

City of Coral Gables City Commission Meeting
Agenda Item F-5
November 18, 2008
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael "Ralph" Cabrera, Jr.

Commissioner Wayne "Chip" Withers

City Staff

Interim City Manager, Maria Alberro Jimenez

City Attorney, Elizabeth Hernandez

City Clerk, Walter J. Foeman

City Clerk Staff, Billy Urquia

Director of Human Resources, Marj Adler

F-5 [Start: 1:51:57 p.m.]

Discussion concerning the selection of a firm to conduct executive search services for the position of City Manager – City Commission As-A-Whole.

Mayor Slesnick: F-5 – Ms. Manager.

Interim City Manager Jimenez: F-5 is a discussion concerning the selection of a firm to conduct executive search services for the position of City Manager – Ms. Adler.

Mayor Slesnick: Before Ms. Adler starts, Madam City Attorney we have received a communication, I guess all of us did, complaining about the process, and I'd like you to comment on that complaint, and whether or not we should move forward.

Commissioner Cabrera: I haven't received anything.

Commissioner Anderson: I haven't received anything.

Mayor Slesnick: Well, I received a letter from an employee of ours, Mr. Benedit, who has complained and I think complained to the Governor, the Lt. Governor, the State Attorney, everybody, that there is some impropriety.

Commissioner Cabrera: Can I get a copy of that Mr. Mayor? Does anybody have a copy that I can...don't you think we should all take a quick look.

Commissioner Withers: I haven't seen it.

Vice Mayor Kerdyk: I haven't seen it.

City Attorney Hernandez: I have a copy of all the e-mails and everything. I have a file.

Commissioner Cabrera: Well, I think what the Mayor is referring to though.

City Attorney Hernandez: It's extensive though.

Mayor Slesnick: Can we get copies for the other Commissioners who said haven't seen it?

Commissioner Cabrera: You said a letter, you received a letter.

Mayor Slesnick: No, it was on an e-mail, it was followed up by a printed copy, I'm not sure, but I saw it on e-mail. It was an e-mail to the Governor, Lt. Governor, State Attorney and...

Commissioner Cabrera: Did the Governor respond?

Mayor Slesnick: No.

City Attorney Hernandez: The City Commission directed the City Manager's office to conduct an expedited search for a selection firm for the search of City Manager. Basically, what the City Commission did was rather than have the Manager's office select the selection committee, they directed that Ms. Marj Adler and Mr. Don Nelson serve as the selection committee; Mr. Joe Rodriguez of the Procurement Division was assigned the task of doing the work for the Procurement Division. During the course of the process, Mr. Danilo Benedit raised several concerns regarding the process related to the cone of silence, and those issues related to responding to questions relating to public records, and the Sunshine Law as it applied to the committee members. With regard to the cone of silence, you will remember that the cone of silence applies to all contracts for services over twenty-five thousand dollars (\$25,000), and basically it is that the selection committee shall not have communications with vendors or Commissioners during the process; there are other provisions, but basically those are the provisions that apply in this factual scenario. The remedy if an employee breaches the cone of silence is discipline. Here the recommended contract is below \$25,000 and the error, if any, was technical in nature, as to what had happened was, after the time period within which answers to a vendor's question were to be provided, Mr. Rodriguez forwarded a legal question regarding public records, to which we answered, you have to comply with the process which is requiring that you provide your financial records, if there was any irregularity, that would have been the irregularity. There was also a question posed regarding Sunshine Law and Florida Statute 286.011, provides that all meetings of any Board or Commission where official acts are to be taken are public meetings open to the public, and no resolution rule or formal action shall be considered binding except as taken at such meeting. Now, a selection committee does fall under the purview of the Sunshine Law, so they definitely do have to comply. The violations basically result in the validity of any action taken; in violation of the law are void Ab Initio. The allegations made were basically that the committee may have met in violation of the Sunshine

Law; and chronologically what happened was on a Thursday they were going to open the bids at a specific hour, both Mr. Nelson and Ms. Adler were present, and from my understanding in discussing this with the individuals, after the proposals were opened each one of them stayed in the room and began to review. There were a certain number of proposals, so each was independently reviewing. I have no evidence to indicate that there were discussions raised or any action taken by them during that meeting. The following day they met as the committee and at that time is when they evaluated the proposals and ranked them. They both indicated that they conducted their formal review and rankings during the Sunshine meeting, and that they did not violate the Sunshine. I found no evidence based on what was alleged in Mr. Danilo's statements or in what was alleged in what he wrote to indicate that there was a Sunshine Law violation. Now, the City Commission has several options; the City Commission can determine that in their mind there was a Sunshine Law violation, they can reject the proposals, they can accept the proposals based on the recommendation, or they can conduct their own review of the proposals and then decide which of the vendors they wish to select in order to perform the selection. Those are your options. I could not find as City Attorney, my department could not find any violation, however you as the City Commission are the final fact finder in those situations.

Commissioner Withers: Let's move forward.

Mayor Slesnick: Anybody determined not to move forward with this? Ms. Adler.

Interim City Manager Jimenez: Marj, if you can, let's pass out the summary of the bid tabulations...

Ms. Adler: You want them now?

Interim City Manager Jimenez: Yes please, that way they can see it.

City Attorney Hernandez: Can't hear you.

Commissioner Cabrera: That's because I turned it off. I said I want to move forward on this thing, but I also want to say that however this process unfolded, it really, I think it would be unfair for us, not that we would do this, but some of us could be thinking this, to blame either Ms. Adler or Mr. Nelson, I think we put them in a really tough position from the standpoint of trying to do something with a very, very quick turnaround; and the other part of my commentary has to do with the fact that we are talking about a \$25,000 contract here; and we are talking about a firm that would eventually simply help us identify candidates for the City Manager's position. We are not talking about a firm that would actually make the final recommendation as to whom we hire. So whatever we did wrong, whether its, you know, a misdemeanor or something of a higher magnitude, I think the process has been one given the constraints that we've given staff, its worked as well as it possibly work. Now I will tell you all, as you pass out the tabulations, I am disappointed with the turnout; I am disappointed with the recommendation, but that's my personal view, and I'll articulate that further, but I just get the sense that none of you really feel...I mean, I think you all feel the same way as I do on these irregularities, because everybody kind of stayed quiet.

Mayor Slesnick: Well, the City Attorney opined that one irregularity was technical in nature, and was not defective, I mean, did not make the procedure defective, and then she found no other irregularities. So I think your comments are...

Commissioner Cabrera: I'm trying to be transparent in this discussion as possible. I mean, Mr. Benedit is in the audience and he feels strongly about this, or otherwise he wouldn't be here; and I am not afraid to talk about these kinds of issues because obviously, you know, if we are going to be potentially accused of following the inappropriate process, then again this opens up to all kinds of criticism and innuendo and things of that nature; and so I want to be able to discuss this openly in a forum like this so that everybody understands why we are taking the position we are taking, that's all.

Mayor Slesnick: I think that was well said. Ms. Adler.

Ms. Adler: How do you want me...do you want me to review the process and how we got here?

Interim City Manager Jimenez: I'd like for her to review the process, if that's possible.

Ms. Adler: At the October meeting the administration was asked to expedite the process for finding a search firm and asked Finance Director, Don Nelson and myself to be the selection committee. We condensed the usual timeframe as best we could to be able to bring a recommendation to this meeting. The RFP package went out on the 31st of October; questions were due in on the 10th of November at noon; there were three such sets of questions and we extended that process so that our answers were due by the 12th. Now having said that, the proposal opening was the very next day on the 13th at 2:00 p.m. in Mr. Nelson's office. Danilo Benedit, Joe Rodriguez was present from Procurement, as well as Mr. Nelson and myself. That afternoon, because we had only until the next day when the evaluation committee was to meet, we remained there and independently reviewed the proposals. There were...I should say we reviewed ten proposals, there were ten people who responded to the RFP; you have the names of those firms in front of you. They were all quality known firms, and we were very, very pleased to see that. The proposal was in two parts, the technical proposal itself and the price proposal; the price proposal was not opened until the committee meeting on the 14th. Mr. Nelson and I reviewed our findings in terms of what we thought and bringing to you as a recommendation, what we agreed upon as the top four firms. We didn't have them all in the same order, but in our independent rankings the four firms were Arcus, The Mercer Group, Colin Baenziger and Slavin. Both of us did indicate Colin Baenziger as our top rated firm. As you can see from the long sheets you have all four firms have considerable experience in finding City Managers, particularly Baenziger and Slavin, numerous City Managers in Florida, but we brought all four of them to you for your selection.

Mayor Slesnick: Thank you.

Commissioner Cabrera: I just need to catch you on a typographical error. The tabulation you gave us today showed that performance fees were \$29,500; the tabulation you gave...

Ms. Adler: [Inaudible – off mike].

Commissioner Cabrera: Well, the tabulation I received last night from the City Manager's office showed performance by both you and Mr. Nelson as \$24,500.

Ms. Adler: You are absolutely correct. I have to go...[inaudible – off mike]...

Commissioner Cabrera: This is what I just got last night which was your tabulation, each of your individual tabulations, and I just went through it.

Ms. Adler: [Inaudible – off mike]...I apologize for the error; I caught two errors, but not that one.

Commissioner Cabrera: Where did these categories come from?

Ms. Adler: The RFP that was used in 2001, was sent to me and perhaps to Don, I don't know, to edit or whatever since we were trying to get it out expeditiously and not reinvent the wheel here, and those were the same kinds of categories. I didn't change them.

Commissioner Cabrera: I have a reason for asking you this question.

Ms. Adler: Why?

Commissioner Cabrera: Seven years ago we used an RFP...

Ms. Adler: The City used an RFP.

Commissioner Cabrera: The City used an RFP that yielded performance as a selected vendor to perform the recruitment process for then the City Manager's office, and you just said that you, and I don't want to put words in your mouth, you said something along the lines that you received a copy of that RFP from 2001?

Ms. Adler: I believe that's what Procurement sent, I wasn't here, for me to edit.

Commissioner Cabrera: I'm just trying to use common sense here, if they using that criteria in 2001 received the bid, and you've used parts of it or all of it in terms of the categories, why wouldn't they have been in the top four (4), top five (5)? Now, the answer could be that seven years ago all these companies did not bid on the business, that could be the first response. But I'm willing to bet you that at least half of them may have bid on this business.

Ms. Adler: I have no clue.

Commissioner Cabrera: Well neither do I.

Ms. Adler: I don't know.

Commissioner Cabrera: We weren't as close to the process then, Ms. Adler, as we are today?

Ms. Adler: I know in reviewing them I was looking for people who had as much experience in finding City Managers.

Commissioner Cabrera: And that's an excellent...

Ms. Adler: As I could; that's the lens that I looked because all of the firms here are quality search firms.

Commissioner Cabrera: And you said that last night and I believe you, and you know, that's an excellent way to look at it, however, I would take a different slant on it; I would look at it more of, you know, being diversified, and being able not only to have that municipal experience, but having that private sector and not-for-profit experience to me is just as valuable as just being so focused, and here's why I think that. I think many firms that specialize in municipal job hunts, they have a database of candidates, they already have that database, and they are at an advantage over a firm that is fully diversified.

Ms. Adler: I didn't mean to suggest that these firms specialize, but some of them are large enough to have a large stable.

Commissioner Cabrera: But last night you told me; last night you said to me, let me paraphrase what you said to me last night; you and Don said this to me last night, Don Nelson; you gave me the impression, and I can't say exactly the exact words, but you gave me the impression that one of the reasons that these four firms stood out like they did was because of their strong municipal experience.

Ms. Adler: Right their experience, that's what they showed to us in terms of...its not that they didn't have a lot of experience in the private sector or other aspects.

Commissioner Cabrera: But I took it as that, that's the way I took it, that's why I'm having this dialogue. See I would have liked to have seen some points being given to local firms, even though the company that's the recommended bidder, they are in Palm Beach, Florida.

Vice Mayor Kerdyk: You know what they say about experts?- anybody that lives out of the City is an expert, so getting to what you say has some validity to it.

Mayor Slesnick: Well, let me say this, I had nothing to do with this selection process, and...

Commissioner Cabrera: And had you had it would have been good too.

Mayor Slesnick: But I had nothing to do with it; the only person that...I guess, the two people that came to me, maybe to others before the selection process started are not on the recommended foursome. So therefore, I've had no conversation with anybody that's recommended here, and...

Commissioner Cabrera: But you could have.

Mayor Slesnick: I guess I could have, but...

Commissioner Cabrera: You were not bound by the Cone of Silence.

Mayor Slesnick: But anyways I didn't.

Commissioner Cabrera: I did; I had conversations with both.

Mayor Slesnick: Both people I referred to.

Commissioner Cabrera: Yeah, Mr. Larrieu and Mr. Park.

Mayor Slesnick: Oh yes, yes. But I can only say to you that everyone in the State of Florida knows we are looking for a City Manager, as far as other municipalities and other governments, and at the National League of Cities last week, I had a number of people approach me from other governments that they had used Baenziger, and that their experience was very positive, very positive period. Leave it at that. By the way, you might say how did Baenziger come up?- I can just tell you they brought it up; I didn't know that they were even...my response was, I didn't know that they were even applying or not.

Commissioner Cabrera: You know what, I stand corrected, I spoke to Baenziger as well, they called me as well, he called as well, Colin; is he here today; and I told him when he called me that I had a preference to go with a firm that had done the work for us seven years ago.

Mayor Slesnick: OK. Well we have a recommendation.

Audience Member: Mr. Mayor, I'm from The Mercer Group, in case you have any questions.

Commissioner Cabrera: Thank you ma'am.

Mayor Slesnick: Thank you, and we see Mr. Bud Park also here in the room; is there anyone else from a bidder?- if they have any questions – if we have any questions.

Audience Member: [Inaudible – off mike].

Mayor Slesnick: The question was if we had any questions.

Audience Member: [Inaudible – off mike].

Mayor Slesnick: No George.

Commissioner Withers: Are you looking for a motion? Then I'll move the recommendation of the executive search services for the Baenziger Group.

Mayor Slesnick: Do I have a second?

Commissioner Anderson: I'll second it.

Mayor Slesnick: OK. A motion has been moved and seconded, to accept the recommendation of the selection committee for Baenziger who was the highest ranking and lowest price as a matter of fact.

Vice Mayor Kerdyk: Let me just make a comment; I'd like to make a comment. You know, I was quite pleased with the way Performance handled it several years ago, no doubt about it; and I was hoping they would be part of this presentation here where they were selected, and I'm sorry there are no points for local firms, because I'm one that always likes to advocate to help local firms. I mean, I'm looking at a group here, I don't know how we can go outside the spectrum that is given to us, no matter how much I'd like to...

Commissioner Cabrera: You know what, I don't want to throw Don and Marj under the bus, and I told Marj that a little while ago.

Mayor Slesnick: Clarify which Don.

Commissioner Cabrera: Don Nelson – non Mayoral Don Nelson; OK non Mayoral, four year term Don Nelson. You know, I don't want to throw them under the bus, but the reality is that they were only able to do what they did given the little direction we provided, and we provided very, very little direction in the way of giving them this information, and I happen...

Vice Mayor Kerdyk: Shame on us.

Commissioner Cabrera: What's that?

Vice Mayor Kerdyk: Shame on us.

Commissioner Cabrera: But let me tell you why, it kind of shame on us, and I appreciate you saying, but you know what, this is probably, I don't know about you, and Chip, and Maria and Don, but for me this is probably be the most important decision I make as a City Commissioner, and so given that, I find that I'm pleased as can be to have a very competent Interim City Manager serving our City with an extremely competent Assistant City Manager, and now another Interim City Manager assisting her in her efforts; and so all of a sudden I have a level of comfort that I didn't have before, and so maybe now January 31st for me is not the drop-dead date. Knowing what I know and having said to her, hey by the way you may be asked to serve in the "Russian Front" for another 120 days possibly, are you capable or are you willing to do it, and she absolutely said, whatever it takes, whether she got the five percent (5%) or the zero percent (0%), or ten percent (10%). So knowing that and knowing that this is such an important process for us, do we want to take a step back and reassess it before we make this final decision, or do we want to go ahead based on what we have in front of us to decide on?

Mayor Slesnick: Let me say that first of all, I'm looking at the number of the people who did bid; these are some of the best companies in South Florida or elsewhere. I think that the categories

are stellar categories, I mean, qualifications, experience, ability to perform, company resources, business history, professional references, cost of providing services, I think are certainly key factors to the selection; and I've known Bud Park for thirty (30) years, I guess, as a friend who worked with me and you all closely the last time around. I love his daughters even more than Bud. I have to tell you, I've come to a point in our procurement efforts that I just don't see tossing out what the procurement selection process has done and moving forward. Sorry to say that.

Commissioner Cabrera: I'm not suggesting that we throw it out, believe me, I'm not suggesting that at all.

Commissioner Anderson: Did we want to consider, I'm not sure...

Mayor Slesnick: Well, let's see how this motion goes.

Commissioner Anderson: Talk about something else; do you want to include five and have them at a Commission meeting speak to us directly?

Commissioner Withers: I think the only other option would be to go to a full blown appointed selection committee; I'm assuming that's where Ralph's headed with this.

Commissioner Cabrera: If it were up to me, if I had to do this, but again you know, I'm part of a group of five. If I had to do it over, I would have gone back to the 2001 RFP and studied it and seen why we selected who we selected, and then come back and said why don't we just reappoint that firm to do the job again. Not because he's my friend; he happens to also be my friend, and I agree with Don, I like his daughters better than I like him. But the point is that he did a fine job the first go around, and all we did to him was, we kind of threw a wrench into his system because we decided that we wanted the interim to apply for the permanent job. So all of a sudden what that did was, it may have taken some really great candidates that he had for us to look at, and take them off the process, because they say you know what, the interim's got the inside track, why the heck should I even apply for a job like this and let my Commissioners, my Councilmen, my whomever Board of Governors know that I'm looking for a job elsewhere. Outside of that, he did a phenomenal job; you know, met with us individually, briefed us, took us through the process, continually counseled us, and I looked at that and said, gees; and then on top of all that he lives in the City, and he works in the City, and he knows what's going on in the City, well that's a pretty easy decision to make.

Mayor Slesnick: [Inaudible – off mike].

Commissioner Cabrera: You're right, you're right; well I'm being honest, I mean, I'm telling you how I feel.

Mayor Slesnick: [Inaudible – off mike].

Commissioner Cabrera: Absolutely I did.

Mayor Slesnick: That's what I meant through this process.

Commissioner Cabrera: I'm telling you, what I would have done differently, that's what Chip asked me. Hey Don, I make mistakes each and everyday that I get out of bed, and I am just man enough to say when I made a mistake, and tell you the reasons why I made the mistake, so.

Vice Mayor Kerdyk: Where I have a stomach ache here is the procurement, the overall thing. I wish we would have just said, hey, you know this might go through Procurement, let the City Manager make the appointment, but we've gone through the Procurement Code, and it worries me that if we change the procurement instructions...

Commissioner Cabrera: But the Procurement Code has already been criticized.

Vice Mayor Kerdyk: Well, yes I know, but....it gives me....

Mayor Slesnick: We have a motion and a second.

Mr. Clerk

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: You know, for the sake of this group, I'm going to vote yes, but I think you all understand my position; I think I've made it clear enough.

Vice Mayor Kerdyk: I think we all have sort of that same position.

Commissioner Anderson: I think we do.

Mayor Slesnick: Yes

Commissioner Anderson: And I do understand.

Mayor Slesnick: Thank you.

[Vote: 2:18:30 p.m.]