



## CITY OF WASILLA

290 E. HERNING AVE.  
WASILLA, ALASKA 99687  
PHONE: (907) 373-9050  
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December 11, 1991

### CALL FOR SPECIAL MEETING

Pursuant to WMC 2.08.020, a special meeting of the Wasilla City Council is called for 7:00 p.m., Tuesday, December 17, 1991 at Wasilla City Hall for the purpose of hearing new information and reviewing the status of engineering for the new sewer filter and to act, if necessary.

### AGENDA

Call to Order


Roll Call

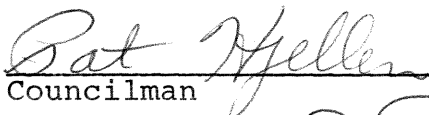
Approval of Agenda

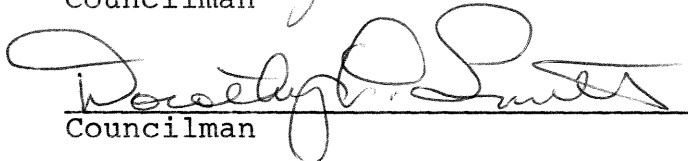
Unfinished Business

CM91-97 - Contract for Professional Services  
Reports: Jack Felton, P.E., Alaska Rim Engineering  
Alaska Department of Environmental  
Conservation

Adjourn

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Councilman

  
\_\_\_\_\_  
Councilman



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WASILLA CITY COUNCIL  
SPECIAL MEETING VERBATIM TRANSCRIPT  
DECEMBER 17, 1991  
7:00 PM

1. CALL TO ORDER:

Mayor Stein called the meeting to order at 7:12 p.m.

2. ROLL CALL:

COUNCILMEN:

Mr. Carson-Not present  
Mrs. Cottle-Not present  
Mr. Erickson-Not present  
Ms. Hjellen  
Mr. McCarthy-Ex.  
Mrs. Smith

STAFF:

Mayor Stein  
Mr. Harris-Deputy Admin.  
Mrs. Harris-Deputy Clerk  
Mr. Nelson-City Clerk

3. UNFINISHED BUSINESS:

CM. No. 91-97; Contract for Professional Services;  
Reports: Jack Felton, P.E., Alaska Rim Engineering;  
Alaska Department of Environmental Conservation;

Mayor Stein: "Let the record show that we do not have a quorum tonight, only Mrs. Smith and Ms. Hjellen are present. However, we do have present in the audience the Deputy Administrator, the City Attorney, Engineer Felton, Engineer Gilfilian, Paul Pinard from the Department of Environmental Conservation, and Sandy Medearis from the Frontiersman, what's the name of that place, and Engineer Peter Curtis.

In order to get the information to the remaining Councilmen, I think it would be appropriate simply for Mr. Felton and perhaps Mr. Gilfilian to make comments, we'll read those into the record and then have a verbatim transcript provided to the remaining Council people so we can get the information out. And also if Mr. Pinard would be available also to comment and then we can at least get the information out to the Council. So understanding that this is an unofficial meeting and information gathering effort I would like to I guess ask Mr. Harris to introduce Mr. Felton and we'll get these comments on the record."

Mr. Harris: "Starting at the last council meeting, Council directed that I prepare a request for engineering services and go out and ask for letters of interest and statements of qualifications to provide engineering services for design, contract administration and start up of the recirculating granular media filter for our sewer treatment system. I also received permission from Council to use the services of Engineer Jack Felton to assist in reviewing my solicitation for letters of interest. I prepared that letter of interest and ready for advertisement and Mr. Felton came in and

reviewed it and expressed a great deal of surprise that of the course of action that we are proceeding and he proceeded to relate to me why he was surprised at this and the potential impact of the course we are taking, and I thought that this was of such significance that the entire Council should be made aware of the facts as Mr. Felton sees them prior to proceeding any further. So Mr. Felton, if you would please relate those to the Council."

Mr. Felton: "Good evening, yes basically I was surprised and it was my understanding that Mr. Harris and I were to negotiate a contract with Gilfilian Engineering as stated by the Council. We had done that and through several meetings did come up with what we thought was a reasonable professional services agreement. It was within, I believe about 1% of the estimate that I told the Council in my report to you that I thought was fair to pay for the job. When I looked at the letter of interest and thought about it all I had to sit down and one of the things that we discussed with Mr. Harris is that of an engineering project of this size, if you go out with letters at this time, I would say you could expect to pay for the same services that we negotiated with Mr. Gilfilian anywhere between a hundred and ninety and two hundred twenty-five thousand, and there's a great disparage there between that and the reason is that no other firm or I'm not aware of any other firm or any other person that has the initial knowledge that Mr. Gilfilian and his firm have. The other firms would have to through interviews, site visits literature studies and a whole bunch of other things come up to speed with Mr. Gilfilian's firm. Because of the work they've done for you to date on this project, they're starting way ahead of us.

The other thing that we discussed was the professional services agreement, a professional service agreement is not in most instances like a contract that you would have with solicited quotes. In other words its not as if you went into a painter and said, how much to paint my living room, and they will give you a usually a quote and its good for 30 days. If you went into a full solicitation program and I'm being very generous here, and I understand Bob's in the audience and we are personal and professional friends but, I'm not putting any words and he can stop me at any time, or you can ask him, himself but he's not obligated to leave his quote on the table and he is a fully recognized firm. He could either answer the letter of solicitation or withdraw from the project 100%. Those are both honorable, equitable positions of his firm and it would be a business decision on his part, what he would choose to do.

If he did enter the solicitation program he would be justified in more compensation, in other words he's going through, if you will excuse it but those of us in the trade call it a dog and pony show. That's where we get all bib and tuckered up and give you all those nice full blown proposals and glowing letters of interest and all and they eat up time, their overhead, and for that and quite basically he's in a competitive market with other engineering

firms. His price could raise, it could stay the same. That's a business decision he has and I can't speak for him. The point being it did not, it would not hold his offer on the table because he is eligible to propose on the other.

So my counsel to Mr. Harris was that by not continuing on with the vain that I thought the Council had elected that you stood the chance of expending twice what you thought you were going to spend for the same service. And that's what alarmed me and that's what I discussed with Mr. Harris and the different opportunities. I also, we discussed quite frankly that with a project that has the potential, I'm not saying it will, but it has the potential of a quarter million dollars of engineering fees you are going to stir a great deal of interest. The majority of the firms that can respond positively to your request are in Anchorage, you might possibly find 1 in Washington. The Seattle area might, it might be worth while for a firm to come up here, this may be a project to get a foot in the door if you will to open an Alaska branch office, they might solicit. If they did, those firms and there's a few firms that are starting in Anchorage right now that closely scrutinize the selection process.

And by this I mean that if you do not have a process on line of how you are going to select and they can prove any kind of arbitral, that you are arbitrary or capricious, they will sue you for the cost of presentation and they have been winning. If there is a detailed procedure and you follow it, that's the rules of the game. If you want to get into the game, you read the rules as long as the rules are aptly applied. Quite frankly the City doesn't have enough business that it would be a bad political move for someone to sue you. The size firms we are talking about, the total City engineering probably couldn't keep one of their tech's paid through the calendar year. So you're not, there's no threat to say well we'll never do business with them again. They don't care, pay us for what we've done today and they'll go elsewhere for their work.

So I was discussing with Mr. Harris that we were going to have to come up with a detailed selection criteria to make the short list and then what is normal a detailed selection criteria for the proposing firms, the 3 or 5 whichever the Council decided to go with and that list is published and given to the proposers they know where the points are and they know how they are going to be reviewed and then they will aim their presentations to the Council at the points list.

So we were discussing how much time he and I were going to have to spend to try and come up with these documents to give the Council and how that was going to work. And it boiled down to the project would be in jeopardy for construction in the summer of 92, it was going to be very tight to get the project in and on line.

Again we discussed some of the things that I'd learned and Mr. Pinard is in the audience, but your discharge permit was granted for 2 years because you were taking corrective actions. You wouldn't be responding to your discharge permit, in other words if you went into the summer of 93, you are almost at the end of the permit, you haven't done any construction and you are liable for corrective or whatever, I can't speak for the department, I'm not a spokesman for the department but as your advisor I was telling you, you are exposing yourself to liability there.

So it seemed imperative to me, or I was stressing to Mr. Harris that if there's anyway that the Council could shorten this selection process, within your realm and get the project on line and make the summer of 92 construction it would greatly benefit the City, greatly benefit it. And that's the reason that I believe that Mr. Harris talked to the Mayor and this meeting was scheduled. Now I'd be happy to answer any questions that you might have of me about what I am saying."

Mayor Stein: "Questions. Mr. Harris."

Mr. Harris: "Mr. Felton, in your opinion, are there any firms including your own firm in the local area that could bid, successfully bid and maybe do this project?"

Mr. Felton: "Okay, we are excluded. Let me go back to that, professional ethics say that I can't bid on the project because you've hired me to make the selection criteria, its inside trading I'm in on the inside, I can not bid on the project under the firm. I am not aware of another firm in the Valley that would have the E & O and the size and the expertise. There may be one and I apologize if I'm slighting them, I'm just not aware of one that would take on a design project of this magnitude. There are probably and I will defer to Bob because he's there now, 8 to 10 Anchorage firms that would be interested in it. Is that a reasonable number? I'm not going to go down the list, but I can think of quite a few fairly quickly and maybe more that I'm not aware of."

Mayor Stein: "Any other questions, Dorothy."

Councilman Smith: "Mr. Felton, how knowledgeable are the firms that you're speaking of in Anchorage about the type of filter system we're talking about. It seems to be kind of a specialized thing that Bob had experience with."

Mr. Felton: "Well, that's why to be quite honest with you I think there's probably more expertise in the Northwest. The seminars that I've attended there's a lot of engineers doing them in the Seattle and Portland area and that's, for that reason I thought there might be interest if they read the Anchorage papers. I believe the firms

are competent if they bid on it, they would have the people or they would gain the expertise."

Councilman Smith: "One other thing, I understood the other night at the Council meeting that this wouldn't be on line for 92 anyway because of funding."

Mayor Stein: "Mr. Harris?"

Mr. Harris: "If the design were finished soon enough where we could get you know, a pretty close and detailed cost estimate as well as the final designs themselves in order to help us lobby in Juneau there may be an opportunity to do that, and if it looks like we're coming down the pike far enough, quickly enough, we may be able to either get, obtain legislative funding or DEC grants or loans in order to do it. But with the process we're going through I doubt we will be able to line up funding this summer."

Councilman Smith: "Well even, would we have, we have in the fund ourselves 300 and some thousand is that correct, in that grant?"

Mr. Harris: "We have in the general area right now of about 750 thousand."

Councilman Smith: "750 thousand, okay so if we had the plan design ready for the summer could we go ahead and start even if we weren't sure of the other funding or do we have to have a total?"

Mr. Harris: "No, we could start, we have more then adequate funding you know, for the design itself, but with those matching funds available and having design underway and knowing you know, having a time frame and schedule for it I wouldn't be shy then of beginning a process of grant applications and we could do a better job of lobbying the legislature if we could assure them that we are going to be building this year. If we can't build this year, we may have some trouble getting the funding from them, if there's any funding available at all."

Councilman Smith: "Thank you."

Mayor Stein: "Any other questions? Okay, thank you very much Mr. Felton. Mr. Harris, maybe we should hear from the, let me see, maybe Mr. Gilfilian and then we could hear from Mr. Pinard but there are some questions that arose regarding the nature of the quotation that was presented at Council last time and maybe Bob could go over what the difference between then and now is."

Mr. Harris: "I think that would be well, we did try to explain part of that to Council but we didn't really have the entire information. We explained that the first quote did not have include the errors and omission insurance, which is quite expensive,

secondly it did not include the start up assistance which we estimated services for 2 months and then there were other things thrown in that as well because the more detailed scope of services and more involvement by the engineer during contract administration and Mr. Gilfilian can probably better explain those."

Mayor Stein: "Bob."

Mr. Gilfilian: "Thank you, I came here tonight to explain the proposal dated November 30. I believe that was in the packet at the last Council meeting. I think its in order to provide some background information. Bob approached me to prepare an estimate so that he can get it before Mr. Felton and start working at a contract with conditions and agreed upon prices and the scope of work. And when Bob approached me it was like one day before I was to leave on a trip and I've been gone for 2 weeks. I just got back last night from Eastern Europe. I found out that things have gone in another direction here and I was quite disturbed.

The letter I prepared November 30th is the day before I was leaving, Bob asked for a wag on costs and that's, that's always a difficult thing to deal with and he said that what he wanted was in addition to what was being, what had been proposed in the past, it was additional work to be done, and E & O Insurance to be provided and the approach to be taken on the project would be different from what we had originally evaluated for the City, and that is the City to be taking strong role in the construction of the facility to save cost. I looked at our budget and Mr. Curtis here was also partly involved with the old budget and briefly discussed the budget with Peter and looked at the scope of work. I have outlined there in the November 30th letter a breakdown of the different tasks. This is different from the previous proposal that you have before you back in April.

We're going back a long ways, back in April I had a budget of \$78,000, this budget that was presented November 30th is different. It included an additional task of plant start up and trouble shooting, more involved construction inspection, contract administration and E & O Insurance. The E & O which I have hopes for my firm can obtain, has not been required in other projects that we have done. We used to have E & O, I explained that to Council many meetings ago and we dropped it once it got up to 60,000 a year, and that was only for 100,000 dollars coverage. Bob said he wanted a million dollars coverage, this was after I prepared this proposal and we're trying to get quotes on that now for the million dollar coverage. I don't see or have a problem with that but the cost that you have before you in that budget is one for a different scope of work than what was before you before.

What bothered me most was the article that appeared in the Frontiersman on the 13th of December and it appeared from the

article that I was taking advantage of the City Council and raising my fees and that's not the case, of the fees that are in the November 30th proposal reflect a different scope of work, an increase in the scope and I was bothered by some of the quotes that are in that article and I've talked to a few people that have read the article and it comes across that I'm here to try to rip off the City and that bothers me a whole lot and the folks that most responsible are not here tonight.

So I've looked over the contract that Bob has prepared and essentially I don't think there was any major changes except E & O, we needed to get a final number on E & O costs. What I was trying to provide the City in previous proposals and the November 30th proposal was a budget that would be cost effective. The, I've talked it over again with Peter today, its a very tight budget and I certainly don't want to come before the Council asking for more money, its not my intent of raising the price because I would have to go through this process, but that we would honor that price and work towards that.

But there is something else that I need to point out about the E & O. There is a cost associated, the numbers that are before you here in the November 30th reflect about 1/2 million dollars worth of E & O coverage. I first said 300,000 but I believe that its 500 when I was looking at my quotes cause I had to call from Germany and talk to Peter and I didn't have my paperwork in front of me, but we're trying to get the costs now for the increase to a million dollars of E & O. E & O is an interesting type of insurance, its an insurance that provides you some form of protection if I make an error or there's an omission essentially in the design. The problem with E & O in many cases is that once you get a system designed and its constructed and its operated, time passes and then insurance may not cover that. That is something that constantly comes up because you get a false sense of security with E & O insurance.

There was an article to the Frontiersman by one of the Council members that made reference to one of the previous design engineer's E & O insurance, and the City attempting to pursue that course of action. And that's very difficult because you would have to go on the design basis. I would provide a design for that cost and I would be doing that design based on standards, recognized standards. If I make an error in that process then I am liable for that error. If the system is built and construction and designed in accordance with standards and it fails to meet the design criteria, you wouldn't be able to get that cost for replacement from E & O insurance unless there was an error in the design. And that's something I think there is a misconception, a guarantee here being implied because you got the E & O you're guaranteed the system can be replaced. That's all I have to share, if there's any questions?"

Mayor Stein: "Any questions for Mr. Gilfilian?"



Councilman Hjellen: "They were talking about that they wanted this E & O continued for 2 years. That seemed to be a hot item which doesn't mean anything to me because I see what happened now they're after CH2M Hill, well shoot, that was years ago. That has nothing to do with it."

Mr. Gilfilian: "And it would be extremely difficult to pursue. You have, that's a carry, I forget what the term, tail, I believe its referred to, that very expensive to get that kind of E & O insurance."

Councilman Hjellen: "And what are you looking at just to cover the contract or for 2 years after if you did the work yourself."

Mr. Gilfilian: "The E & O is a claims made basis, it only can be made during the year of the coverage."

Councilman Hjellen: "You can't get extra coverage, you can but,"

Mr. Gilfilian: "You can but its very expensive,"

Councilman Hjellen: "you can but its too expensive,"

Mr. Gilfilian: "and if you want it for a specific project it becomes even more expensive. Its available but to point out the important thing here is that even if you have it you may not be able to collect unless there's an error on the part of me as the designer or the contract inspector, construction."

Councilman Hjellen: "I understand now, I understand then, thank you."

Mayor Stein: "Mrs. Smith."

Councilman Smith: "I think that was one big misunderstanding the other night at the Council meeting about this E & O because I didn't. You had already talked to us about you had dropped yours because for the reasons you're stating here. Some of the Council insisted that you know, you still had that in that bid in April,"

Mr. Gilfilian: "No."

Councilman Smith: "which, how much did that add to the"

Mr. Gilfilian: "E & O for 1/2 a million dollars would cost us 20,000"

Councilman Smith: "20,000"

Mr. Gilfilian: "I think its 20, I've got the quotes. It may be 20 additional, I think its 15 for a 1/2 a million, now I've got earlier

quotes like 6 weeks earlier that it was at 40,000 and the market's changing and that's about the best we could do, I think its 15,000 for the 1/2 a million and its something that a lot of the clients just don't understand what kind of protection that provides for you. We can provide, we're, for project life its, its probably wise to have it. The Borough has been allowing it to slide on certain projects if they don't exceed a million dollars and, and this project is right at that line, and so its probably wise to have it but to understand what does it provide you I think is the point I'm trying to make."

Mayor Stein: "Sandi, oh, go ahead."

Councilman Smith: "So actually the, the E & O was 15,000 so then 7,000 was for, I think it was 22,000 above the orig, so 7,000 was basically for the additional change in the work, right."

Mr. Gilfilian: "I had, there's 10,000 for the phase 3 if you want to call it that. At the plant for plant startup and all. And you keep in mind that these are time and expense budgets, these are not okay we're going to get 10,000 for doing this work. So that was about 10,000, and in addition more, which is real important to me, is the type of construction. It was earlier to keep the costs down. Our firm would inspect the construction as it was occurring but not on a, I'm not going to say a full time basis but on a spot check basis. That we would go out and essentially look over the City's shoulder to see if its being done in accordance with the plans but not be out there on a full time basis. That adds up very quickly, that kind of cost so that was a whole different approach."

Councilman Smith: "Of course you are talking to 2 councilmen that"

Mr. Gilfilian: "Well this will be on record, I guess."

Councilman Smith: "Actually then from what you're saying if the phase 3 was 10,000 dollars in addition"

Mr. Gilfilian: "Yes."

Councilman Smith: "and then the E & O for 500,000 was 15,000, so actually this bid was basically less then what your first bid was"

Mr. Gilfilian: "Right, in those terms"

Councilman Smith: "in those terms."

Mr. Gilfilian: "and as I said I have spoken with Peter because of my personal drive here in terms of seeing the City get a system and my personal interest was there all through this process, I've been coming from. My goal has been coming out in the press and all and

it might be an exorbitantly cost that may not be worth it. I mean I'd like to re-evaluate it once I find out what the cost might be."

Mr. Gilfilian: "Its, you couldn't find probably a bigger firm then CH2M Hill. CH2M Hill, okay they did the original design and we're over here saying to EPA that the system failed, but I can't and I had to go on record to show that CH2M Hill did not make an error in their design. So that, even though that system has not met the expectation of the City and also the DEC permit requirements you can't go after CH2M Hill's E & O insurance, you may try to but they're coming from a pretty strong position of how they did things in accordance with the standards recognized at the time."

Mayor Stein: "Okay, thank you, Jack."

Mr. Felton: "To answer Councilman Smith, yes I did say on record that I thought you should have E & O, its like any other insurance to a client. I'm not sitting on a fence here because I play both sides as you understand. Yet I think Bob said the same thing I was saying, yes he feels E & O, how much insurance you want and what you want it to cover is the same thing as doing your car. Quite frankly here you could get the deluxe super premium policy but you pay for it. You can get accurate coverage or a reasonable coverage at less cost. I am still of the opinion that you need it, how much you need I believe is up to you."

Councilman Smith: "Now how much, you mean to cover the entire project, one million or for the 2 years after. I mean, I guess I'm thinking of what about these 2 years after."

Mr. Felton: "I'm saying at least for the design, that's what I'm talking about."

Councilman Smith: "But perhaps not for the 2 years after, or to me that's what we need to evaluate. That seems to me where the cost is going to be."

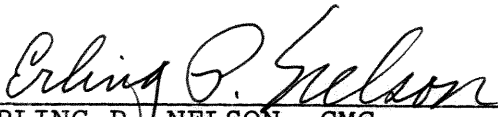
Mr. Felton: "That and when you are going to construct, and what gets very expensive and again is to cover a design that you put on the shelf and that's what Mr. Gilfilian was talking about. Standards could change and the insurance companies are very leery of covering a design that you put on the shelf and dust off in 2 years later and bid. There could be a whole new almost anything. Without paying the engineer to re-evaluate his design or bring it up to current standards your design specifications could change. Your legal constraints, your discharge permit could have changed in those 2 years. A lot of things could happen and that's why that kind of tail is extremely expensive."

Mayor Stein: "Thank you, Mr. Gilfilian, Mr. Felton,"

Mayor Stein: "It will be on the agenda for next meeting. Okay, if there is no other comments, we thank you all for coming and we hope this has been productive or ultimately will be productive."

4. ADJOURNMENT:  
The meeting adjourned at 8:00 p.m.

RESPECTFULLY SUBMITTED:

  
\_\_\_\_\_  
ERLING P. NELSON, CMC  
City Clerk