. When it was first going to be constructed we had a lot of problems. I think the way we handled it was by calling someone else in so they could handle it and they straightened it all out. Is that recollection of mine correct and is that something we should possibly look to do here?

Mr. Sheppard replied Tim Clougherty was actually the project manager on that. I don't know if he has some information.

Mr. Tim Clougherty, Deputy Public Works Director, stated I don't recall there being any specific site related issues with the Derryfield. What we will typically do on any project, even if it is just building related and we are doing a renovation, is hire an environmental engineer, which we have done in this case, to do as comprehensive an analysis as possible while still trying to limit the cost. That is what we have done here. We hired GZA. They are a professional geo-technical

and environmental engineering firm. They have done borings throughout all of the areas of the site, absent the office surplus building and the railroad right of way. We are doing some minimal, non-evasive work there. It is going to be surface parking so we're not too concerned about that, but we have borings throughout the site, 40 to 50 borings, along with information, but as Kevin mentioned a little earlier, we could take a boring where I sit and where you sit and it could be perfectly clean, but there could be some dirty soil in the middle that could cause us those problems.

Alderman Roy stated thanks for that information. More to my point and what I was trying to get at, I guess I didn't phrase it properly, but if I remember right at Derryfield the entire project was in jeopardy because it was going to go over budget so they brought someone in...

Mayor Gatsas interjected what happened was the design ended up increasing the cost to more than what we had bonded. It was more the design work and they came back and redesigned the building.

Alderman Roy asked so it isn't apples to apples here then? That was an apple and this is an orange.

Alderman Lopez asked Kevin, did I hear you correctly about January 1st for a construction manager and it is going to take about two more weeks to do some negotiation with A or B party?

Mr. Sheppard replied I can't guarantee a date, but I know that it is in my best interest to get this project off the ground and negotiate a contract as soon as possible.

Alderman Lopez stated I'm trying to choose my words very carefully in case you have to negotiate. Who is on the negotiation team? Mayor, would you answer that?

Mayor Gatsas replied I think most of the negotiations were done...the value engineering was done down at the Highway Department or wherever you were meeting and then once a week they would come up and it would be myself, Tom Clark, Bill Sanders, Kevin, Tim and the rest of the Harvey team that came in and brought us up to date with what was happening for value engineering. At that point we were looking at value engineering and they were just bringing us up to date with changing the color of the roof from black to white or white to black and basically the same presentations that you heard. Two weeks ago, it was something that we were hearing on a regular basis for about four or five weeks. I would think that the question that you just asked, Alderman, would be something that we were negotiating the contract on Tuesday with legal counsel, with Ken coming in, and that is when the negotiations and the discussions were on the contract that was coming before us. I made it very clear to everyone that we needed a contract to go out by Friday so the full Board would see it and they would have an opportunity to see it before the Tuesday meeting.

Alderman Lopez stated in reference to the construction manager contract it is a matter of...is it all done and it is just a matter of changing the names, whether it is A party or B party. Is that correct?

Mr. Viscarello replied the contract has been prepared and has not been negotiated with the other side, but is ready if the construction manager accepted the contract. It would be ready to go, subject to putting some attachments and exhibits on it.

Alderman Lopez asked Kevin, can you repeat what you said about the Brownfield's? Did you say that the City is not eligible for that?

Mr. Sheppard replied we have taken a look at Brownfield and typically Brownfield is available for hazardous sites that the City is looking to assist with and is not for property that we currently own.

Alderman Lopez stated we got \$43.5 million so everything is ready to go except for this sticky issue which has to be cleared up in the next couple of weeks. I don't want to say anymore because there might be some negotiations going on.

Alderman Corriveau stated first, just to clarify, the sole issue between the City and Harvey at this moment is in regards to hazardous materials. In regards to any other contractual issues do we lack a meeting of the minds?

Mr. Viscarello replied it has been represented to us by Harvey that this is the big issue on their plate. I'm not sure that it is limited to hazardous site conditions. It has been represented to us by Harvey that this was the biggest issue. At the meeting we had the other night they did take off some of the other issues that they did have, but this was far and away the largest.

Alderman Corriveau asked are Harvey's issues in regards to AIA contract and construction in the general language or any changes that we have made to the document?

Mr. Viscarello replied changes we have made to the document.

Alderman Corriveau asked in your practice, Attorney Viscarello, is it standard practice for municipalities or contractors to assume liability regarding hazmat?

Mr. Viscarello replied generally the liability would be assumed by the property owner. However, in this case where there was a large contingency offered, something like that would be one of the elements that might want someone to shift the risk.

Alderman Corriveau stated I don't want to pinpoint you to any particular hazmat issue in regard to hazmat, but you mentioned earlier that the City RFP expressly addressed the hazmat issue.

Mr. Viscarello stated the provision in here that caused us to draft the contingency the way we did was on the RFP amendment number one, dated September 15, 2010.

Alderman Corriveau asked could you read that?

Mr. Viscarello replied sure. "Each CM, construction manager, will carry \$2 million for contingency. This will include all contingencies for the project, whether they are categorized as unforeseen conditions, hazardous materials, abatement, escalation, design, etcetera."

Alderman Corriveau stated at this point, the City hasn't encountered anything unforeseen. Is that correct?

Mr. Viscarello replied I don't have any knowledge of it, but I'm probably not the person to ask.

Mr. Sheppard stated that answer would probably be yes. With the geotechnical work that we have done, we have done asbestos review and I don't think we have encountered anything that we would consider unforeseen at this point. We have not, that I would think, come across anything that would be unforeseen or not identified at this point. With the borings that we have done, we found contaminated soils in the areas that we thought we may because of the leak back in 1985, but other than that, we have not found anything that would be of concern to us, but that doesn't mean that that doesn't exist.

Alderman Corriveau asked has Harvey done any of this sort of work on their own on the site yet?

Mr. Sheppard replied I would have to check with my team, but I don't believe that Harvey has been on site. I don't believe they have.

Alderman O'Neil asked Kevin, tell me, in other contracts that we do in the City, do we normally pass on the risk of hazardous material or ledge onto the contractors?

Mr. Sheppard replied in other contracts no, we typically do not.

Alderman O'Neil asked is this the only time that you are aware of in all the construction contracts that you have been involved with that we have passed the risk on to the contractor?

Mr. Sheppard replied that would probably be the case, yes.

Alderman O'Neil stated Attorney Viscarello I think answered Alderman Corriveau's question. Ken, I don't want to misquote you, but you said something to the effect that hazardous materials are generally assumed by the property owner.

Mr. Viscarello stated in site conditions, yes, Alderman.

Alderman O'Neil asked Your Honor, could I ask one of the representatives from Harvey Construction to come up here?

Mayor Gatsas replied I don't have a problem with that, Alderman O'Neil, if I can come back to you.

Alderman O'Neil stated I'll stay with the two gentlemen who are up here then. One of the things that was mentioned was going to the second place team. I happened to have sat in the audience during the selection process. I recall, I may be the only one who recalls this, but I thought you were going to go to both of the finalists. If I recall from looking at my file, Engelberth was actually \$1 million lower in price than Suffolk was. Why wouldn't we be talking to Engelberth as well?

Mr. Sheppard replied you mentioned that to me last night and I talked to other members of the selection team and their memories are similar to mine that the decision was made that Harvey Construction was the choice of the committee, but should negotiations breakdown between the City and Harvey, we would be talking to the team.

Alderman O'Neil stated just so I am clear, Kevin, that is not what I heard and I respectfully disagree with you. I wasn't sitting up front; I was sitting in the audience. We are negotiating with the runner-up firm that was \$3 million higher than Harvey and \$1 million higher in price than Engelberth. Does that sound logical?

Mr. Sheppard replied there is a lot that goes into the negotiation or the review of proposals so when you say does it sound logical, off the top it doesn't, but you have to take a look at the qualifications that were submitted, the information that was submitted and then the review committee...Alderman Long sat on that review committee. You can't just look at price when are taking a look at construction managers or contractors or when negotiating.

Alderman O'Neil stated I just want to make sure I am clear. To the best of your knowledge, this was the first time that we ever passed the risk onto the contractor?

Mr. Sheppard replied to the best of my knowledge, yes.

Alderman O'Neil asked and we probably have done hundreds of millions of dollars in work with various scopes in transportation projects, waste water projects and building projects. Any idea why that decision was made in the RFP and who made it?

Mr. Sheppard replied I think the decision was probably made because when you are negotiating a contract you talk about risk and it is the shifting of risk and who is going to take risk. In this case, the City decided to shift risk off the City side and onto the contractor's side.

Alderman O'Neil asked can you tell me who made that decision to shift the risk? We have never done it before, but we did it on this project. Can you tell me who made the decision to shift risk?

Mr. Sheppard replied I don't remember specifically. I think we talked about it as a group. I think the Mayor mentioned it when we sat down as a team putting together this RFP. I think he mentioned it to the team and it came up. Specifically, I wouldn't say that I could point to one person who said that.

Mayor Gatsas stated let me clarify because I think there was another contract, Alderman, where the risk was shifted from the City to developer. I'll refresh everyone's memory. That was the baseball field because there was grave concern about what might be there. The shift went from us to them.

Alderman O'Neil stated but Your Honor, that was with a private developer. We didn't select the contractor. If you want to go down there, I guess the shifting of that risk from the developer who then brought on a contractor. That contractor, who had been in business for a while, went out of business after the baseball stadium. This is dangerous ground to be getting on with putting this risk on the contractors. That is not an apples to apples example. There was a developer in the middle of the baseball stadium who actually held the contract with the builder.

Mayor Gatsas stated I think we are the owners of that stadium.

Alderman O'Neil stated we are, but we had a contract with Mr. Webber. He hired and assumed all the liabilities with that contract. In this case there is no middle person. It is the City of Manchester. I would like to bring Harvey Construction up.

Mayor Gatsas stated I think Alderman Long was on that selection committee and it looked like he had a question.

Alderman Long stated not a question, but an answer to Engelberth not being picked even though Engelberth was the low bid when it came in on October 1st. Engelberth, throughout their RFP was talking about Vermont contractors. My opinion was that for \$1 million it wasn't worth not having local contractors on this project. That is where, in my mind, I dismissed Engelberth.

Alderman Craig stated Alderman Corriveau asked many of the questions that I was interested in asking so I'm going to go back to that line of questioning. In terms of the language in the contract being consistent with the language that was in the RFP and if Harvey is going to come up I'll ask them, but do you know why this is becoming an issue now when they moved forward with the RFP process? If the language hasn't changed and nothing has changed, why are we at an impasse?

Mr. Viscarello replied in general terms and not to get into the specifics of negotiation, I think it was a case where there wasn't a meeting of the minds. I think Harvey can speak for themselves, but I can speak for the people on the City side and the City definitely thought that they were getting a proposal where they thought that the contractor was picking up the liability for unforeseen conditions on the site based on the \$2 million contingency. I think that within the first five or ten minutes that we had with Harvey it was pretty clear that they didn't agree, they didn't see it the same way. They thought that that provision worked differently.

Mr. Sheppard stated to Harvey's credit, they did talk to us after the Board meeting about their concerns with that and we talked about our concern with that as well. I think it really came to light once we started to negotiate, once the contract was put together. We may not have agreed, they may have expressed

their concern and we may have agreed and disagreed in some areas, but it is not until you actually get to contract negotiation, once the contract is drafted in, that things really comes to light.

Alderman Craig stated regarding the other issues, you mentioned that Harvey didn't see them as being major issues; this is the main one in their eyes. Would you say that there are any other issues we, on the City side, would think that are major issues?

Mr. Viscarello replied we never really got into the specifics, Alderman, of what their concerns were. We really spent most of the one negotiation session we had on this particular issue. They did outline what those issues were relatively quickly, but we spent no time discussing them. The representations were that this was the big issue for them.

Alderman Craig asked to the best of your ability you are saying that on our side we would not see any of their other issues as main...

Mr. Viscarello interjected until I hear them I'm not sure. We never really heard them specifically. We heard them while they quickly rattled off that these were some of the other things that they were concerned about, but we never spoke specifically about what they were or got into them.

Alderman DeVries stated Kevin or Attorney Viscarello, what I heard you say is that this is basically over the potential costs of the hazardous materials and that makes us believe that the concern is over the amount in the contingency put aside to offset that potentially increased cost. Would that be correct?

Mr. Sheppard replied I think you are phrasing it correctly. There is a \$2 million contingency that the City put into the CM.

Alderman DeVries asked that is for the entire project?

Mr. Sheppard replied that is for the entire project to cover all contingency. If you take a look at the hazardous materials and take a look at other contingencies they feel they need, I'm sure they feel that the balance of contingency is not adequate for them or they feel it is not adequate for their project.

Alderman DeVries stated I have heard you say that the project price is not going to change; it will stay at \$43.5 million. Did I hear you say that?

Mr. Sheppard replied that is what we are approved for, the \$43.5 million project.

Alderman DeVries stated and I'm sure that's what the Mayor would nod his head in agreement with.

Mayor Gatsas stated I would hope that it would be less.

Alderman DeVries stated okay, we can always be hopeful. If that is the amount that the project will cost and we're, I would assume, bumping up contractually against that now because you've already done a series of deletions and brought what you guesstimated the numbers down to be, sitting right at \$43.5 million. Now if we need to come up with extra dollars, for contingency in order to bring a contract in, that means we have before us another round of deletions or value engineering.

Mr. Sheppard replied if that were the case and the number came in high you would be correct. We have a \$43.5 million number for this project and that is the number that we need to work towards. It is my hope that we are going to get the project that we presented to the Board of Mayor and Aldermen completed for that number.

Alderman DeVries asked so since that was a little bit unsettling for this Board, that we really came in at the tail end of that exercise rather than being part of the project of what's going to stay in or what is coming out, how are you going to engage us now so that we have a better understanding of the deletions to the project as you are deciding on them?

Mr. Sheppard replied I believe Alderman Lopez has set up that special committee of Aldermen. I forget the name of the committee, but they will oversee this project. We will be reporting to that committee. Quite honestly, it is my hope that that committee will be meeting once a week or once every two weeks so that we can report to that committee.

Alderman DeVries asked what is the next timeline for this contractually? I may have missed that in the very beginning. Tell me when I should expect to see something settled.

Mr. Sheppard replied I would like to think that we could do something within the next two weeks. I can't guarantee anything. As you know, during contract negotiations, you can never guarantee a timeline, but we would like to see this project move forward as soon as possible.

Alderman DeVries asked if we were to go into non-public session now is there something additional that you can tell us as a Board that you cannot state publicly that would be upsetting our negotiation process?

Mr. Sheppard replied I'm not sure of that answer.

Alderman DeVries stated I just didn't want us not to hear something that is available to you today because you cannot state it publicly because we are going back into a round of active negotiations. I know legally we can go into non-public session to avail ourselves of that information that we keep to ourselves and doesn't go out to the public. Is there something that you would like us to see if we go into non-public so we have all the information that is available today so we're not unhappy about having misinformation or not being told?

Mr. Tom Clark, City Solicitor, stated Alderman, this is not a situation where the non-public session is available.

Alderman DeVries asked why would that be?

Mr. Clark replied because the Right to Know Law doesn't allow you to go to talk about contract negotiations in non-public session.

Alderman DeVries stated I think that is being discussed. You are saying that 100% of all of our contracts are now going to be in public?

Mr. Clark replied for this type of contract, yes. Labor contracts are allowed to recess for negotiate strategy, but on a regular contract that the City enters into, correct, they are done in public unless they are done by staff. If the Committee or the Board is doing them they are done in public.

Alderman Arnold asked would the rules or State law allow for this Board to recess to meet with legal counsel, such as Mr. Viscarello?

Mr. Clark replied you can recess to meet with legal counsel so long as the Board has legal questions. It can't be to discuss anything besides legal questions.

Alderman Arnold stated it could theoretically, however, raise issues that wouldn't necessarily be most appropriately brought up in public.

Mr. Clark stated if you had a legal question that you didn't want to ask in public, yes, correct, but you couldn't get into other matters besides the legal question.

Alderman DeVries stated it is just a point of comment to you, Your Honor, since we have a couple days before us and I know sometimes we have met in less than a quorum to get an update on a project that doesn't trip our Right to Know Laws. If there is anything that you are hearing that we should be hearing as a Board would you bring us to a meeting in your office so that we can hear the same information that you are hearing?

Mayor Gatsas replied I certainly will have conversations if there is something that comes before us in the next two days. Certainly you know that I don't have a problem meeting on weekends if I think it is something that Board members need to know and hear about. There is no question that I can do that.

Alderman DeVries stated I hope you don't limit that to the next two days. If you are hearing it and we need to hear it, let us know.

Mayor Gatsas stated I am very confident that we have a staff that we put on this who have put a lot of time in. I think all Board members understand how much time they put in and they are going to continue to work because this is a project that must happen in this City. We have the perfect storm as I have said in many places. We have probably the lowest interest rates that we are ever going to see in our lifetime on this project. We have 45% discounts on interest rates. I think those are things that we must move forward and I'm very confident. As I said, there are sometimes hiccups in the road and we will continue to work to get through them. Even in the small project on Hackett Hill there are bumps in the road and we are going to get by that and get it done and get a fire station built.

Alderman Shaw stated I think people have touched on all of this, but I just want to add something to it. Wouldn't it be better to continue to work with the company that you have chosen to see what other issues would come up and then you would have a better idea if there was additional money or less money, whichever, but a better figure...it seems to me that if you go with the second choice you may not wash the amounts and you have already been working with this company to come up with a plan. The other way you are reaching into the unknown. It just seems that to me you might be better off to continue. We may be at an impasse with this one, but let's see what the other points are and see how we can work out something so we make our concessions to stay in the \$43.5 million box. It is just another way of looking at it.

Mr. Sheppard stated it is my intention in talking to the second construction manager that we will likely end up, or I would prefer that we end up with the same project with our contract for the same scope of work. There may be some minor variations, but just because a second CM was higher at the time doesn't mean that they are higher at this time through negotiations.

Alderman Shaw stated I didn't get the name of the second company.

Mr. Sheppard stated it was a team of Suffolk Construction and Anagnost Companies.

Alderman Shea stated most everything has been covered and will be covered some more, but in this particular document here you mentioned about the contingency, but there is also site work hazard and soils and building. There is about \$200,000 plus the site work, which is about \$5 million. Would that be part of any kind of problems that would be encountered environmentally?

Mr. Sheppard replied the information that was presented to the Aldermen was for informational purposes. There is a line item in here for site work with roughly \$4.4 million. That is basically for site work like moving gravel and drainage. The number that was on here at \$500,000 for site work, hazmat and borings was the intent of Harvey Construction to cover any hazardous material.

Alderman Shea stated in addition to the \$1.8 million there is also additional funding of that particular amount which would bring it up to \$2.3 million.

Mr. Sheppard stated I'm not too sure what the \$1.8 million is.

Alderman Shea stated that would be down below where you have the contingency at \$1.5 million plus the other \$500,000 so that is \$2 million and that would be applicable to any environmental problems. The \$4.3 million for site work, would that also be applicable to that or is that a separate entity?

Mr. Sheppard replied that is separate.

Alderman Shea stated so for environmental there is about \$2 million.

Mr. Sheppard stated typically, a CM carries contingency not only for unknowns, but for escalation. It may be for changes in cost that they run into so contingency is for other items as well as hazardous materials so when you say that they are showing \$1.5 million for escalation, increase in cost and increase in labor costs it is items like that.

Alderman Shea stated normally, when you make out a contingency fund, you want to get a little bit back in terms of not spending the total amount so it can be applicable to different kinds of situations.

Mr. Sheppard stated right. It would be our hope that none of the contingency is spent.

Alderman Shea asked would you say that realistically it would be possible for a negotiation type of situation that the City could probably cover at least \$800,000 worth of environmentally hazardous material using a couple hundred from contingency plus what you have set aside for the site work?

Mr. Sheppard replied I guess that is a tough question to answer.

Alderman Shea stated well we'll leave it for later then if it is a tough question to be answered. Another concern that I had in looking through this material was the AIA document, A-133, the preliminary discussion that we received. In reviewing that, there are four areas that I came across. One had to do with the information and services required of the owner and that would be on page seven of that document. It indicated that the people who were negotiating the contract with the City were well aware of that particular responsibility at that time. It was included

in this document. If you turn to page seven it has to do with the owner's responsibility, 3.1 *Information and Services Required of the Owner*, and it says that these paragraphs were deleted from that particular situation, which meant that the onus of the responsibility for the removal of hazardous waste was actually removed at that time from the owner's responsibility.

Mr. Viscarello stated I'm not sure what time, Alderman, you got this particular contract. There was a contract that was distributed before I got involved which was a form that the City had used before. I think the hazardous section is actually in 3.5.

Alderman Shea stated I haven't gone into that yet, but it is 5.21 that has to do with the guaranteed maximum price on mine. The other is 6.5 on page 11 that has to do with the removal of hazardous waste. It has to do with the cost of material and equipment...no, that's not correct. It would be 6.53, fees and assessments for the building permit and other permit licenses and inspections...no, that's not it either. It is in that particular section there, cost of removal of debris from the site of the work and its proper and legal disposal, which in my judgment, has to do with the removal of hazardous waste. That is on page 11, 6.5.3. I'm not sure if that was understood when the contract was drawn up.

Mr. Viscarello stated I don't think that particular provision deals with hazardous material. I think that was more in one of the other sections that we removed in the draft that I did. I think that one with debris deals more with construction type debris, demolition type debris and construction waste that has to be taken off the site.

Alderman Shea stated I'm trying to get back at what was said before, but during the discussions concerning the contractual agreement, there was mention, maybe not publicly here, but there was mention and I'm assuming that there would be environmental hazards maybe found in that area, which obviously Harvey Construction would be made aware of in the negotiations. Is that correct?

Mr. Sheppard replied I think everyone knew that there was potential for hazardous materials on the site, if that is the question that you're asking.

Alderman Shea stated so basically, it was sort of after they talked together that they decided that this would be more of a difficulty for them to remove the hazardous waste even though they agreed to a guaranteed price. This is where it is difficult and I think Alderman Craig brought that up as well as others that at this stage, which is almost the last hour, why would this particular issue be brought up if it wasn't brought up initially?

Mr. Sheppard replied well, again, to their credit, they did raise a concern with that in our discussions with them, but the way we looked at it, that was part of our contract negotiations. They had some opinions about what they should be responsible for, but as Ken mentioned, on September 15th, there is new information that went out that did say that they would be responsible for all those costs. They did raise concerns with that, but when we got down to the final contract negotiation and their view that that was put in there and that is where it really came to life.

Alderman Shea stated the last question has to do with the cost of services incurred during the preconstruction phase. I'm sure that they have been working at this particular site for about four to six weeks, whatever the time is, so that any

costs that would be incurred by the owner, which would be the City, that Harvey has incurred...could you elaborate on that? What would be the responsibility, vis-à-vis the City, in that regard?

Mr. Sheppard replied during the value engineering phase as part of Harvey's submission to the City, the City required that that be set at zero. CM assistance during the preconstruction, I forget the exact wording for it, but that was set at zero per a requirement of the City. Even though there were costs incurred, that was not a cost to the City.

Alderman Shea stated that provision is on page 12, 6.88 and it says, "costs not to be reimbursed". I'm not sure if the attorney has drawn up a separate type of...

Mr. Viscarello interjected those are not preconstruction fees, Alderman Shea. The preconstruction period fees are handled in section 4.1.2.

Alderman Shea stated I'm looking at 6.8.8 which says, *Costs for Services Incurred during the Preconstruction Phase*. It says, *Costs Not To Be Reimbursed* at the top.

Mr. Viscarello stated if you look at section six, it has to do with two things: the costs that are reimbursed, the cost of the work for the construction phase, so during the construction phase you don't get reimbursed for preconstruction. Preconstruction would be prior to the construction phase and that would be handled by section four.

Alderman Shea asked so how would you explain any kind of work that they have done now?

Mr. Viscarello replied it would be compensated, as Kevin said, under whatever agreement you had for them to be compensated for preconstruction services. I think as Kevin points out there is something in the RFP or one of the proposals that preconstruction was going to be carried at zero. That is not unusual. A lot of times you will see contractors carry nothing for preconstruction services and they will build it into their fee during the construction phase.

Alderman Shea asked so if they have done any kind of probing or work as far as the actual complex is concerned those particular finds would belong to whom, Harvey Construction, the City or both?

Mr. Sheppard replied the City actually performed those. The City owns those documents.

Alderman Shea stated in case the City wanted to pass on any findings they would own those findings. Is that correct?

Mr. Sheppard replied correct.

Alderman Shea stated you would have to compensate Harvey according to what they...

Mr. Sheppard interjected that work was done by GZA Environmental Engineers under contract of the City, not under contract of Harvey.

Alderman Lopez stated I'm just wondering where we are going with all this. I think legal counsel has indicated that the RFP did indicate this and he probably had a five or ten minute conversation with Harvey and they didn't get into

anything else. I think that was your statement or along that basic line. Is that correct?

Mr. Viscarello replied the meeting did last longer than that, but when we sat down this was the biggest issue that was on the table and we spent the bulk of the time talking about this issue and very little time talking about any of the other issues. I don't want to speak for them as to what they thought was important, but it was definitely my feeling from the conversations we had that this was the big issue for them, dealing with the contingency and the site conditions.

Alderman Lopez I guess I am having a problem though if legal counsel is saying that it was in there and they bid on something and now they want to negotiate. I think Alderman Long brings this up all the time and I know the experience he has, but something comes up after the contract has been given so to speak. I think that's what happens in most cases. It happened at Riverfront. Any project the City is given, whether it is Parks and Recreation, after it is done then all these issues come up. 'I didn't really know that' or 'I didn't mean that.' I think that is what is going to happen here tonight. We are going to continue, 'he said this; they said that'. I think the issue with the legal document is number one, and the negotiating team...since the City Solicitor already ruled that we can't go into a non-public session on the contract. I ask where we are going with this. This is an informational thing for the Board of Mayor and Aldermen. I don't think we are here to hear testimony from everyone.

Mayor Gatsas stated I think it was clear, Alderman, that this issue was important enough that it needed to have a discussion with the Board so that the Board knew where this project was moving and I think there were some Aldermen who wanted to ask more questions. I think Alderman Corriveau has one more question of this group and Alderman O'Neil wants to have some questions with Harvey.

Alderman Corriveau stated Kevin or Attorney Viscarello, it is my understanding that recently we have essentially begun dual negotiations, continuing with Harvey on this City work and remediation issues and initiating negotiations with Suffolk Anagnost about whether they can come in at \$43.5 million or lower. Is that a good status report?

Mr. Sheppard replied yes. The actual numbers are somewhere around \$38.8 million because we had the City cost, the soft cost, that we considered as part of that, but yes, the intent is changing the number from \$43.5 million down to \$38.8 million. That is a correct statement.

Alderman Corriveau asked could you explain the \$38.8 million one more time?

Mr. Sheppard replied sure. What was presented to the Aldermen, there are some City costs, soft costs. One example is the purchase of the property which the contractor is not responsible for.

Alderman Corriveau stated since we are undertaking some discussions with Suffolk Anagnost, I don't want to get too specific, but essentially we are initiating a dialogue with them about whether they can undertake the project for \$38.8 million. Is that correct?

Mr. Sheppard replied correct. That is the same scope.

Alderman Corriveau asked at this moment, are they undertaking their analysis about whether that is possible? Is that fair to say?

Mr. Sheppard replied they are in the process of doing that analysis.

Alderman Corriveau asked after they undertake their analysis do you come back to the Committee with appropriate jurisdiction or to the Board or to the Mayor? How do we find out whether Suffolk Anagnost can undertake the project for \$38.8 million?

Mr. Sheppard replied I guess I would defer to the Mayor as far as the process.

Mayor Gatsas stated I would say that obviously the process is in their court. They are going to do the best they can to get to where they are with \$38.8 million. If they can't do that I would assume they would come back to this entire Board and tell us where they are at so that we can move forward in whichever direction we move forward in.

Alderman Corriveau stated this Board has, based on the special meeting that we had, essentially authorized Mr. Sheppard to initiate negotiations with Harvey. Did we ask him to negotiate with Harvey or just initiate negotiations to reach a contract?

Mr. Clark replied this Board didn't authorize negotiations with Harvey. This Board at that special meeting authorized going forward with the municipal project and as a result, staff committee, which Alderman Long is a part of, had already chosen Harvey as the first participant so that is when negotiations began with them, after we had our legal counsel on board.

Alderman Corriveau stated thank you for the clarification.

Alderman O'Neil asked Attorney Viscarello, if you had been involved in this process earlier would you have recommended a certain percentage that the City carry as an owner contingency?

Mr. Viscarello replied that is a tough question, Alderman O'Neil. A lot of it would go into what the costs were, what the pricing was and where the risks were on the different line items or the different buildings or phases that you are bringing in. Generally you always want the owner to carry some contingency. A lot of it depends on the size and scope of the project, but I think I can say pretty certainly that you generally want the owner to carry some contingency, to have some wiggle room in there.

Alderman O'Neil stated in the many projects that you have been involved with, I don't know specifically if you have represented contractors, but I know you have represented developers and non-profits, but have you been involved in construction management negotiations?

Mr. Viscarello replied yes.

Alderman O'Neil asked is it your experience in those contracts you have negotiated that there is, over and above an owner contingency, usually a construction manager contingency?

Mr. Viscarello replied yes, there is.

Alderman O'Neil asked is there a percentage, off the top of your head, that normally it may be?

Mr. Viscarello replied a lot of it depends on the size of the project. It could be 2% to 10% depending on where you are with construction drawings, where you are with site conditions, if you understand what is on the site or understand what is in the construction drawings. A lot of that contingency fluctuates on what the CM thinks they might need based on where they are with respect to any particular points in the projects. I do also represent construction companies, Alderman O'Neil.

Alderman O'Neil stated the fact that we are not at final construction documents at this point, would that lead you to believe that at this point we should have a little higher contingency for both the CM and the owner? We couldn't take the drawings that are out there today and go to a final bid. I heard Mr. Sheppard say that they are not going to be ready until January or February.

Mr. Viscarello stated where we are now under what was contained in the RFP it seemed pretty cut and dried to me at least when I read that the construction manager was going to be taking on all that risk for the \$2 million. If the construction manager wasn't taking on that risk, if we had a totally different project, you would want the owner to make sure he has some type of contingency in place to be able to deal with things that come up over the general course of construction because something always comes up over the course of construction.

Alderman O'Neil asked so it is your belief and what you have read to date and I know you were only brought in fairly recently, but the construction manager's contingency of \$1.5 million...is the \$500,000 also part of the construction manager's contingency?

Mr. Viscarello replied I think they are looking at those two numbers much differently than we were. My instructions were when I came in...and I can say from meeting with everybody at Highway, Kevin O'Maley and Tom, that everyone on the City side clearly thought that for \$2 million Harvey was taking all the risk with respect to the site. I think what their reading of what the \$1.5 million and the \$500,000 was quite a bit different than what the people on our side of the contract negotiations thought it was.

Alderman O'Neil stated Ken, you said this a couple times and I don't want to misquote you, but Harvey was assuming the site responsibilities and liabilities with the \$2 million. That also includes any price increases on the building. I wasn't able to write it down fast enough what you said the section in the RFP was, but it would seem to me that with the site responsibilities it has to have a value of more than \$2 million.

Mr. Viscarello stated it could, but once again, we are in a certain economy. If Harvey had read this and saw it and was willing to go forward taking the risk, I didn't know where the plans were at that time or site investigations if that was their choice to take it. I represent the City and I drafted the contract having read that provision how I thought it should be drafted to best protect the City.

Alderman O'Neil asked were you made aware that the drawings were not at 100% construction document level?

Mr. Viscarello replied I think maybe in the first or second meeting I was told. Some of the documents were pretty far along and others were still being worked on. I think there was some value engineering that was going into some of the drawings that had to be incorporated.

Alderman O'Neil asked other clients that you have represented, would there also be a design contingency or is that usually...

Mr. Viscarello interjected not usually. Maybe in a design build contract, but in a CM contract or an A101 or A111 I'm not sure I would generally see a design contingency. I would have to go back and check, Alderman.

Mayor Gatsas asked are there any other questions of Kevin or Ken?

Alderman Shea stated just a point of order. I think the Verizon did have some hazardous material that Jim was referring to before when he referred to Derryfield. I think that when the Verizon was being built there was hazardous material. I think Ron Ludwig could probably attest more to that because he was involved at that time. Kevin, was there any kind of background material as far as how much money was involved in removing that hazardous waste from where the Verizon was built?

Mr. Sheppard replied I apologize. I wasn't involved with the details of that project. I don't have that information.

Alderman Shea asked so we don't have any amount of money that it cost the City?

Mr. Sheppard replied I'm sure we could get that, but I don't have it.

Alderman O'Neil asked how many CM projects have you done? I can pick any range, the past two years, five years, ten years. You guys pick a history of how many CM projects you have done, not only those that you went after, but actually won where you built the project under a construction manager at risk.

Mr. Rob Prunier, Executive Vice President of Harvey Industries, replied in the last ten years we have probably done in excess of 150 construction management projects.

Alderman O'Neil asked any idea, of that 150, how many are more on the public side?

Mr. Prunier replied probably about a third of those were construction management projects.

Alderman O'Neil stated so about 50 of them and about 100 for private clients.

Mr. Prunier stated correct.

Alderman O'Neil asked in any of those 150 projects did you assume site liability?

Mr. Prunier replied not for subsurface conditions that were really not defined.

Alderman O'Neil asked never or with rare exception?

Mr. Prunier replied not to my knowledge.

Alderman O'Neil asked can you say that again? Never for subsurface conditions.

Mr. Prunier replied never for subsurface conditions. One of the things that I think is pretty important here is that when numbers were put together early on there was really no information whatsoever on what the materials were underneath the soils. The City was asking us to put a number on something that was an unknown, quite honestly. I don't think anyone will deny that.

Alderman O'Neil stated I'm trying to get a feel that the norm in the industry is that the owner assumes that liability.

Mr. Prunier stated correct.

Alderman O'Neil stated it would seem to me...my observation is if we could reach some agreement on who is liable for the hazardous material my read is that we could probably get a contract pretty quickly. Is that a fair observation?

Mr. Prunier replied as Attorney Viscarello mentioned, that was our main concern. We had other concerns, but I'm not sure this is the place to be bringing up those concerns out of respect for the negotiating team. Certainly, that was one of our main concerns. We received a document last Friday, the 26th, that really caught us by surprise quite honestly. That is what drove us to the impasse that we reached on Tuesday night.

Alderman O'Neil asked what was the document?

Mr. Prunier replied the document was supplementary general conditions to the 133 and to the A201 that we had never seen before until Friday.

Alderman O'Neil stated let's go back to the number of projects you have done with the CM at risk. Public or private, is there a norm in the industry in your position for CM contingency? A percentage?

Mr. Prunier replied it depends on what level of drawings the particular project is at. Perhaps at the schematic level you are talking about 8% to 10% contingency, at the design development level you are talking 5% to 8% contingency and going into a GMP with 100% documents you are somewhere between 2.5% and 5%.

Alderman O'Neil asked what was the second one you said in design documents?

Mr. Prunier replied design development documents is something the architect could talk better to the phasing of the design process, but it is the level of documentation and how far along the architects have gotten through the documents.

Alderman O'Neil asked what percentage is that under the design development documents?

Mr. Prunier replied 5% to 8% typically.

Alderman O'Neil asked that is a norm for a public or private client, smaller or larger CM project?

Mr. Prunier replied based on our experience, yes.

Alderman O'Neil asked and in those same projects, would the owner carry a contingency?

Mr. Prunier replied the owner usually carries a contingency.

Alderman O'Neil asked is there an industry standard or a norm in your experience?

Mr. Prunier replied I would say that it follows along the track of what I described, although typically when we break ground an owner is carrying around 5% in contingency.

Alderman O'Neil stated Attorney Viscarello is shaking his head. Do you agree with that? When you say you break ground you are at the 100% construction documents?

Mr. Prunier replied yes.

Alderman O'Neil asked before that there is not a percentage that floats around?

Mr. Prunier replied I would say at the conceptual schematic level of documents it is probably at the 10% range.

Alderman O'Neil asked so it tracks somewhat similar to what the CM would be?

Mr. Prunier replied yes, when we break ground and we have 100% documents our contingency tends to creep down a little bit. The owner's contingency typically stays at around that 5% level because of unknowns that are going to be out there that they may have to incur.

Alderman Roy asked Attorney Viscarello, did I understand you correctly when you were speaking before that it was spelled out in the RFP that the bidder would be responsible for the unknowns in the ground?

Mr. Viscarello replied the language that I was given was the language. Do you want me to show it to you?

Alderman Roy replied no, that's what I thought I heard you saying. My question to the individuals from Harvey is if that was in the RFP then what you just stated led me to believe that you didn't understand until the last couple of weeks that you were going to be responsible for that stuff underground. I'm getting a mixed message here and I'm wondering where the miscommunication was or am I just not understanding the situation?

Mr. Prunier replied I think there is a history to where you are going with this and quite honestly we did not fully expect to have the responsibility of the contaminated soils and the hazmat until we received that document on Friday. If we play history, our first submission was on August 23rd and in that RFP the City asked us to describe what our construction management contingency would be and how much that would be. Our response clearly identifies, there was a whole section, the construction management contingency and what that was used for. It was not used for subsurface conditions; it was not used for hazmat. There was some discussion about taking some of that contingency...we offered at that point, prior to the amendment on September 15th...our contingency was \$2 million. I don't know what our competitors carried, but we carried \$2 million and we defined what our contingency was to be used for, escalation, subcontractors, labor costs, but certainly we would not take the risk of something that was an unknown and that we had no documentation for.

Alderman Roy asked so you spelled that out in response to the RFP?

Mr. Prunier replied we did. To Attorney Viscarello's comment on the amendment that came out, the City did try to push that contingency off to the construction manager. We responded with the same response that we had in our first submission and that was that we carried \$2 million and we described exactly what that money was going to be used for. We thought that we were pretty clear as to how our construction management contingency was going to be used. I don't know if that answers your question.

Mayor Gatsas stated Alderman Long, for the clarification of the Board members here, there has been some discussion on what amounts were put in for contingency and what the amounts for profit were going to be. I think that when the first group of six or 12 came out there were varying contingencies from \$2 million to \$5 million to \$7 million. There was 1.5% in construction management fees up to 2.5%. I think the committee sat down and asked how they were going to compare apples to apples to know what this project is going to cost us. They went through and did an analysis of each individual item and said okay these are the numbers that we believe will be locked in. It was 1.75% for construction management fee. Everyone got that same number. It was a maximum that they could come in with. Contingency was \$2 million because it was all over the place.

Alderman Long stated we weren't able to compare apples to apples because there were hidden fees in there. We didn't know what the contractors had in their general conditions from contractor to contractor so there was no way of knowing what the detail was. What we had asked for was for Kevin's department to send out some requirements. The general condition was going to be 7% maximum in the RFP. They had to show us that and not go over 7%. The CM fees were not to exceed 1.75%. Harvey was 1.5% so they didn't exceed the 1.75%. In the

contingency at \$2 million, this was one of the requirements, included unforeseen conditions, hazardous materials, escalations, and design. Engelberth was non-compliant on that one, but Harvey and Suffolk Anagnost were compliant. That is where the miscommunication or the misinformation occurred, both sides not understanding that a misunderstanding took place.

Alderman DeVries asked can I ask for clarification of that comment? Alderman, are you saying that the selection committee's interpretation of the documents that you had from Harvey was that their contingency included those items, hazardous materials and unforeseen conditions? You are not saying that you presented something to them and they responded back? You are saying you interpreted the documents to believe that?

Mayor Gatsas stated I think what Alderman Long is trying to say is that those criteria that he just read were sent back to those companies saying this what you are going to do if you want to bid the project or walk away. We are assuming that you are going to take risk, take all the risk, that your management fee will be no more than 1.75%. You can be less if you want, but you can't be more.

Alderman Long stated that contingency will be \$2 million including unforeseen conditions, hazardous material, escalation and design.

Alderman DeVries stated if was Alderman Roy's original questioning and the answers aren't sinking in for me so maybe somebody...I can wait.

Mayor Gatsas stated let me try to make it clearer. When we first started, correct me if I am wrong, there were 12 people who responded to the original RFP. The committee went through with Kevin and his department and pruned that down to six or five. They then sent out for another RFP for those five with some changes.

They then pruned that down to four and gave the bidders stipulations to bid on. All four of them had the same stipulations: no more than 1.75% construction management fee and they would assume \$2 million in contingency and assume all risk. There were a bunch of other things that were in that document, probably five or six because you were seeing different numbers for the number of days it was going to build the project. We tried to put that down so we could understand it. You had different line items from someone saying that to build this building was \$180 a square foot and someone else was saying it was \$50. For the square footage, one company was bidding 52,000 square feet and another was bidding 36,000. We went back and said here is the criteria, here is the size of the buildings because everybody looks at the construction documents and sees a different sized building. I don't know how, but they tell me that can be done.

Alderman DeVries asked what was the timeline, Your Honor, for that clarification to the four finalists?

Mayor Gatsas replied I don't have that, but I would say that they were probably within 30 days of the bidding. There were 30 days from when it went to six and probably another 30 days when it went to the final four.

Alderman O'Neil stated I have a document and unfortunately Alderman Corriveau and I were just looking at it and I think it is the apples to apples documents with prices, but there is no date on it. It did require Engelberth, Harvey and Suffolk to all use the same contingency number of \$2 million, the max on the CMP was 1.75% and within that, we still ended up with a \$3 million price difference from the high to the low with the same square footage, everything. I guess whether it is Harvey, Suffolk or Engelberth, if we do this apples to apples they are all going to have the same issue with the site issue I guess. If they are all using the same contingency number...

Mayor Gatsas interjected I hear you, Alderman, but I think the site issue was included in that there was no risk to the City. It was \$2 million and whatever was on the site was what was in there. It was site, hazmat and contingency.

Alderman O'Neil asked did they all miss it then? They are all using the same number.

Mayor Gatsas replied that is what I am saying. I think that is what they all looked at.

Alderman DeVries stated we were in the middle of trying to get an answer from Kevin Sheppard and he just didn't give it. He was about to.

Mr. Sheppard stated I believe it was two weeks. The date on this document is September 15th and the date of the submission was October 1st.

Alderman Ouellette stated Attorney, I am going to ask you once again, if you would indulge me, and please read the language in question for the record.

Mr. Viscarello stated sure. "Each CM will carry \$2 million for contingency. This will include all contingencies for the project, whether they are categorized as unforeseen conditions, hazardous materials abatement, escalation, design, etcetera."

Alderman Ouellette asked I would like to ask the gentleman from Harvey, what is ambiguous about that? It is pretty clear to me what you were bidding on was pretty straightforward. I understand that maybe some projects in the past or all your projects in the past didn't have that type of contingency, but quite frankly,

I'm not concerned with the projects you had in the past. I just want to know how you could have missed that and how do you find that ambiguous in any way because it is pretty straight forward to me.

Mr. Prunier stated I'm not here to tell you that we missed that. What I am here to tell you is that on October 1st we responded to that by describing exactly what our \$2 million contingency was including.

Alderman Ouellette stated then I have a question for Alderman Long who was our representative on the committee. Alderman Long, it is your recollection that their response addressed what the \$2 million would include and that was different than what the RFP was?

Alderman Long replied their proposal is what it is, a proposal. We asked them to put contingency at \$2 million including A, B and C, what they just said. When they sent in their proposal it included the \$2 million and they did explain that they wanted to control the contingency, includes \$100,000 for hazardous material abatement, \$100,000 for soil remediation, it includes \$200,000 for unforeseen conditions and the remaining \$1.6 million is intended to be used for escalation to cover any omissions and subcontractors for the scope of work.

Alderman Ouellette stated Alderman, I assume you voted in that committee for Harvey. In your mind, were they following the RFP when you made that vote?

Alderman Long replied yes, I believe they were. I wasn't voting for Harvey because of their October 1st request.

Alderman Ouellette stated I'm talking about this particular issue that we are talking about.

Alderman Long stated that was a consideration in my...I assumed, I didn't read this until later on, before we voted, but I assumed that this was what Public Works wanted.

Alderman Ouellette stated the RFP said it would include all unforeseeable circumstances. I don't understand where the ambiguity is.

Mr. Sheppard stated I can try to clarify my interpretation. During an RFP process we send out information and we receive information back. Just because a proposer says something does not make it true. What happened was that Harvey had this clarification in their response to the City saying that this is what our plan was. We told them that \$2 million covers everything. They came back and said that the \$2 million covers this, this and this. We could have thrown Harvey out of the process saying that it was non-responsive to our RFP process, but what we chose to do was choose Harvey and negotiate with Harvey. Harvey has other clarifications in there. That doesn't mean that because they put it in there that we have to accept them; it is a negotiation point. Harvey clarified it and they did discuss it with us several times, but it really came to bear when the contract was put together. I think I said that earlier that just because Harvey put it in there and just because we put it on here it doesn't mean that this is the final contract. It is our intent that this is the final contract and Harvey can say that they don't agree with us and we can show Harvey the door, but it is a negotiation process. Just because they say it is so doesn't make it so.

Alderman Ouellette stated okay, that answer clarifies it a little bit better for me. I don't like the answer, but it is what it is. I guess that is the norm in the business.

Mr. Sheppard stated it is a negotiation process. It is not a straight out bid.

Alderman Shea stated I want to ask Harvey when you did different developments and you said that the owner of the property was responsible for the hazardous removal, what was the usual amount of money that that cost? Could you give a ballpark figure. or a low and a high?

Mr. Prunier replied it depends if you are putting a Dairy Queen on the site or a municipal complex. I don't think there is a specific answer that I could give you, Alderman Shea.

Alderman Shea asked is it like \$500,000 or is \$1 million a reasonable amount? I'm trying to get a figure here as far as what your major concern might be because obviously you did preliminary work at the site. Did you do any probing?

Mr. Prunier replied no, we have not done any probing. I think the City has done some and whether we have the same opinion or not is up for discussion, but it is our opinion, and to your point Alderman Ouellette, the problem with this is that they were asking us to commit to this with very little information about what was in the ground. We were not going to take that risk to quote numbers for material...you have been to the site, you know the site. It is a pretty scary site. There was an incinerator there. We were not given the information to really quantify what those subsurface conditions were. On October 7th, a week after we submitted our October 1st proposal, we got the first documentation from the City, from GZA, explaining that there was \$365,000 to \$485,000 worth of contaminated soil that had to be removed from the Police Department area, but we had already submitted our number.

Alderman Shea stated in other words, you do have some preliminary information concerning the initial amount of money that it will cost to remove hazardous material. That is exactly what you said, right?

Mr. Prunier replied what I said was a week after we submitted our proposal, we were given information that the City procured from GZA, not Harvey. We had nothing to do with it. The City shared that information with us.

Alderman Shea stated but you were given that information from an outside source so you are aware of the fact that there are going to be additional costs involved in removing hazardous waste in addition to what that amount is.

Mr. Prunier stated one can only suspect. No one knows at this point what is under the ground and that is why we cannot commit to a contingency that may or may not be adequate.

Alderman Shea stated in doing a lot of work that you have done and knowing the type of environment you are working in over there, what would you anticipate might be a reasonable amount of money that would be required? You are not coming in here like a novice. You have done so many projects, according to what you have said, 100 or 120 municipal projects, so I'm sure that you have some idea in your mind as far as how much the total amount would be as far as removing this waste is concerned.

Mr. Prunier stated quite honestly, Alderman Shea, we don't.

Alderman Shea asked you have no idea at all?

Mr. Prunier replied we have an engineer's quantification and price estimates from an engineer that the City procured for just where the new Police headquarters is going to be. We do not have very much information beyond that in terms of what is in the ground.

Alderman Shea asked how many different areas would you be involved with here in addition to that initial...in other words, how much more area are you concerned about? Is it 25% of the area that you know and 75% that you don't? What are we talking about?

Mr. Prunier replied I would defer to the Highway Department I guess because I'm not sure that we have a good assessment of the entire site.

Mr. Sheppard stated I think Rob would agree that there are borings throughout the entire site. Did the borings miss something? Potentially and that is the whole issue with underground hazardous materials, but there is information available for the entire site. Beyond the Police Station, I would assume that other areas of concern would be the vehicle maintenance building, the Highway Administration building and potentially the vehicle storage building so there are other areas, but there is boring soil information for all those other sites. The railroad right of way doesn't have any and the shops building. The shops building has been taken out of the contract. The railroad right of way we are minimizing any cuts or fills, but beyond that I believe there is information for the balance of the site.

Mr. Prunier stated I would say that there is not enough information to specifically quantify what the cost would be to remediate that site at this point in time.

Alderman Shea asked when would you know how much remediation would have to be done? In other words, would more types of tests be done? Can you verify the information that the Highway Department gives you?

Mr. Prunier replied Alderman Shea, the way this typically works is when you start digging you start finding and that is why we recommend that the City have a good full risk contingency for this specific item that we are talking about.

Alderman Shea asked what would you recommend for a contingency?

Mr. Prunier replied at this point in time, you would probably have about a 5% contingency on the owner's side.

Alderman Ouellette stated Your Honor, I would like to respond because I was addressed during one of the responses. Let's be honest, we're not talking about a dollar figure at this point, whether it be \$5, the \$100,000 that you put in or maybe it is \$10 million by the end of the day. No one knows. What we are talking about is risk. That is what we are talking about. You do not want to assume the risk. In our RFP it is clear to me that we were asking the people to bid on this RFP to assume the risk. It looks like we are at an impasse, I'm sorry to say. You are not going to assume the risk and you have made it perfectly clear to this Board member that you are not going to assume the risk. I think the only option is to move on. With all due respect, thank you for playing, but have a nice day. That is my interpretation of it anyway.

Alderman Greazzo stated I have a couple of different questions for a couple of different people. First, for the representatives from Harvey, you are looking for a 5% contingency cost. Is that going to be comfortable for you? We are obviously

at an impasse over this. This is the point of contention. What is going to satisfy you in order to assume the risk?

Mr. Prunier replied we have been consistent that a \$1.5 million construction management contingency at this point would be responsible.

Alderman Greazzo stated we have \$2 million. I want to know what is going to make you comfortable in assuming the risk of managing this construction project.

Mr. Prunier asked can we separate the subsurface conditions from the construction?

Alderman Greazzo replied certainly, because we don't know that there is necessarily anything there.

Mr. Prunier stated that is a good point.

Alderman Greazzo stated there could be nothing. I'm sure there is something, but we aren't building a park here. Why can't we just build on top of it? I don't want to be environmentally unfriendly; I'm a pretty environmentally friendly guy, but we have Arms Park that is the last known anthrax site in the United States. That has been capped. People use that every day. We are looking to put buildings on here. I guess that is a question for the City Solicitor. Are we allowed to build on this site regardless of what is under there or are we responsible to get rid of any possible hazardous material that is going to be encapsulated under whatever buildings we put there?

Mr. Clark replied if you dig into the soil you are responsible for what you dig up.

Alderman Greazzo asked and if we don't dig it up?

Mr. Clark replied if we don't build we leave it as it is.

Alderman Greazzo asked and build on top of it?

Mayor Gatsas replied I don't know how you can.

Alderman Greazzo stated there are buildings there now.

Mr. Clark stated that is an engineering question. I don't know if you can build on top without going into the ground.

Mr. Sheppard stated you still have foundations that you have to put in for any slab work so there is still the opportunity to run into soils. The Highway Administration as well as the Police Administration do have a basement in them. The vehicle maintenance does not, but again, you are going to be digging.

Alderman Greazzo stated basically we are talking about the areas that would potentially have basements.

Mayor Gatsas stated you are talking about the entire area, Alderman.

Alderman Greazzo stated I'm trying to figure out a way constructively to deal with this. If we are going to dig up anything in the City it is going to have something there. We are going to run into this everywhere. If they were able to do it for a parking lot at Arms Park I don't see why we can't do it for a site like this. Another question I have is for Alderman Long. Of the \$5 million that is

proposed for site work, do you have any information as to what that money goes towards?

Mayor Gatsas stated I think your question, Alderman, is that there is \$5 million for site work. That is for moving earth, digging foundations, tearing down buildings and getting the site prepared.

Alderman Greazzo asked that will all be on whatever construction company performs that work, correct?

Mayor Gatsas replied that is correct.

Alderman Greazzo asked is the Highway Department able to perform any of that to save us some of that money so we can move it to contingency so we can move on with this?

Mayor Gatsas replied I feel that you are going to try to negotiate the contract...

Alderman Greazzo interjected no, sir, I'm not.

Mayor Gatsas stated I applaud you because I think that is all something that the Highway Department has said, that there is work that we can do there that is going to reduce costs and I think that that was part of the value management. I hear what you are saying and I think that we are going to try to get there. We are going to build these buildings and we are going to be at the \$38.8 million as we had proposed.

Alderman Greazzo stated I'm fairly certain that the Highway Department has the equipment to do some of the site work so we could save money on construction costs and move that over to contingency to satisfy Harvey Industries and move forward with this. We have been talking about this for two hours now, about one specific issue. If that is the only thing that we are at odds with, let's either resolve it or move on to the next company. I'm with Alderman Ouellette.

Mayor Gatsas stated I think that's what the department is doing.

Alderman O'Neil stated I have another commitment at six, but if I have to leave before everyone wraps up, I think if we can get the parties to sit down and resolve this issue of the hazardous waste I think they are going to get a deal, or the unknown subsurface, whatever it is properly called by you folks. I have talked to professionals and other communities and states. This is highly, highly unusual that a municipality is trying to pass risk to a private contractor regarding unknown site conditions. It is not done. We have heard the owners from Harvey say that in their experience, and they have a quite a bit of it, this is not the norm. I would hope that we could resolve this issue as Alderman Greazzo talked about and move on. I am concerned that going to any other bidder is going to require reducing the program even more because the next bidder was \$2 million higher and the third was \$3 million higher. That could set us back. I would hope that the parties could get together. I would like to see Harvey Construction doing this project.

Alderman Craig stated there is something that you mentioned earlier that I just want to get clarification on. I believe you said that you own the \$1.5 million in contingency. Is that the case because I was thinking at the last meeting that the City had the contingency?

Mr. Prunier replied we have contended since day one that we had a construction management contingency under our control of \$1.5 million based on the proposals that we submitted.

Alderman Craig asked is this another issue?

Mr. Prunier replied the control over the construction management contingency is one of the other issues that we had brought up to the City.

Mayor Gatsas stated you refer to a couple of documents and I know you made reference to it during the special meeting last week and on that document there were three columns. I don't have it in front of me, but I'm sure Alderman Long can flip to it in a second and I'm sure Kevin has it. If you take a look at what the hazmat condition was in the very first proposal, it was \$200,000 in that line item. In the next column, the third column in, and I don't have it, I'm just going by memory, that is the column that said \$43.5 million, Kevin. It showed \$500,000 for hazmat and \$1.5 million for contingency. That number moved from \$200,000 to \$500,000. Somebody must have increased that number after they read a document that said that we think the hazardous waste is going to be \$485,000. That didn't just change on its own. Did Harvey increase that number or did the City?

Mr. Prunier replied we worked together on that. Alderman Ouellette, I probably should have explained a little more...

Mayor Gatsas interjected let me ask that question. That number moved from \$200,000 to \$500,000 and it came out of contingency. Contingency dropped down from \$1.8 million to \$1.5 million. Is that correct?

Mr. Prunier replied yes.

Mayor Gatsas stated that was on October 1st.

Mr. Prunier stated no.

Mayor Gatsas stated it says GNP 10-1-10 at the top of the column and that was the number that was \$54,693. That was before you started your value engineering.

Mr. Prunier stated our contingency in our October 1st proposal...

Mayor Gatsas interjected I'm looking at this one right here, this document that everyone took as gospel.

Mr. Prunier stated it is the same thing. We identified in our proposal that we carried a \$2 million contingency and that \$2 million contingency consisted of \$100,000 for hazardous materials, of which there was no information so no one could really quantify it at that point. It was \$100,000 for contaminated soils, and again, an unknown; \$200,000 for unforeseen conditions in general; and \$1.6 million that we wanted to control for construction issues as we move forward, the pricing of subcontractors, escalation, if we missed a gasket in the mechanical system it would be covered in our contingency. The \$1.8 million was \$1.6 million and the unforeseen conditions of \$200,000 and the site related numbers that totaled \$200,000 were the numbers that you see up above totaling \$2 million.

Mayor Gatsas stated but that number on this sheet moved.

Mr. Prunier stated that did move and the reason it moved is because we were having discussions with the City about contingency. We contended that we, from day one, from our submission on August 23rd, always carried a well defined and clearly defined construction management contingency.

Mayor Gatsas stated there was some money that was moved upstairs to hazmat.

Mr. Prunier stated correct. There was concern on the City's part about the hazardous waste and the contaminated soils, of which we didn't know, so we, to keep this moving, to get to that \$38.5 million when we started at \$54 million, decided that we would give up some of our construction management contingency that we felt should have been under our control that we would move it up and give it to the City and put it under their control to help mediate the problems of unknown soils and hazardous materials. We reduced our contingency, plus \$100,000; \$100,000; the \$200,000 plus another \$200,000, we reduced our contingency to \$1.5 million and moved \$500,000 to deal with contaminated soils and hazmat by the City.

Alderman Lopez stated I know time is short here, but as Kevin moves forward as a department head in leaving this chamber to negotiate with the team or whatever the case may be, I think Alderman Ouellette did say it correctly. It is up to Kevin to move forward and negotiate with the team and come back to the City. We are having a meeting on the 7th. If Harvey wants to change their mind, whatever the case may be, or we go with B company, that is up to Kevin to move forward with the negotiating team. I don't think anything else needs to be said, but to keep us informed about what is going on, Kevin.

Alderman Roy stated in the discussion you talked about GZA notifying us of soils that had to be removed from underneath the Police Station footprint and that totaled \$485,000.

Mr. Sheppard stated there is a low or a high.

Alderman Roy stated earlier we had talked about the previous condition and the plume that was created in 1985. Isn't that the area that the plume went into?

Mr. Sheppard replied correct. That is the area that the State will cover.

Alderman Roy asked the State will cover that \$485,000 correct?

Mr. Sheppard replied we believe so, yes.

Alderman Roy asked we believe?

Mr. Sheppard replied I don't have any written documentation, but I have had discussions with them.

There being no further business relating to the Municipal Complex, on motion of Alderman Ouellette, duly seconded by Alderman Shea, it was voted to adjourn.

A True Record. Attest.

City Clerk