

SPECIAL COMMITTEE ON THE CIVIC CENTER

June 26, 2000

Immediately following

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Pariseau, Cashin, Hirschmann, O'Neil

Messrs: P. Levy, K. Clougherty, T. Clark, J. Taylor, D. Butler

TABLED ITEMS

On motion of Alderman Hirschmann, duly seconded by Alderman O'Neil, it was voted to remove Items 3 and 4 from the table.

3. Change Proposal #13 regarding OCIP Insurance.

Chairman Wihby stated I know we wanted Harry here, but he has been pretty sick.

Mr. Levy stated Harry is sick and couldn't make it. I am not an insurance expert and I can't address the details.

Chairman Hirschmann asked do you have any more information on it or should we just table it and wait.

Mr. Levy answered it is not a critical item right now. It is just taking the money out of the guaranteed maximum and it is not critical. The OCIP Program is in place and being utilized at this point.

Alderman O'Neil asked do you know who authorized that.

Mr. Levy answered I am going to refer to Kevin on that. I am not real sure on the composition of that group.

Mr. Clougherty stated it is my recollection that all of these documents and there are about 200 of them, were approved by the Board at different times. They were included as presentations and materials at different versions. The final documents are signed, I believe, by the Finance Officer as we were authorized to do with a review by the Solicitor. We also have a development committee, which was made

up at different points in time of the City Coordinator, the Finance Officer, the Solicitor and the Director of Economic Development.

Alderman O'Neil asked are you saying that this was in the documents that were approved.

Mr. Clougherty asked the OCIP.

Alderman Cashin stated Kevin you better be careful because you are on pretty thin ice.

Solicitor Clark stated the OCIP Program was discussed with the City's insurance consultant, J.H. Albert, who advises the City on worker's compensation and CGL matters. The contract and the documents themselves were done through the Housing Authority. They didn't come through this Board. It was part of the construction project under the Cooperation Agreement.

Alderman O'Neil asked if it was part of the original then why do we need a change order.

Mr. Levy stated this gets the credits back out of the GMP and back into the budget. That is why there is a change order. To legally take it out of their GMP we need a change order.

Alderman O'Neil stated what I read here is there should be a savings to the City on the price of the project of \$428,000.

Mr. Levy replied that is correct.

Alderman O'Neil stated it should take \$428,000 less to build this project.

Mr. Levy replied no because we have included the overall...in the master budget we included a deduct of \$1.1 million for credits on the worker's compensation and the OCIP Program. This is only a portion of it.

Chairman Wihby stated in other words you are going to be coming back every time a new contractor comes on.

Mr. Levy replied right.

Alderman O'Neil stated if that was agreed to why do we need a change order.

Mr. Levy replied legally we need to do the change order to back it out of the GMP.

Chairman Wihby asked that is the same reason you are asking for additional money that was in the budget but going into the GMP because of the fact that it wasn't in the contract.

Mr. Levy answered that is correct. Any time the GMP changes it has to be changed by a change order.

Alderman Pariseau stated, Tom, who in their right mind would subject the City to the liability of workman's compensation for the contractors over there. That doesn't seem right and you are probably saying the City wouldn't accept any liability but if they are coming onto our policy or whatever...

Solicitor Clark replied they are not coming onto the City's policy. This is an owner-controlled insurance policy and again I am not in insurance but...

Alderman Pariseau asked the City is the owner.

Solicitor Clark answered the Housing Authority is the owner and the City is protected.

Alderman Pariseau asked who is the owner.

Solicitor Clark answered the Housing Authority is the owner of the program and the City is protected under it. Now the whole purpose of the program and I can explain it to you as it was explained to me, is to save money. It is cheaper for the City to control or the Housing Authority to control the insurance and purchase it through one carrier than it is to have each of the contractors come in and bring their own insurance because they have built-in overhead and everything else.

Alderman Pariseau stated but that would be the contractor's liability wouldn't it.

Solicitor Clark replied yes but you end up paying for it in their bid prices. This way we are deducting it out of their bid prices.

Alderman Pariseau asked do you think with this arrangement with the City names as whatever, that some Philadelphia lawyer isn't going to try and collect from the City for a workman's compensation claim.

Solicitor Clark answered no. There is a deductible under the policy and it is already...

Alderman Pariseau interjected they always go after the guy with the deeper pockets. Who has the deeper pockets? Gilbane or the City of Manchester?

Solicitor Clark responded there is a deductible under the worker's compensation policy that is already in the project budget. When those deductibles are reached, it goes to the excess carrier under the insurance company and they pay the remainder. There is no recourse back to the City.

Alderman Pariseau asked could you picture an attorney representing an individual who got hurt on the job coming after the City to settle that claim.

Solicitor Clark answered no. He will go to the insurance carrier who is carrying the insurance on it.

Alderman Pariseau asked and then where else.

Solicitor Clark answered his employer.

Alderman Pariseau stated I am just afraid that these lawyers go after the people with the deeper pockets and we are going to subject the taxpayers of the City to...

Solicitor Clark interjected in this particular case we have had our...an OCIP Program is not new. It is new around Manchester, but it is being used across the country. Our consultant has advised us that we are going to save anywhere between \$150,000 to \$300,000 by using this program.

Alderman Pariseau stated on a \$44 million deal that doesn't amount to anything really.

Alderman Gatsas asked how much was the premium amount.

Solicitor Clark answered I don't have the details on that.

Alderman Gatsas stated before anybody can make the statement that this would be a savings to the City, before that can happen, we must know what the premium amount is and we must add the deductible to it because if it is in excess of your \$1.1 million that you are showing there, then the City is at risk. Can anybody deny that statement?

Solicitor Clark replied no but as I understand it the consultant advises me that the City's maximum is what was budgeted which was \$975,500. Anything over that is paid for out of the insurance policy.

Alderman Gatsas responded that is not what I asked you. What I asked is before you make a statement saying that the City is going to save money, we must know what the premium amount is and we must add that to the deductible. Those too inclusive, if they exceed the \$975,500, then the City is at risk. Now, let's go back to when I believe...Kevin do you have an answer.

Mr. Clougherty stated I would defer to Harry on this, but I believe the premium is \$330,000 and the deductible is \$975,500 as Solicitor Clark was saying.

Alderman Gatsas replied so the most the City can save is somewhere around \$40,00 if we don't hit limits and I haven't seen the policy and you are just grappling for numbers. My bet is that knowing insurance companies they are right on the mark to what they are looking at because they are not going to be exposed for a nickel. Now to go back and say that the employee would also have the venue to go back to the employer, as I believe Atty. Craig was insinuating back there you can't. You can only go to one carrier. You can't go twice. You have exclusive remedy in there so obviously there has to be an indemnification that has been signed off by the City to the subcontractors on exclusive remedy here. Either that or there is a real bailiwick of worms. So, for Atty. Craig to say that they can go to the employer, that is not a true fact.

Atty. Craig stated Alderman Pariseau was talking about worker's compensation. Under the law if an employee gets injured, under worker's compensation they have to go to the employer. That was not a good example to use. Say a pedestrian falls on the job and trips over something, that would be different than worker's compensation and if they went to a Philadelphia lawyer, the Philadelphia lawyer would sue everybody standing around including the City but the ultimate responsibility as far as the construction job is concerned lies with the Redevelopment Authority and Gilbane. The City may own the property, but really the City has no control over how the building is going to go up as far as the daily operation.

Chairman Wihby stated we have OCIP's. There are probably eight or nine of them in the State and we are talking big companies like MediaOne, Nynex, and Bell Atlantic. They have...it is listed as the individual contractor comes in and the individual contractor is on the main contract and I think they keep the same mods for those people or at least that is what I am understanding so that when a sub-contractor comes in he doesn't get a break by coming in. I know we have had

discussions in the past as far as making sure that everybody who came on site had coverage and this is a big problem in the State. The unions and I am going to call up Mr. Long in a second, fought for this so that everybody did have coverage because somebody could come in an low ball a price and another person that doesn't have coverage or ended up going through half a year and then canceling it, which happens on a big job because they don't ask for a certificate six months into the program, was causing problems and the general contractor was liable for that sub. Now I am trying to figure out where this all ends up because it seems to me that this is ideal because of the fact that everybody will have coverage and that the mod is being picked up by the individual carrier so everybody is going to bid and they are all going to pay a price to come in based on their mod and I don't know where there is anything wrong here other than the liability for the City. If there is any liability, I don't know where it would come from because the carrier is going to pay...it is a carrier policy so the carrier is obtaining and paying the liability.

Alderman O'Neil stated first of all, I had never heard of this before so I asked some people in the insurance industry and it is, in fact, legal. There was actually a change in the law about five years ago from what I was told. I said why would they do it. They said for two reasons. The sub is high risk and has high claims. That is what I was told. When you talk mod what is that? Is mod the rate?

Chairman Wihby stated yes.

Alderman O'Neil replied so somebody could have a higher and I will use iron workers and let's say Gilbane decides to bring in somebody that and I am going to use my language and I don't know if this is proper insurance language but has high risk and their rate would be \$58 per hundred. Gilbane may be able to, because of their safety record and safety programs, be able to get this at \$45 per hundred. Correct?

Chairman Wihby responded my understanding is that a subcontractor would still be paying the \$58. Is that true? Does anybody know? Does the mod go with the sub? So a sub bidding on a project if he is a high risk is still going to pay the same amount that he would if he got it on his own?

Mr. Butler answered no.

Chairman Wihby asked so the mod is different.

Mr. Butler answered the subcontractor's mod is a factor because it is part of the insurance rating program, but for the purposes of this job although they are keeping track of his mod, because you are buying the policy on a group basis you are getting sort of a group rate so his mod really doesn't impact the price that the

City is paying for insurance. They are getting the best deal they can get. Probably better than the subcontractor.

Chairman Wihby replied so somebody high risk who has a high mod could come in and get a contract where they probably would have been bid out from someone else earlier because they would have had a higher price to pay for worker's compensation.

Mr. Butler responded it is conceivable, but that is not really what this is about. What it is about is trying to buy a volume discount basically. You are buying coverage for X number of man hours of worker's compensation, which is a volume discount that insurance companies will do just to get the bigger numbers of people.

Chairman Wihby asked so a high-risk contractor and a low risk contractor are both going to be paying you the same amount of money.

Mr. Butler answered they are going to be carrying in their bid price the amount of insurance that they would have paid. We, along with the owner's insurance people, back that sum of money out of their bid price, which is what you are starting to see happen here so we collect a deduct based on what their value of insurance is. What the City is paying on the other side is some other rate for insurance.

Chairman Wihby responded you didn't answer my question. A high risk person and a low risk person contractor coming in are going to pay the same amount of money to you or are they going to pay based on their experience before that?

Mr. Butler replied right.

Chairman Wihby asked so they are going to pay...if it was a high-risk company they are going to pay you more money than a low risk company.

Mr. Butler answered that is right. They would have had to carry in their bid price, their cost of insurance.

Chairman Wihby asked that it would have been if they had gone out on their own.

Mr. Butler answered yes.

Alderman O'Neil stated but it is a fact that somebody high risk with high claims is now more attractive to this job.

Chairman Wihby replied I heard no.

Alderman O'Neil responded that is not true. That is what a number of...I made a number of phone calls to insurance people about this and they told me that is one of the reasons this is done. Secondly, it is done because you have companies that will report and again I will use the iron worker's as an example, they put down that their people are all laborers and that is a certain dollar amount like \$20 per hundred where an iron worker would be \$45 when in fact they are doing iron worker's work. Do you follow me and they have been audited and they have been caught on that. There is an advantage on those two cases for somebody coming in on this OCIP. I want to go back to make sure that I am clear on this that the Housing Authority decided this was the way to go. It was not a vote of the Board of Aldermen, correct?

Solicitor Clark replied I don't believe this ever came to the Aldermen for a vote.

Alderman O'Neil responded I just want to be clear. This was a decision made by the Manchester Housing & Redevelopment Authority. The comment was made the owner's insurance people. That would be the Housing Authority's insurance people or the City's insurance people. Mr. Butler just made a comment that it was a recommendation of the owner's insurance people. The Housing Authority's insurance people or the City of Manchester's insurance people?

Solicitor Clark replied there is a broker of record which is Aon, one of the nationally known companies, who is under contract with the Housing Authority.

Alderman O'Neil asked so it was the Housing Authority's insurance people that recommended this. The Housing Authority is shaking their head no.

Solicitor Clark answered it was a combination.

Alderman O'Neil stated we were told earlier that the City is not building this, the Housing Authority is. So, it is either the Housing Authority or the City. There is no in-between on this in my opinion.

Solicitor Clark replied the Housing Authority contracted with Aon. How the program developed was the City's consultant discussing it with the City staff and saying you may want to look at going through an OCIP Program. So, the City did have some discussion on this. Harry was involved in some of the discussions. I sat in on a couple of meetings.

Alderman O'Neil asked should this at least have been presented to the Board at some point knowing that this was going to come up and we were going to have to approve change orders. The first I saw of this was when it was presented a week ago. I think it is a fair question.

Solicitor Clark answered I don't see this as something that would have had to come back to the Board.

Alderman Gatsas stated maybe we should try to get this to a level that everybody understands what an OCIP is and why people do it. Basically, it is a large deductible policy. You will never see a small company that has a \$50,000 premium step into an OCIP. I believe if you check with the State the people that are in the OCIP's are the people with big cash flows and understand where they are going with these programs because they assume that the high deductible amount is going to cover that. The City has entered into a contract. Who is named on the contract? Can I ask that question? Does anybody know that or should we wait until Harry is better? I have a problem that people are making statements that this is a savings to the City and if tomorrow there is a catastrophic that happens there and we hit the deductible amount, nobody knows exactly what the premium amount is so it could cost the City money. Everybody is sitting there and giving guesses. Let us understand what an OCIP is because people don't understand what that is. That is not your worker's compensation policy of a daily venue. It is a high deductible policy, which you see very, very seldom. I find it extremely hard to believe that on a \$70 million project that the comp cost is going to be less than 1%. Either the numbers aren't right that you are giving me because the deductible is 6.5%. At some point Mr. Butler is either incorrect or correct because if somebody has a credit mod we need to understand what modifications are we are delving into situations here that a lot of people aren't familiar with. Modification has to do with experience and we didn't know that. I didn't see anybody showing me a worker's compensation policy on the two change orders that you want, the trucking company that either shows a one mod, a credit mod or a mod more than one. How does anybody know why we are giving them a credit of \$30,000. Has anybody seen that? Mr. Levy have you seen it?

Mr. Levy answered no.

Alderman Gatsas stated so if we are giving somebody a \$30,000 credit for worker's compensation and nobody has seen the policy, their mod may be seven and that comp should have been listed out at \$90,000.

Chairman Wihby asked did the credit amounts come from Harry.

Mr. Butler answered I am not an insurance expert, but I can answer your question about who is reviewing this. Obviously, we are not insurance experts we are construction experts. Aon, who is the insurance broker that was hired by the Housing Authority, is the insurance expert. They put out to bid the insurance specifications. They put together the packet of information that we send out to the contractors that requires the contractors to submit certain information to support the amount of their deduct. Aon has a person on their staff who does what you are suggesting. They audit the credits so when Aon is satisfied that we are getting a legitimate credit back from a contractor, then we are doing the administrative part of deducting it from the contractor's subcontract so there is a review process that is happening administratively. None of us here are involved in it. The insurance people are dealing with it and when they are doing with it, they tell us what to do. I don't know if that answers the question.

Chairman Wihby asked have any of the subcontractors complained about this yet.

Mr. Butler answered it is a little unusual for this marketplace, but it is not unusual in the construction business. We have been involved in a number of them. I think Nashua is doing one on Nashua High School.

Chairman Wihby asked is that a yes.

Mr. Butler answered yes.

Alderman Vaillancourt stated Atty. Craig, in an attempt to perhaps soothe our fears alluded to the fact that MHRA is on the line and Alderman O'Neil alluded to the differentiation between the City and MHRA. Maybe the City Solicitor could just tell us. As I understand it, there is no difference between the MHRA and the City. We were told when we financed this package through the MHRA that if we failed to pay MHRA back in any given year, it would be to the City's detriment. I assume that MHRA will never be on the hook without the City also being on the hook. Is that not correct?

Solicitor Clark replied that is correct.

Alderman Vaillancourt stated so let's not try to use a subterfuge by saying that this phantom MHRA is going to be in trouble but the City will not be.

Alderman O'Neil asked is Aon local. Do they have a Boston office?

Mr. Butler answered they are out of Boston.

Alderman O'Neil stated I would think that somebody representing them should be here. Their name has been thrown around a number of times that they recommended this.

On motion of Alderman Cashin, duly seconded by Alderman Pariseau, it was voted to table this item.

Alderman Gatsas asked can you just get us who the broker of record is on the policy.

Chairman Wihby answered they said it was Kemper.

Mr. Butler stated the insurance company is Kemper.

Alderman Gatsas asked who is the broker of record.

Mr. Butler answered it is Aon.

Chairman Wihby stated we will get back to you.

Alderman O'Neil asked can they get us information ahead of time and if somebody wants to do a summary on this OCIP that would be good.

4. Change Proposal #14, Revision #1 regarding a \$150,000 acceleration allowance to the GMP.

Alderman O'Neil stated I am still not sure at what point this was agreed upon and who agreed to it. Was it part of the final document? Did the Housing Authority agree to this?

Mr. Levy answered yes.

Alderman O'Neil asked and they agreed to pay \$150,000 incentive before...just because on paper the builder has indicated they will be done.

Mr. Levy answered the \$150,000 acceleration is not an incentive. It is just an acceleration to cover overtime to get the project done by November 15.

Alderman O'Neil asked wouldn't, including Gilbane when they knew there was a timeframe on this and hopefully they have indicated it to all of the subs, everybody knew it had to be done by that date so why are we paying an incentive to get it done by that date.

Mr. Levy answered because at the time of closing because of the delay in closing, the completion date had slipped to December 31. In essence, if this change order is not signed and executed, the completion date of the project is December 31, 2001.

Alderman O'Neil asked does that mean that the guaranteed maximum price is going to increase by \$150,000.

Mr. Levy answered that is correct but that \$150,000 was anticipated in the master budget and was added to the master budget.

Chairman Wihby asked in other words it is in the master budget but not in the GMP.

Mr. Levy answered this just puts it into the GMP. It will be a change order again or legal movement of the money from the master budget to the GMP.

Alderman O'Neil asked what is the guaranteed maximum price.

Mr. Levy answered right now it is \$43,987,000.

Alderman O'Neil asked what is the budget price.

Mr. Levy answered the price in the master budget, including the asbestos abatement, the original GMP and the \$150,000 acceleration, is \$44,197,792.

Alderman O'Neil asked and that number could continue to go up.

Mr. Levy answered yes.

Alderman O'Neil stated so we shouldn't be telling people that this is getting built for \$44 million.

Mr. Levy replied right now it is getting built for \$44 million until there are other changes that are going to add scope to the work.

Alderman O'Neil stated correct me if I am wrong but haven't two other projects, one completed and I believe one under construction in New England didn't both of those move in the direction of increased prices.

Mr. Levy replied I am not sure I know what you are talking about.

Alderman O'Neil stated wasn't there a GMP on a project in Lowell and there is a request to increase it by \$10 million and because of it the owners took away the project from the original contractor.

Mr. Levy replied I am not aware of it. When I say the guaranteed maximum and the master budget, the master budget has budgeted \$2.7 million in contingency to cover changes.

Alderman O'Neil asked over and above the \$43.9 million.

Mr. Levy answered correct.

Mr. Clougherty stated now that \$150,000 if it is not paid...if we don't meet the deadline or if at that time the deadline was not met, then that would be the deductible that would be paid. There was some thought by the bank and the Housing Authority that they wanted to see that \$150,000 be used as an incentive to get the project done on time so that they wouldn't have to use the insurance and that was the other \$150,000. That is my understanding of what represents the \$300,000 and how it was structured.

Alderman Vaillancourt asked so you would not accept the terminology of this being left over money.

Mr. Clougherty answered no. I think it was really programmed and it was thoughtful and it was something that people were aware of. Now, we wanted to make sure at the time that if there was a reason not to use the \$150,000 because of the deadlines that that wasn't going to be left on the table. I think everybody with relative certainty knew that was going to happen and that is why we are here tonight.

Chairman Wihby stated I want to go back to the number \$43,987,000. That is what you said the GMP is now. What is the \$44,197,000 number if you have \$2.7 million sitting somewhere.

Mr. Levy replied the \$43 million in the GMP does not include our contingency that we are carrying in the budget, the \$2.7 million. That is the owner's contingency to use for changes and what have you. Also in the GMP the construction manager is also carrying a contingency to cover errors or what have you that he has made in his GMP. In essence, we have a little bit more but we only have control of \$2.7 million.

Chairman Wihby asked so what do you have in the budget.

Mr. Levy asked for which.

Chairman Wihby asked what is this \$44,197,000 number.

Mr. Levy answered that includes the \$60,000 for asbestos abatement. That includes the \$43,987,793, the GMP and the \$150,000 for the acceleration.

Chairman Wihby asked so the new number you are saying is \$44,197,000.

Mr. Levy answered that is the one that is being carried in the budget now. \$44,197,792.

Chairman Wihby stated and on top of that you have an additional \$2.7 million in contingency that you knew that throughout this project you were going to have to do some change orders.

Mr. Levy answered that is correct.

Alderman Pariseau stated if I go back to that \$150,000 and some insurance, that insurance that you are proposing, is that the guarantee that if the place isn't ready by November 15 the \$1 million will be paid to the Los Angeles Kings. Is that what we are paying for or is that what the MHRA is paying for?

Mr. Clougherty replied what it is, Alderman, is if the building doesn't come in on time the Kings and others have got liabilities and that is the insurance to cover the City so that the City wouldn't have to cover that.

Alderman Pariseau asked the City or MHRA.

Mr. Clougherty answered MHRA or the project. Some times we talk about the City and it is my understanding that it is the project.

Alderman Pariseau replied that is what is scary.

Mr. Clougherty stated the project would cover it.

Alderman Shea stated one of the concerns that I personally have is I am hearing words like acceleration, meeting deadlines, incentives, accelerated allowance, now let's think very seriously about what happened down at Hartford, CT when that was built and the top of the building caved in. I think that at least from my point of view I would really want to see a structure that is really well constructed and that makes sense. I don't want to see people in Manchester attending some sort of

an event and because of our haste in getting it up and satisfying whatever people we have to satisfy in this regard, that we make errors of judgment or we do things that obviously are going to not insure the safety of people and I think that all of the discussion that we were focusing on and we can't lose track of the fact that we are talking about human lives here. When you build a house, when you build a fire station, when you build a police station, when you build anything at all which involves people, you want to first of all insure that these people's safety is guaranteed. All of the words that are being tossed around here concern deadlines, acceleration, meeting deadlines, incentives and so forth so I hope and pray that all of the people involved in this project don't lose sight of the fact that haste makes waste and that is my comment.

Alderman Lopez stated I would like to ask Kevin and Tom...I think that one of the major things we have here is the transaction that went on after the approval was given to you and Tom to sign the final documents. My question would be are there, and I use the word loosely, surprises or is there anything else that maybe this Board or the Committee should know regarding what transpired so that two weeks or three weeks down the line they are not going to be surprised to hear something as I was surprised or anyone else was surprised.

Mr. Clougherty replied the documents that comprised this deal, and as I said earlier there are a couple of hundred of them and there are several volumes and they are thousands of pages, certainly if the Board wants us to we will come in and go through every document as we have offered to do with individuals and with this Committee or however you want to handle it. My understanding is when we reviewed the documents at the end when the contracts were approved by the Housing Authority and the banks, what we were looking to do was make sure that all of those elements that were included, whether it was \$150,000 or not, met the criteria that the Board had given us and that the City has not exceeded its authority in terms of the appropriation and things of that nature. That is what we were looking for and we were leaving flexibility to the Authority to develop the project along with the banks. There is a lot of information there. There are a lot of things that make up this deal. I think we have tried to conscientiously let the Board know of all the major elements, but that is not to say on any given day that you may have a question about a budget item or about any piece of this project and at that time we will be more than happy to come in and explain it to you. I can't tell you tonight that I have committed all of this stuff to memory. There were different parties involved. As Tom said, Harry got involved and we used different consultants at different points in time but certainly if you have questions and if there are things that need to be explained so that the Board can go out and relay that to constituents, then we will come in and do that certainly. I don't believe there is anything there that we haven't discussed generally with the Board or at least the concept of what we are talking about that wasn't broached at some

meeting or another I won't tell you tonight that there isn't something in there that might cause you a concern when you read it and we would have to come back and go through that explanation. We will be happy to do that and we want to do that to make sure that you do understand all of the different pieces that make up this deal.

Alderman Lopez stated there has to be good communication so there is no misunderstanding. I personally feel that the fiduciary responsibility of the Finance Officer and the City Solicitor is to protect the City and I think that you will perform that duty.

Chairman Wihby stated I think a lot of it was the understanding that there was a change order coming, but somehow it is in our budget so don't worry about it. Can you talk about the difference between the GMP and the budget and why there is a change order and even though it is in the budget it is considered a change order, Mr. Levy or Solicitor Clark or Kevin?

Mr. Clougherty replied when the GMP was developed with the contractor, we knew there might be some things that would happen with any project this size there are going to be things that move and sometimes they go in our favor and sometimes they go against the project. So, there were contingencies and there were items put in the overall budget, but not in the GMP for the contractor so that you couldn't get those things back out. Once that number was set, you wanted to make sure that those contingencies come back before this body to make sure that these things are seeing the light of day and getting scrutinized. I think that is what he is trying to do tonight. There are some numbers within the budget as with the OCIP. If there is an increase and you don't meet the savings, that has to come out of the project. It doesn't come out of the City. It has to come out of the project. I think those are the things that as this project is developed and gets closer there will have to be some decisions but we thought they should be made by this group rather than by the contractor and that is why it was set-up that way.

Chairman Wihby stated it is the phrase change order. Everybody thinks it is an increase but it is not an increase. It is in the budget; it is just not over on the GMP side.

Mr. Clougherty stated it is not an increase in the total project budget. That always stays the same. It is an increase in the amount that you are going to allow the contractor for his activities.

Alderman O'Neil asked can someone walk me through this. The guaranteed maximum price right now is \$44,200,000 correct? I am rounding off that \$44,197,000.

Mr. Levy answered I am going to get technical with you. It is actually \$43 million right now.

Alderman O'Neil asked but that is not the price of this project.

Mr. Levy answered no.

Alderman O'Neil stated add \$2.7 million in contingency and that is \$46.9 million. Do we also add the credit of \$1.1 million to this?

Mr. Levy answered no.

Alderman O'Neil asked so do we reduce the project by \$1.1 million.

Mr. Levy answered that reduced the project cost by \$1.1 million. The credit we carried in the overall budget.

Alderman O'Neil stated so we are talking then \$45,800,000 is all that is approved to be spent, correct.

Mr. Levy replied that would be correct.

Alderman O'Neil asked and the price of the project will not exceed \$45,800,000.

Mr. Levy answered that would be the ultimate...

Alderman O'Neil interjected we should stop throwing around this thing of guaranteed maximum price because that has changed like three or four times so there is no such thing as a guaranteed maximum price anymore. It is what the budget is to get the project done.

Mr. Levy responded there is a guaranteed maximum.

Alderman O'Neil replied there isn't. If I hire somebody to do a job and he says he is going to do it for \$5,000, that is what he is going to do it for. Not \$5,600 and not \$7,600. We are playing with the terminology here of guaranteed maximum price.

Mr. Levy responded guaranteed maximum price can come in under the dollar amount also.

Alderman O'Neil stated which we know this won't.

Mr. Levy replied it depends on the bids we get and hopefully it will.

Alderman O'Neil stated, Peter, I will buy you the biggest, thickest steak if this thing comes in under and you can have all the beer you want. Who on the City side is responsible for this project? What one person? Can anybody answer that because we seemed to have beaten up Peter pretty good two meetings in a row and Peter is really the construction guy. Somebody has to be responsible for reviewing the City side as this thing goes forward. I am going to reference and I forgot to bring it with me a letter that was sent to Skip Ashooh and this isn't beating up Skip by Aramark sent a letter to Skip Ashooh noting the change. Not to the Board of Aldermen, not to the Mayor of the City, not to a City staff person but to Skip Ashooh. Somebody has to be responsible on the City side for this project.

Mr. Clougherty stated as we had mentioned earlier, Alderman, through the financing while that went through our office that is now complete so it really is a Housing Authority project and it really should go through Peter.

Alderman O'Neil asked including items like the building manager.

Mr. Clougherty answered right.

Alderman O'Neil stated the Housing Authority is paid to build the thing not to determine and approve who the building manager is going to be. That to me is a big problem with this project. There isn't one person on the City side who is going to track the budget, all of these side items going on such as building manager...who in the City was the discussion with with regards to the hockey ownership.

Mr. Clougherty replied I believe that was handled with Skip and the Manchester Development Corporation.

Alderman O'Neil stated the Development Corporation is nothing. Tom Clark has said that. They are an arm of city government. Am I correct, Tom?

Solicitor Clark replied correct.

Alderman O'Neil asked so what authority did we give them to represent the City on the hockey deal and on the building manager deal. Can anybody answer that?

Mr. Clougherty answered again I would have to go back and look at the documents. I don't have an answer for you.

Alderman O'Neil stated we didn't authorize them to do those things. We have to determine here tonight who is responsible. What one City staff person or the Mayor is responsible for all activity with that civic center? Can anybody answer who would be appropriate for that? In all honesty, there has to be a team of six or eight people out there to answer questions and that shouldn't be how it is.

Mr. Clougherty replied I know and initially we dealt with the first phase through Jay and the MDC. There are a lot of pieces that come in that may be a question for me or for Tom or for Harry or somebody else. I don't disagree with what you are saying. We have, and I think Jay has looked for a project manager now that it is in the construction phase to carry that out. If you want somebody to take that on, let us go back and we will get you a recommendation.

Alderman O'Neil stated Peter sat here a week ago and he tried to answer questions that he probably shouldn't have but he was the only one here. I feel pretty strongly that someone on the City side has to be...I have all of the faith in the world in Peter with regards to the construction of the building but all of these issues like building manager, who on the City side does Aramark call if they have a problem.

Mr. Clougherty replied to me what they should have done was contacted the Mayor's Office.

Alderman O'Neil asked is that what we need to do. That any future things for the civic center other than the construction should be dealt with through the Mayor's Office.

Mr. Clougherty answered before I give you that answer...I think based on what we heard the other night I know that Tom and I have talked about this and we plan to be at the meetings going forward and have somebody here to make sure that if we can't get you the answer right off the bat we can go back and research it and get back to you at the next meeting so I think we are going to make a commitment to be here with him.

Alderman O'Neil stated I want one person, Kevin.

Mr. Clougherty replied I think that person should be Peter.

Alderman O'Neil responded Peter wasn't hired to deal with Aramark and wasn't hired to deal with the hockey team or any other issues that may come up.

Mr. Clougherty replied then I would say that we go back to Jay and I hate to volunteer him if he isn't here.

Alderman O'Neil stated he is here.

Mr. Clougherty stated I think he did a good job during that first phase and that is probably where it should go.

Mr. Taylor stated let me first say and this is only my opinion and does not reflect the opinion of the other staff but throughout this whole process for me personally it has been very frustrating in trying to deal with these issues because there is no one person. I don't know how there could be only one person. I am not an expert in Finance. I wouldn't present myself to be that. If there were questions about finances I wouldn't presume to try to answer them. The analogy I guess that I would use is if there were a City Coordinator this is the person that would fulfill this function. There is no City Coordinator, therefore, we have management by Committee and frankly I don't see any way around that under the current way the structure is set-up. Now if the Mayor's Office or somebody else wants to appoint a person to deal with all of these issues that is fine recognizing that whoever that person is is not going to be able to do some other things that he or she is being asked to do. It is a matter of a decision as to who wants to appoint somebody and who is going to do the other duties that this person is already carrying out. That is my opinion.

Alderman O'Neil stated I don't disagree with your statement, but it still doesn't resolve the problem. There is a problem.

Chairman Wihby stated what I am hearing is that Finance and the City Solicitor and Jay form a Committee that could answer questions and get back with one answer. What is wrong with that?

Alderman O'Neil stated in all honesty and this again is not a shot at Skip but Aramark had no business contacting Skip. The hockey team had no business contacting Skip. Skip is not an authorized agent for the City of Manchester.

Chairman Wihby stated we could say it is Jay, but Jay is not going to get all of the answers himself. He is going to have to count on Kevin and the City Solicitor.

Mr. Clougherty replied I didn't mean to imply that. Obviously if you want one focal point for all of the information and all of the inquiries and all of that, then Jay can serve that role as he has in the past and then we will try to be here at every meeting and try to answer questions.

Alderman Hirschmann stated I don't think what happened is actually wrong because during Phase I, Skip Ashooh was the City's liaison through the Manchester Development Corporation and when Skip was dealing with the previous Ogden company that is now Aramark. Aramark took over Ogden and they sent Skip a communication. He was the Phase I coordinator, but now we are in Phase III, which is the construction cycle and everyone is still involved exactly and even Skip is involved to a point just to provide a reference for everybody. He is still part of the team, but I don't feel that any one person...most of the cooperation agreements are between the Housing Authority and the food company and the hockey team. It is not the City of Manchester directly. I think that the weekly reports we are getting from Jay answer my questions. I have been getting those weekly reports and it doesn't really infuriate me that someone writes a letter to Skip as long as we get a copy of it, which we did.

Alderman O'Neil stated if, in fact, the cooperation agreements are with the Housing Authority, then that is who should be dealing with this. That is our one stop thing. Is that correct, Bill?

Atty. Craig replied the city's agreement with the Housing Authority is to acquire the site and relocate the tenants and to get the facility built. The Authority has appointed, as they were required to do in the contract with Gilbane to appoint a so-called owner's representative and he has appointed Peter Levy as owner's representative. As far as the Authority is concerned with respect to construction, Peter speaks for the Authority.

Alderman O'Neil stated you didn't answer my question.

Atty. Craig replied I am sorry. I didn't hear it right then.

Alderman O'Neil asked the hockey team and the building manager. Is that part of the Housing Authority's responsibility?

Atty. Craig answered no.

Alderman O'Neil stated we have to find one person.

Alderman Hirschmann replied it is a team.

Alderman O'Neil responded a team concept isn't working here. There are too many members to the team.

Alderman Vaillancourt stated when Jay was providing the weekly updates, they were quality and well done. I will offer that compliment. When they went to the MHRA, they became skimpy and virtually non-existent. I think we can have confidence in Jay to be the conduit for all of this information. I think he did a wonderful job before. He was responsive as opposed to some other groups and I think we should rely on his expertise again to pull it all together.

Alderman Gatsas asked, Atty. Craig, did you say that Peter was hired by MHA.

Atty. Craig answered I didn't say that. I said that he was appointed or designated as the owner's representative.

Alderman Gatsas asked through Scheer-Stern.

Atty. Craig answered no.

Alderman Gatsas asked who does he get his check from. With the statement you just gave me, who do you assume he should get his check from?

Atty. Craig answered Mr. Stern.

Alderman Gatsas stated obviously this Committee is probably not going to meet for two or three weeks and Peter they tell me that I was pretty tough on you last week. I would assume that as tough as I was on you last week that somebody would be sitting around here to give us some answers and not have that thing tabled again because what I see and nobody has told me that I am wrong...Kevin you are the finance guy and you are representing the City on the financial issues and you can't tell me right now sitting in that chair that absolutely, unequivocally that worker's compensation policy is not going to cost the City a nickel.

Mr. Clougherty replied that is my understanding.

Alderman Gatsas stated you can't give me a definitive answer because you don't know.

Chairman Wihby stated we have tabled that subject until Harry can come to the meeting.

Alderman Gatsas asked should Harry be answering that question, no. It should be Aon that is in here writing that policy.

Chairman Wihby answered they are going to be at the next meeting.

Alderman Gatsas asked when is that.

Chairman Wihby answered when Harry gets back.

Alderman Gatsas asked so if a catastrophic accident happens out there...

Chairman Wihby interjected they are already doing it.

Alderman Gatsas stated that is what I am saying. They instituted it without anybody questioning what is going on.

Chairman Wihby stated I don't even know if we decided not to do it if we could stop it from happening. I think it is already done. I think all we are doing is moving the money from one pot to the other pot and that is all we are asked to do, not to stop the thing because I think it has already been done. We will have that at the next meeting. Any further questions on this?

Alderman Gatsas stated I have a major problem that the agreement that this Board looked at or that the entire Board looked at that nobody at any time ever came back and said because of the bank and closing dates anything changed. There has never been a whisper of that. There has never been any indication of that. Nobody ever came back to this Board and said I think we are going to have a problem with completion dates. That was never mentioned on anything that we read or anybody from the point positions told anybody until they just came in here last week. Everything was fine. We are going along ahead of schedule and nobody once ever said things have changed because of bank commitments. Nobody ever said that to anybody on the entire Board or this Committee. I don't think that is right. I am not saying that people wouldn't be in agreement with it, but I don't think we should be left in the dark. The lights are out in this place enough without having to take the biggest project this City has ever looked at and having them on dim.

Chairman Wihby stated we discussed what we could do to bring that date forward. That has always been discussed with this Committee. The dates were very tight and we made motions at the time to get things done so we wouldn't have to delay the process because we knew it was going to be a costly expense if we did. I know that this Committee has taken it up. I don't know if the full Board has but we have discussed timing and completion of the project before.

Alderman Gatsas replied it sounds like the \$150,000 that we gave them covers their deductible on the back end if they don't meet the dates because they have to come up with \$50,000 per game for the hockey team. Am I correct or incorrect? That is what it sounds like to me. That is the deductible on the insurance policy that kicks in and covers the other \$850,000.

Mr. Clougherty stated the deductible on the insurance policy, the \$150,000 to get the completion guarantee insurance is an incentive to Gilbane to get the job done on time.

Alderman Gatsas asked and if it doesn't get done on time, the \$150,000 we just paid him for the wages on the front end accommodates the \$50,000 per game, three games, \$150,000 deductible if they don't meet it.

Mr. Clougherty answered I don't believe that is the case, Aldermen, but I will go back and look. I don't believe that is the case.

Alderman Gatsas stated well the numbers are coincidental aren't they.

Alderman Cashin asked who required the \$150,000.

Mr. Clougherty asked which one. The \$150,000 deductible for the guarantee or the \$150,000 we are talking about tonight.

Alderman Cashin stated the \$150,000 we are talking about tonight.

Mr. Clougherty answered that was part of the budget that the terms required...Gilbane came forward and said I have my GMP and we are looking at these timetables that are slipping and we think we would like to amend the GMP and I think the decision at that point was let's not amend the GMP let's hold you to that, but we will put money over on the City side and if it is determined that it is necessary than the Board will move the \$150,000 over for your completion.

Alderman Cashin asked you are saying that Gilbane requested it.

Mr. Clougherty answered I think Gilbane originally raised the issue.

Alderman Cashin asked how about the bank. Did they have anything to do with it?

Mr. Clougherty answered at the time the banks knew that it was slipping and they knew what the budget was.

Alderman Cashin asked before they approved the financing didn't they request it.

Mr. Clougherty answered I think they were involved in that, Alderman.

Alderman Cashin stated you are right they were and we didn't know that either, Kevin.

Alderman Vaillancourt stated Alderman Lopez referred to unpleasant surprises that may be lurking in the future. I would like to just take us to one of those and ask for an update from the City Solicitor and Kevin. As far as I am concerned, the City has already lost the Staples lawsuit and the money is sitting there in escrow. Of those \$44 million or whatever, where is that money going to come out of. The lawsuit that Staples filed with the City and that the Board of Land Appeals has heard. Again, I know that Atty. Craig will disagree with me but from what I understand we have already lost that lawsuit and it is just waiting to be paid.

Solicitor Clark replied that is not correct, Alderman.

Alderman Vaillancourt asked would you clarify it then.

Solicitor Clark answered there was a hearing before the Board of Land & Tax Appeals to determine whether or not or what security should be placed with the Board in the event there is an award. There has been no hearing on the merits. Staples has not provided an appraisal to the Board outlining what damages they may or may not have. The City, through the Housing Authority, has an appraisal, which shows the damage at zero. We do not concede that there will be a loss in the case.

Alderman Vaillancourt asked but we have escrowed a certain amount of money.

Solicitor Clark answered we have escrowed. By statute the Board has the right to ask for security.

Alderman Vaillancourt asked how much was that.

Solicitor Clark answered \$250,000.

Alderman Vaillancourt asked where in that \$44 million would the \$250,000 come out of if, in fact, we do owe it.

Solicitor Clark answered it is relocation money in the budget, I believe. I am not the Finance person so you would have to ask the budget person where the money is.

Alderman Vaillancourt stated let me just say that I suspect this is going to be one of those surprises lurking out there in the future.

Alderman Hirschmann stated I have a question for Doug Butler, the contractor from Gilbane. Mr. Butler, the \$150,000 for acceleration, if we grant that this evening, do you give us then a guarantee that November 15, 2001 you will be done.

Mr. Butler replied that was the intent of that money. Perhaps I should clarify how it happened to come about. For those of you who have looked at the GMP document, you know that the GMP is based on a schedule that was included in the back of that. It indicated a December completion date and as the final discussions were ongoing with the hockey team, it became apparent that they couldn't wait until December without suffering some loss. We were asked what can we do or what could we suggest in order to move the date up to something that the hockey team could live with. We analyzed what might be done and one obvious answer is to try and work some of the trades, particularly those people whose contracts had already been bid but had not been awarded at that point in time, some overtime money. We tried to do an analysis of what that might cost. We actually came up with a wide variety of estimates because it is a pretty unknown sort of a subject. In discussions with Steve Stern at the time, we agreed upon this \$150,000 figure as a number that we would try to work with to accelerate the earlier trades so that the later trades would have a clear shot at getting the end date desired. That was the genesis of this acceleration money. It is an effort after the fact to get the earlier contractors to go faster. Our expectation is that if we do it correctly that will happen. Does that answer your question?

Alderman Hirschmann replied the word "expectation" doesn't. The word "guarantee" would. So, this money already sits in contingency and we couldn't transfer this to you on November 15, 2001 when you have it done?

Mr. Butler responded no. This money is actually being spent. We have authorized the concrete contractor to work extended hours with the expectation that we were doing the right thing. We were assuming that all of us want to see the hockey team playing their first game on November 15. For us to do that, we have to be able to push the early parts of the schedule along and this money was intended to provide some impetus to get those trades out of the way. The follow on trades that are just going out to bid now will have the November 15 date as part

of their contract, which the earlier trades did not. We will presume that if we are successful with the first group of people we can certainly make the end date with the rest.

Alderman Hirschmann moved to approve Change Proposal #14. Alderman Wihby duly seconded the motion. The motion carried with Aldermen Cashin and O'Neil being duly recorded in opposition.

Alderman O'Neil moved that Jay Taylor be appointed the City designee on all matters with regards to the hockey team and the building manager and that he reports to this Committee. Alderman Pariseau duly seconded the motion.

Alderman Cashin asked, Jay, how do you feel about this. I don't want you to come back and tell me that you don't have time to do it. Can you handle it?

Mr. Taylor answered first of all I guess this would require the Mayor's consent because technically all department heads report to the Mayor.

Alderman Cashin replied I think we can handle that.

Mr. Taylor responded I am sure you can, however, to the extent that I am going to be working or spending more of my time on this particular issue, I guess my concern is that I don't want to be held accountable on the other end for things that I don't have the time for that I am doing now that I can't get to. I guess that is my concern and I don't want to get hammered on one side for not doing what I am supposed to be doing because I am doing this. All that having been said, I will do my best to try to do it.

Alderman O'Neil stated I am all ears if there is somebody else, but either we create a position to do it or one City staff person has to pick it up. Give it to Kevin or Tom. I really don't care.

Alderman Hirschmann stated if Peter Levy is in charge of all construction, the only thing that is left is the management company, which is Aramark. The hockey team has a contract with Aramark so you are not going to deal with the hockey team. You are just going to deal with Aramark. That is it. It is not a big commitment here. I don't even know what goes to the development guy. A management thing like that might go to somebody else.

Chairman Wihby called for a vote on the motion. There being none opposed, the motion carried.

Alderman Levasseur asked are you filming this on a daily basis for the archives.

Mr. Levy answered no. We are trying to set-up a web cam right now and are in the process of doing that and a public web site.

Alderman Levasseur stated I am not really worried about the web site as much as the Big Dig was filmed on a daily basis for everything like liability issues down the road. I just thought maybe it was something prudent that you should think about.

Mr. Levy replied it is being thought about.

Alderman Vaillancourt stated just for the record, Mr. Chairman, the vote on the \$150,000 was 3-2 in favor with Alderman Pariseau voting yes. Will that come before the entire Board for a vote or does this 3-2 hold for the entire Board.

Alderman Wihby replied I think the way it is written is it is approved by the Committee.

Alderman Vaillancourt asked so it never goes to the entire Board.

Deputy Clerk Johnson answered just as a matter of record, the actions that are taken on any change orders we are advising the Board of, but it is not submitted as a recommendation but just advising that it has occurred so that the full Board is kept informed of what actions are being taken at the Committee level.

Chairman Wihby stated there is no vote required of the full Board.

Alderman O'Neil asked, Jay, are you going to inform Aramark that you are the agent now.

Mr. Taylor replied yes.

Alderman O'Neil asked how are we doing with residency. There was some talk last week about it, but I understand there are people here from Maine doing some stuff.

Mr. Levy answered they left.

Alderman O'Neil asked who is doing it if they left.

Mr. Levy answered the concrete contractor is doing it with his people. I will have a report to you the first of the month. They just got it to me and I will get it out to you.

Alderman O'Neil stated I still think this is a very serious matter and I will tell you that I am going to be a pain in the but about it. There are going to be, to the best of our ability, Manchester residents working on that job in all trades.

There being no further business to come before the Committee, on motion of Alderman Pariseau, duly seconded by Alderman Hirschmann, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee