

City of Coral Gables City Commission Meeting
Agenda Item I-1
October 14, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Chief Procurement Officer, Michael Pounds

Assistant Chief Procurement Officer, Pamela Katsaris

Public Speaker(s)

Jason Gordon Esq., Representing SP Plus

David Zell, Representing Laz Parking

I-1: [Start: 12:44:55 p.m.]

A Resolution accepting the recommendation of the Chief Procurement Officer to award the Parking Cashiers, Attendants, and Supervisors for City Parking Facilities contract to Laz Florida Parking LLC, pursuant to Request for Proposal (RFP) 2014.06.19, and Section 2-828 of the Procurement Code entitled "Contract Award".

Mayor Cason: Let's move onto Item I-1.

City Attorney Leen: Thank you Mr. Mayor. Item I-1 is a Resolution accepting the recommendation of the Chief Procurement Officer to award the Parking Cashiers, Attendants, and Supervisors for City Parking Facilities contract to Laz Florida Parking LLC, pursuant to

Request for Proposal (RFP) 2014.06.19, and Section 2-828 of the Procurement Code entitled “Contract Award”. This issue is listed as a City Attorney Item, although it is a Procurement Item, because of the protest that was filed, my office was advised regarding the protest and I gave consultation to the Procurement Director and the City Manager and ultimately the reason is it’s a City Attorney Item, I just want to make sure the process is followed pursuant to our Code, but I will turn it over to Michael Pounds and to Pamela, our Assistant Procurement Officer to speak about the issue.

Mr. Pounds: Mike Pounds, Chief Procurement Officer.

Ms. Katsaris: Pamela Katsaris, Assistant Chief Procurement Officer. You want to start or would you like me to go ahead. OK. Basically we went through a procurement process and it was a Request for Proposals for the parking cashiers, attendants and supervisors. An evaluation committee convened in August; basically they scored and ranked the criteria as outlined in the Request for Proposal. We were given presentations by the three proposers that submitted and the evaluation committee unanimously and individually ranked Laz Parking as the top ranked provider. Prior to the last Commission meeting on September 11th, SP Plus submitted an Intent to Protest and as you know they did actually file a formal protest. Upon doing research relative to their public records request, everything was satisfied. The procurement process was followed and we feel that in conjunction with our consultation with the City Attorney and the City Manager and the Assistant City Manager that the protest as we wrote to be denied should continue to go forward the award to Laz Parking. If you have any questions?

Commissioner Quesada: I have a few questions. So we spoke yesterday, thank you so much. Standard Parking had reached out to me as well, so I’ve spoken to them as well and I’m looking at their protest letter, which we went through item by item, you and I did yesterday, I guess the three of us did yesterday; and I see their attorney here present, so I don’t know if its improper if I ask him to come up.

Mayor Cason: I have two speaker cards, so if you want to do it now, if they’d like to come up now.

Commissioner Quesada: Well, I guess he doesn’t have to come up right now, I guess be ready. I guess you are anyways. So going through the protest and this is something we had discussed yesterday. What is our requirement in our Procurement Code that all the items requested in the bid in the RFP be submitted in writing as prepared to verbally at the presentation, so is there a requirement that everything has to be submitted in writing?- or it can also be submitted orally? Does our Code say anything directed at that?

Ms. Katsaris: Ultimately, if there are exceptions to the RFP then they are generally spelled out in the document that is submitted. It is standard that you would...

Commissioner Quesada: If there are exceptions --- OK ---

Commissioner Keon: I don't understand what that means either.

Commissioner Quesada: I know – and we discussed this yesterday. It's sort of a wacky way of saying that someone doesn't comply.

Commissioner Keon: Exactly.

Commissioner Quesada: Or its basically saying, I'm submitting a bid for a project in the City and I say, well I can't supply water bottles, so I'm taking an exception in my..

Ms. Katsaris: In your submittal that you are not going to submit water bottles, yes.

Commissioner Quesada: So that's basically saying that if an applicant, if a bidder voluntarily tells you that they don't qualify, but it doesn't answer the question whether staff considers or the committee considers whether that person qualifies or not. Yes – no – maybe?

Ms. Katsaris: I understand what you are saying.

Commissioner Quesada: It's kind of a wacky way of stating it.

Mr. Pounds: Let me just say something. The RFP is a type of solicitation where there aren't ridged bid specifications. We are really asking them to give us their approach to the particular type of service that we want them to provide. So there isn't the rigidity of an IFB, which is what you are mostly used to.

Commissioner Quesada: What's an IFB?

Mr. Pounds: An IFB is an Invitation for Bid.

Commissioner Quesada: OK. That's more ridged than an RFP.

Mr. Pounds: This is an RFP where we do not provide them a very specific scope of work or scope of services and we do not provide a very detailed set of specifications. We want them to tell us based on what we've provided and how they will provide the services.

Commissioner Quesada: Got it.

Commissioner Keon: Don't you have mandatory services that you request in the RFP?

Mr. Pounds: There were mandatory, certain mandatory things that we required and I'll go back to Pamela.

Commissioner Keon: I'm sorry that I interrupted. You finish...

Commissioner Quesada: No worries, no worries. So going back to my question is, in an RFP process does the Code say that they can clarify the submission, I guess not clarify, outline or meet the minimum requirements both in writing as well as orally or is it one or the other, or just need to expand on?

Ms. Katsaris: The actual RFP document does say that if it's up to the City, the City reserves the right to have additional presentations or have presentations and interview the proposers. So yes, we do.

Commissioner Quesada: So a minimum requirement can be met, not in the written document, but in the oral presentation?

Ms. Katsaris: It can be clarified, yes.

Commissioner Quesada: It can be clarified.

Ms. Katsaris: But ultimately if they don't – again, they are not taking exception to the actual scope of work. If the scope of work in this case was several pages, it wasn't required that they go through each paragraph and say, I comply, I comply, I comply, I comply. Basically, it's a matter of if they took exception then they should say that this is what I'm taking exception to of your requirements.

Commissioner Quesada: So the written submission – and I'm just speaking in general terms here, written submission of any bidder does not have to fully comply, if I understand you correctly, it doesn't have to fully comply with the written submission?

Ms. Katsaris: I am saying for a proposer...

Commissioner Quesada: For a proposer.

Ms. Katsaris:...bid for a request...

Commissioner Quesada: Does not have to meet the minimum requirements in the written submission.

Commissioner Quesada: It does.

Ms. Katsaris: No, it does, but basically, but they are not taking exception to that. So you are looking at a proposal that they submitted a solution to, a Request for Proposal is generally you are asking a solution to a situation. So they provided the solutions – solutions to our solicitation. We did say, yes you must have this, this, this, and this, and they did not say that they did not meet it. They did touch on it, if you are talking about a certain company in general, that they did touch on it, and then the reason for the oral presentations is for clarification for the evaluation committee.

City Attorney Leen: Mr. Mayor, if I may, Commissioner, if it's OK, I'll just read you the provision and then you can determine if you think it complies or not. It's discussion with responsible offers and revisions to proposals. What it says is, "As provided in the Request for Proposals and under Administrative Regulations, discussions may be conducted with responsible offers who submit proposals determine to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers."

Commissioner Keon: I understand the Procurement Code. What I'm having some difficulty with understanding so I need you to help me with this is, when you say that they are not required to answer all of the technical items that are included in the RFP, except by exception, how do you do your due diligence in evaluating the answer to the question that you have asked? If you have elements in that RFP that you feel are essential to be provided, I don't know whether its security, whether – I mean all of the different ones, I don't have the RFP in front of me, but when I look at all of those elements, I would imagine or I would think that you would need a very specific answer to that question in order for you to be able to evaluate whether or not they are responsive. I understand when it gets to the selection committee they are given the results of your due diligence. So their selection is based on the information you provide them with, is that right?

Ms. Katsaris: Yes.

Commissioner Keon: OK. So the evaluation part on the part of procurement staff is, I don't quite understand how you can do that if you don't have answers to the questions, so how do you do that?

Ms. Katsaris: They weren't specific questions. They were outlines saying, you have to comply to let's say, remote monitoring, and you must have this type of; I assume you are referring to remote monitoring.

Commissioner Keon: Well one of the issues they did come up with was the remote monitoring, and you have very specific questions about remote monitoring, and so if you don't answer those specific questions, how do you evaluate that its meeting your need?

Ms. Katsaris: They were not – I guess they weren't specific questions, they were not, do have this?- do you have this?- they were not specific questions. I was you have to have the solution in place and in reviewing the proposals they did have an overview of what they had in place....to the technical whether or not it meets this megahertz that we are looking for, whatever the case may be. No, that would be more toward an Invitation for Bids. This is a solution – they offered a solution relative to their monitoring system and basically they said this is what it can do, this is what we have, this is what it is. So therefore there was no reason to deem them non responsive.

Commissioner Keon: So what you are saying is because this was an RFP, it would require a different level of information or detail of information than an Invitation to Bid?

Ms. Katsaris: The scope of services or the specifications would have been much more specific.

Commissioner Keon: Right – but the outcome of this RFP process seems to be the same as the outcome for the Invitation to Bid, you are awarding the contract, right?- so you are doing, you are arriving at the same end with either process, yet your processes are not the same. That's hard for me to understand.

Mr. Pounds: I'm sorry. Can I interject here?

Commissioner Keon: Yes.

Mr. Pounds: We are not asking for something specific, we are asking for a solution to a problem. We are not asking for a specific widget, we are asking for an approach, a solution that could be a number of things.

Ms. Katsaris: Absolutely.

Mr. Pounds: So we can't really have a detailed specification in something like this when we are asking for a particular solution. I would say that in any kind of IT situation we would have the same situation; we would not be able to give you necessarily a detailed set of specification. We want to tell you what we wanted to do and then have you come to us and tell us what you are going to provide. And in this case we look at, Procurement looks at it, but then we rely on an evaluation committee and we bring a group of evaluators who we think bring to the table the type of skills and expertise to give us an evaluation of those things.

Mayor Cason: Let's ask Commissioner Quesada....

Commissioner Quesada: No, it's still on the same lines. Commissioner Keon and I are thinking the same way I think here. I'm looking – I only have one page of the RFP in front of me and it would be better if we had a copy of the RFP, but obviously we don't have it, we don't have it. It says and this is Section 5 of the RFP, Section 5.2, Method of the Evaluation, Evaluation Criteria. It is imperative that the submitted proposal clearly demonstrate the firm's ability to provide the services described herein; only respondent to meet the qualification criteria will be considered. Then it talks about the assignment of weighed points to evaluate and rank proposals. It seems to be very specific, again, I just want to make sure and I told you guy this outside before; I just want to make sure – I couldn't care less whom wins or who loses the bid, I think we all feel the same way. I just want to make sure, I think we all want to make sure that the procedures is always the same for everyone and if it's not clear – I understand the nature of an RFP process, yes its open, its transparent, but there is a little bit of a shade there when you have these oral presentations – yes, they are technically open to the public but no one really goes there. If additional information is being presented there that's not being presented in the written documents that's the biggest concern I have; and when I read these two sections which I just read to you guys, Section 5.2 of the RFP, the City put out, I read it to be clearly demonstrate the firm's ability to provide the services described herein, and when the protest letter comes in they specify specific items that were not met. For example, the emergency power high availability of routers and firewalls and the bidder must have infrastructure for disaster recovery, I don't have the RFP in front of me, so I don't have the specific request, I'm assuming it is, because they referred, I'm sorry, page 13 of the RFP provides five specific required features. I haven't read the RFP cover to cover, I don't have a copy of it, I'm assuming that statement made by, excuse me, Mr. Gordon, is correct, I'm assuming he is not fabricating that information; and if those specific items are not mentioned in a submission by a bidder when Section 5.2 of the RFP says, is to clearly demonstrate to meet the qualifications, it doesn't add up, and if you adding, that bidder – excuse me use the right language, if that bidder is adding that information at the oral presentation it makes it troubling for me.

Commissioner Lago: To me it's a very contradictory statement. You are looking for certain information – I think we have discussed that for 15 minutes. If I may, I'm just going to ask you a few quick questions in regards to something which I have extensive experience on in regards to being involved with public entities and having to go through this process, which by the way I think is absolutely the most ridiculous thing I've ever seen in my life. Having to send out these evaluation forms to these clients and then they have to send them back to the end-user and the actual person doesn't know what's being written there, to me is very troubling, and I'll tell you why it's troubling. Not because I'm afraid of what one of my clients is going to say, that's not my concern. My concern is that I'm afraid that they don't know how to fill these out and so what ends up happening is that people are deemed non responsive or what you end up having is you end up having my poor secretary at the office receive 15 phone calls a day from me saying, did you follow-up with University of Miami?- did you follow-up with FIU?- did you follow-up with US Postal Service, did they send a person. I've had people tell me that yes, I already sent in the evaluation criteria. I received the document which is before me after I come in second place or third place and I find out, guess what?- I didn't meet the requirements because I was one evaluation short, or the person that filled the evaluation did not do it correctly and that's the person who told me to fill it out, so whatever, outside of that. When you look at Laz' breakdown and also Standard Parking breakdown, again like Commissioner Quesada said, I don't care who wins here. I've never done business with any of these individuals; I just want what's in the best interest of the City. I look at Laz and I see that you're requiring certain standards in reference to contract sizes and the examples on whether they meet those thresholds. When I look at Laz' documentation I see that, for example, CBRE doesn't even completely finish filling out their documentation and as a matter of fact they even leave out the amount of the dollar contract. When I've been involved in these types of procurement processes, when this document is left in this manner they receive a zero, they just don't because you as a person evaluating these documents have to say, OK, they didn't fill it out, so the dollar amount is non-existent, is there even a contract?- what is the magnitude, so that's one thing. So I don't know how, I don't know how the breakdown was because like Commissioner Quesada had stated, I only have a complete ranking in the top. What I would like to know is when you look at Standard Parking and you look at Laz' breakdowns, who received the most votes in regards to these evaluation criteria?

Ms. Katsaris: That is one step of the references or the performance evaluation. There were also references provided in the proposal documents.

Commissioner Lago: How many – how many, again...

Ms. Katsaris: There was not a minimum of a maximum.

Commissioner Lago: My question to you – OK, there is no minimum, so if zero individual would have submitted they would have received zero points?

Ms. Katsaris: Well, again it's the evaluation committee. Procurement does not tell the evaluation committee...

Commissioner Lago: Let me tell you the way it has happened when I've been involved in this. You are required to submit a minimum. As you can see Standard Parking here submitted one, two, three, four, five, six, seven, eight – eight entities, all of them private sector, public sector entities which deal with parking, and the thresholds are very, very similar in regards to the size of the contracts which are in line with what we are requesting. When you look at Laz document, again, nothing against Laz, I imagine they do great work, City of South Miami, For Capital Management, I don't know who For Capital Management is, from my understanding they looked into For Capital Management and there seems to be no company like For Capital Management registered in the State of Florida; City of Daytona Beach; and CBRE, which again is a great company, does a lot of work in the County, does a lot of work in the State of Florida, but they didn't fill out the document, which is not Laz' fault because Laz never gets to see this document. This document goes straight from the client to the end-user, procurement.

Commissioner Keon: But does it go to the evaluation committee?- or does it go to the procurement staff?

Commissioner Lago: It should have never made it to the evaluation committee.

Commissioner Keon: To my understanding it goes to the procurement staff who then puts that information together for the evaluation committee, is that correct?

Ms. Katsaris: That's correct – and again, that's one step of the...process.

Commissioner Keon: You don't require in our Procurement Code, we don't require a minimum number of references?

Mr. Pounds: There is no specific requirement. It would be done; it would be handled on a case-by-case basis per RFP or IFB.

Commissioner Lago: That's....

Commissioner Keon: That's a problem.

Commissioner Lago: If I can just go off of what Commissioner Keon is saying, because again, excuse me, I'm not privy to all the information, but when you look at the first page of this document, which gives the breakdown of – it was a response. It shows the ranking order; you see the points allocated as per entity that was involved in this RFQ, it's not an RFQ...

Ms. Katsaris: Request for Proposals.

Commissioner Lago: Excuse me RFP. I need to know why Laz received 98 points and Standard Parking received 95; and the reason why I ask that is at least with my involvement in these public sector agencies, when I've gone after RFQ's, RFP's, CM at risk contracts, I can say OK, you know what, for next time I need to make sure that I follow-up with these agencies or for next time I need to tighten up my presentation in regards to OSHA, in regards to ACA, in regards to different design criteria that I maybe didn't show enough experience in, or maybe I showed the wrong projects. That's just something that I think would benefit us all when we are looking at trying to make a decision on whether to approve this or not. I would like to know whether was Standard Parking or was Laz penalized for not providing the right documentation in regards to the criteria, the evaluation criteria, along what Commissioner Quesada and Commissioner Keon said before.

Ms. Katsaris: OK. Relative to your point about why someone would not get the proposal in which I think is what I heard. I'm more than welcome debriefing sessions with proposers in the event that they were not supplied or they were not awarded a contract that would be something that I think we can discuss with the evaluation committee also. This evaluation committee comes from different departments within the City. They each had an opportunity to read and review the proposals, to read and review the evaluation criteria in advance. They are all very talented individuals; they to my knowledge were not lobbied by anybody. They basically – they came together as a team and professional team and they review the proposals, discuss the proposals, had an opportunity for Q&A with the three proposers and they scored and ranked given what they had, not only on paper, but again I think of it as you getting a resume and then you are looking at a resume and someone can have a beautiful resume, but what they come across in terms of in person and be able to articulate that. That is the key reason why we would have an interview.

Commissioner Lago: Listen, I understand what you are saying and it goes back to what Commissioner Keon was saying. I think that we need to put forth some parameters which will end up avoiding these types of back and forth conversations where we become a lot more transparent and just a lot simpler of a process.

Mayor Cason: A question – do you have any reason to believe that if you went back and did this again with all the information that’s come out through all the protest that there’ll be any difference in the decision or you never know?- is it replicable?

Ms. Katsaris: I tend to believe – let me back up just a little bit to answer your question. This RFP was done prior to my joining the City a while back, five or six years ago. At that point, I believe there were 8 or 9 submissions; we had 8 firms at the pre-proposal meeting for this RFP. We had 3 firms submit and I would say that if we were to go out and do it again, we might get 2 firms to submit. Basically, we have an issue where people tend to get lobbied and I’m going to be honest with you.

Commissioner Lago: So you are saying in regards to the Commission?

Ms. Katsaris: Well not necessarily the Commission, but I would say that you have individuals who express an interest outright and then they decide not to submit because they believe that there is potentially another firm that would be able to be awarded the contract for whatever reason.

Commissioner Lago: I’m confused, I apologize, sorry.

Commissioner Quesada: Just be clear.

Commissioner Lago: I want to be really clear. I want to be crystal clear.

Ms. Katsaris: I’m saying that I have, not necessarily I’m not saying this Commission, but I have seen, I have seen history with other particular firm.

Commissioner Keon: Well, I have seen it too and where I have it is when there is ambiguity in the procurement process and there is a lot left to interpretation or whatever and the requirements of the respondent are not very, very clear, and so that’s my concern here and what I’m asking you is, why there isn’t a request for references?- and why don’t you request a certain number of reference?- I mean you are leaving items up to a proposer to provide for you where I would think if you – if you are going to score them, if they have enough weight that you would provide a score and they would be a basis for awarding of a contract, you should have that in your RFP, that should very clearly be in your RFP; and if you want to know that there is a back-up whatever, power, whatever, that should be very clearly stated in your RFP and you should expect a very clear response in your RFP. I think where there is mischief in the procurement process it is due to the ambiguity of the proposals and not necessarily the people on this end, because when it comes to us it’s only a matter of, OK, great if that’s how you arrived at that particular thing,

everybody had to have four, everybody had four, this is what they were, you scored and you ranked it, it's a number, it's a number. And the issues that have come forward and I mean it's perfectly appropriate when there is a bid protest to have someone come and talk to you about it because otherwise we don't know, we don't deal with the day-to-day procurement process and this is where you begin to realize that there are concerns or you do have questions, and if you have an unambiguous process then you feel very comfortable and you can stand up, you explain it and it's done.

Mayor Cason: Have you all thought about the Procurement Code in general, is there something you could do to make it less subjective or that we wouldn't have more of these coming to us, is there anything you think – this could be an old Code, it's been around for a long time.

Commissioner Keon: I think that the Procurement Code...

Mayor Cason: Are there things that you think that could be done to tighten it up so that we don't get – we have a number that's clear.

Mr. Pounds: I think that there are things that we can do to improve the Procurement Code. I'm not sure that we can, that the Procurement Code will solve this problem. I think that RFP's are by their very nature more subjective than bids and yes, we can tighten up what we've asked for in an RFP, but we also don't want to tighten it up too much because we might as well just do a bid. The purpose of an RFP is to allow the proposals to submit their approach to doing things, their methodology, their talent, so they can tell us to some extent how we should do it rather than we tell them how we want it done. So there is always going to be some subjectivity.

Commissioner Lago: I have to interject here because if you want somebody to tell you how to do it then you go hire a consultant, you hire a professional. If I need to learn how to market my real estate portfolio, I go hire Bill Kerdyk, you know. If I need a lawyer to tell me how to handle litigation lawsuit, I call Frank Quesada, you know. Let's be serious here. All jokes aside, listen I know that we are trying to resolve this issue here, but the bottom line is that we need to get away from what we are talking about right now because I don't want to leave things up for firms to tell me how to do things. If you have an idea on how to do things I'm more than willing to listen to it, my door is always open. But if we need ideas on how to be more professional or how to be more efficient or how to bring better services to this community, which is why I think we are all here, how many consultants do we have on the payroll?- how many people can they bring out to do this?

Commissioner Keon: That's when you write the RFP, you are asking for....

Commissioner Lago: Implementation.

Commissioner Keon:...your scope of service should be clearly defined. Now they may deliver it, different firms may deliver it a little bit differently, but the actual services themselves and what you want, the end product you have very, very clearly and unambiguously defined what you want. So somebody may come back and say to you, I don't know, we back cars in instead of pulling them in forward and that works better for whatever reason, so I mean that's fine. But the issue is can they get them in that spot, and so how they do it. What I'm hearing and the reason – and possibly the people that are protesting should stand up and talk to us about it, but from what they had said is that there was a difference in how the actual technical parts of your Request for Proposal were met by the different people that submitted proposals.

Mayor Cason: Craig you opined – there were various elements, I think we all were lobbied and gave us their points of view on various elements, you addressed those and you said the importance of the elements...

City Attorney Leen: I was asked to look at this. I don't look at it on the merits in the sense that ultimately if you are not comfortable with this RFP you should have no compunction, you shouldn't hesitate to reject it and reopen it and issue instructions; there is no issue with that. My issue is, I have to look at this to determine could I defend this if you do give the award and I felt I could. I felt it was legally sufficient. I felt like there was not a legally sufficient basis to throw it out, I want to be clear about that. You could throw it out, and you could restart it, but you didn't have to. Basically its within your discretion under the Code, you could do three things; you can resolve the protest and find no basis for protest and you can accept the recommendation; you can reject all bids; you can send it back with instructions; you can accept the number 2. You could basically find that the number 1, Laz, is not responsive and you can then award it to the number 2. Responsiveness is really the key though from a legal standpoint, because when I look at these things I look at first, who had the highest number? I look at every one of these that come through before they come to you. Who has the highest number?- and then two, who has the lowest price?- and three, if they are providing additional services which I think there was a claim here that they are, I recall that, that could be a concern sometimes, but only if the price is not the lowest. Here because the price being offered by Laz is the lowest, any additional services offered to the City are simply a bonus and even if you took those away presumably their price would still be the lowest. So I look at those things and I feel comfortable that if you go forward with the recommended award, I can defend this in court; and frankly even if we lose ultimately what the case law says is that the losing bidder is entitled to their bid protest, basically to their bid cost, the cost of doing the bid. So you are given a lot of discretion here, but again ultimately you have the sovereign power to determine who to award this to, that's clear and just because it's legally sufficient to proceed doesn't mean you need to, and I want to say one other thing, it's perfectly

appropriate for you to talk to the bidders, all of them. Our Cone of Silence makes that abundantly clear and it's part of your oversight function.

Mayor Cason: Each element of the protest and I gather from this that you found each of them not to be correct or I don't know what the term is, is that correct?

Mr. Pounds: Yes. We looked at each element of the protest and we did not find any of them to be of such a nature that we could recommend that the proposal be, the RFP be thrown out and we would start over, we didn't find anything compelling enough that we would recommend that.

Mayor Cason: And if we start over, what I'm hearing you saying we are going to have the same two people bidding again.

Ms. Katsaris: Well I don't know that. We have seen a diminishing....

Commissioner Quesada: Mr. Mayor if I may?

Mayor Cason: Go ahead.

Commissioner Quesada: Ms. Katsaris you said something that bothered me and the implication behind it. I'm going to chalk it up to something that you misspoke, I'm going to treat it as that, and we can talk about it after. Section 1.9 of the RFP states that all verbal modifications to an RFP response will not be allowed, OK. We are talking about whether they comply or not and whether the protest is valid or not. Section 1.9, I'm looking at the City Attorney that statement of the RFP, oral verbal modification will not be allowed. In the protest letter it states and its referring to page 13 of the RFP, and I mentioned it earlier and I'll mention it again, high availability to do routers and firewalls, the emergency power and the infrastructure for disaster recovery were not specifically mentioned in Laz' initial bid. On pages 13 and 14 of the RFP, network security is another requirement of the RFP. Says here that, the protest states that Laz do not address those in their written submission and in the response to the protest, if I recall correctly, correct me if I'm wrong, it said that, that was made orally at the presentation. Also, page 14 in the RFP discusses reporting requirements – about a command center must provide call data reports, must be able to provide specific site details, must be able to report call data, must be able to analyze all calls and provide reports. Laz' bid didn't address those items according to the protest. Again, the response to the protest stated that it was made orally. Now I'm not going to go into the merits of the qualifications of the service and the background, I think Commissioner Lago addressed that sufficiently, I'll come back to it. Section 1.9 says the RFP no oral or verbal modifications will be allowed. So you mentioned that this organization lobbies and the implication was maybe they lobbied us on it, which is tremendously troubling to me that

statement you saying that here. Based on those points that I just raised, based on the language in the RFP, to me it shows that the RFP initially written was lacking and the due diligence going through it was lacking if Laz is being recommended as the number one bidder when they didn't meet those minimum requirements based on the statements I just told you right now. With that, I believe there are some speaker cards, I think there are three individuals that want to speak, that's how I feel right now.

Commissioner Keon: I agree with you that the RFP, there was a problem with the RFP, there was a problem with the due diligence with regard to the RFP and there was a problem with the verbal communication.

Mayor Cason: Let's ask Jason Gordon and Chester Escobar want to come up together.

Mr. Escobar: For the record, Chester Escobar with SP Plus Standing Parking. I'm going to defer my time to Mr. Jason Gordon.

Mayor Cason: OK.

Mr. Gordon: Good afternoon members of the Commission and Mr. Mayor, my name is Jason Gordon from the law firm Heller Waldman, representing SP Plus, we've heard all that today. What I'd like to do is I prepared a brief handout just to go through some of the points that I'm going to cover. I thought it would be easier if we all had these in front of us to be able to look at them, so I'm just going to ask Mr. Escobar to give this to the City Attorney, there is a copy for you as well and for the Commissioners and Mayor, so we'll just go through some of these items that are written in the protest and some of the things that were just asked about of the Procurement Department. And where I'm going to start is where Commissioner Quesada started with – must all the items be contained in the written protest and how does that work under the language of the RFP? – how does that work with Section 1.9? – and the starting point for this is what's on page 1 there – Section 3.7 of the RFP. I'm going to read it and here's what it says and I'm going to explain from our perspective why it's so important to this process. Each response will be reviewed to determine if it is responsive to the submission requirements outlined in the RFP. Here's what a responsive is: one which meets the requirements of the RFP and some additional items on formatting and such. The importance of this section cannot be overlooked for the discussion that everyone just had for the last 20 minutes. What in fact is responsive? Who is to determine responsiveness? – and at what point is it supposed to be done? – and the fact that as we show through our protest and I'll go through here with the handout, that was not done ultimately by the Procurement Department in going through these bids, and I'm going to explain where that is ultimately an issue. Now on the next page, the remote monitoring part that we've been hearing about. Section 2.0 of the RFP addresses the scope services more and there are

detailed requirements in this RFP. Detailed requirements are in the RFP for a reason, they mean something. The RFP is very lengthy and when the City puts those requirements in there, they are there for a reason, because the City wants what the bidder who is going to get the contract to have all of these items within their system, that's what the City asked for. If the City is going to determine who actually has those it has to know whether or not each proposer can meet those requirements. So we go through these in our protest; the first one there listed on the bottom of the page, redundancy business continuity – these three were discussed at length a few moments ago and I'm briefly just going to address them on the next page. The high availability technical items dual routers and firewalls, the emergency power and the back-up, and then the infrastructure for disaster recovery. Now as we said in our protest none of these items are in Laz proposal. Now what was also addressed within the response to our protest from Procurement is the following, here's what's said as to these items: It is stated in the response additionally, as far as the items line by line not being addressed. Procurement says as part of the detailed presentation question and answer session, all items were addressed, discussed at length and fully met the satisfaction of the evaluation committee. Now I went through the audio of the presentation, it's a 3-hour CD; I went through parts of it when we prepared the protest and in preparing for today last night I spent a few hours going through it again. I listened to the beginning parts before the first presentation from SP Plus, I listened from start to finish to Laz' presentation and I listened from the end of the presentations when....finished to the end of the CD. Those are the parts that I heard, and I can tell you what is on there, I'll tell you what is not on there. As far as these three items, the high availability the routers, that's not addressed in Laz' oral presentation. Emergency power – here's what Laz was asked and I will tell you where it comes up, about 1 hour 49 minutes into the presentation. They are asked about emergency disaster and Laz rep says they have a plan for each location in corporate, if there is a fire, if there are various things that happen they have back-up IT for local and corporate, default center up in Chicago, there is an issue. They are specifically asked them if they have a hurricane plan, and they say, we do, same thing – back-up local whatever, we tell our employees where to go. Here is what they do not address; it's on the CD, what the RFP asks for. Do you have battery back-up for your services, not specifically addressed in the presentation? Importantly, do you have an emergency generator with minimum 48 hours, that's also requested in the RFP, Laz doesn't address it? The infrastructure for disaster recovery – there is some reference generally to up in Chicago, if we have to default we can go somewhere else, but specifically it is not addressed. Now as far as the question that was asked about whether Section 1.9, as far as oral modifications would allow going to the meeting and addressing items that are not in your RFP, from our perspective you can't do that, and I'm going to get to why, but I just want to briefly go through these items. On the next page, network security requirements – three items there. As we state in the protest, not in Laz proposal. The PCI compliance, the first one, Laz' rep addressed that during the presentation. He said, we are PCI compliant. OK, we will give them that one. The other two are not addressed during the oral presentation, it's in the CD, they didn't address it. So

these items are lacking as well. That brings us to the next one, on the next page, the reporting requirement. The City put specific reporting requirements in its RFP. It used mandatory language, used the word, must, mandatory, four items that must be in here what the City would like. Call data reports for calls received; specific details on hardware issues, reporting by lot, providing and analyzing calls, these are all in there, mandatory requirements. Not a single one is addressed in the proposal. Now are these addressed during the oral presentation? Here's what I found on the CD. Laz' rep addressed some of the data center call items that they will get how they can address certain items, they get a ticket with an item, they don't have hallway times, they answer on the fourth ring, these are things they talked about. Did they address every single one of these four?- from what I heard they did not as far as specifics. What reports will be provided and these various things. They addressed some; they didn't address all of them. Mandatory requirements that are not there. So here's what Procurement says in response and it was mentioned a little bit ago. On the next page – the scope of service by its very nature must be accepted by all proposers and provides a common standard upon which proposers are to respond and to comply. The proposal submitted by Laz did not take any exception to any of the terms of the scope of service and subsequently their proposal was deemed compliant with the terms of the RFP. Now here is the issue with this response on the next page. There are three issues. First, from our perspective with all due respect to Procurement, that response misses the point. Procurement after the proposals were submitted, after they went to the evaluation committee and after our bid protest, effectively waived the requirements for the remote monitoring system that they had to be in the proposals. Procurement effectively said, if you don't cover them that's OK, you don't have to. The RFP as a document given to the bidders has to be complied with and everyone's got to abide by the same rules, that's what keeps the process fair, and that doesn't work. Second, the fact that Laz did not take exception to a requirement does not mean its proposal met the requirement that is not the way that that works. Just because he says, I don't have an issue with it, doesn't mean you actually have the requirements and the capabilities for the remote monitoring system. Just because you don't say, I have an issue with reporting, doesn't mean you can actually provide reporting requirements; and third, and fundamentally what was being asked by the Commission to the Procurement Department before I started. The due diligence that was required to be done on these proposals, Procurement is the gatekeeper in this process. Each of these proposals, this is Laz' when this proposal comes to Procurement, Procurement has to sit down with the RFP requirements and the proposal and make sure the proposer met the requirements, that's its job to do it. That was not done. Procurement made clear that was not done, because it left it up to either it will be addressed at the oral presentation, we'll see if they met it or maybe evaluation committee will find out, they didn't do that. Now why must they do so? It's on the next page and it's where we started. Section 3.7, because each proposal has to be determined to see if in fact it is responsive. Procurement doesn't do it, the evaluation committee is not going to go through each of these proposals, though lengthy and the RFP and check off each single requirement to make sure they are met, that's not for the

evaluation committee to do. Before these proposals get to the evaluation committee, if they ever do, Procurement's got to go through them, and if this proposal doesn't meet the requirements then it doesn't go on to phase two, it doesn't get to the evaluation committee because you didn't meet the requirements. That's what is what needed to be done, that's what the language of the RFP says in Section 3.7 and that was not done. Now as well and there was some reference to this item also, on how Section 3.7 is handled on the next page there. Why this is crucial and concerning? The response that Procurement has rendered Section 3.7 meaningless, because all a proposer has to do in their view is sign their name to this proposal, give a price, and that's it. You don't have to put in whether they actually meet any of the requirements – why? – because according to Procurement if you didn't object to the requirement then you don't have an issue with it, you in fact meet it. That's not how that works. It renders 3.7 meaningless and again the language of the RFP means something. Now briefly, the client surveys were addressed in length, I'm not going to spend a lot of time on the because you've done that already, but I just want to point to one section of the RFP that addresses it, 5.2 says, contractors are required to identify and submit their best clients projects. Now the way the process works as you are aware is, the surveys are sent to the customer, Laz' customer, SP Plus and the customer sends it back, that's how it works. Now what we have with these surveys that you've got, we went through the 4 and the 8 and all that, and the amounts and everything else, on the next page, not going to spend time there, but what I do want to point to on the next page is Procurement's response to our objection on this point. They said that to allege that Laz did not submit their own client surveys is correct; the client surveys cannot come from the proposer. That's not the basis of our objection that also misses the point. The point is if you look at the references that Laz provided in its proposal, I'm just going to point a couple out briefly. Port Authority of New York and New Jersey; 24 Hour Self Park and Valet to over 500,000 vehicles in Manhattan second largest public parking facility; Washington Metro Area Transit Authority, 60,000 parking spaces at 57 locations. The parking lot in Chicago, this is the largest underground parking system in the United States, \$563 million, 99 year lease; and finally, Ohio State, 35,000 parking spaces. These are among the references provided, they are very large scale projects, which arguably their best client projects. You did not see in the client surveys you got a single one of these that provides a client survey. What you have is one for 25,000, one for 30, for an amount we don't know, and South Miami for about 203,000, which is about 62 percent less than your parking contract. There is no possible way any reasonable person looks at these references and looks at what they actually provide in the survey and say these are client's best projects. It doesn't comply, that is a specific requirement of the RFP and they did not comply. Now you saw the surveys that SP Plus provides, 8 of them for which are above the amount of your contract, they in fact complied with this. So the important points of this process is that the RFP and the proposals have to be matched up and before they get to the evaluation committee; and I would invite you to the extent that you would want to, to go listen to that CD of what happened at that meeting, if you want to confirm this as to what exactly was said and what was not said. And finally I will say this, I'm happy to answer any

questions. There is some discussion about whether based on issues with the procurement process, the Procurement Code, the way the RFP was handled or the lack of due diligence, any of that. Should this process be thrown out and started over?- and I would ask you and I would say no, and here's why. SP Plus complied; they met the requirements, they answered the questions, their bid was proper. SP Plus should not be penalized and have this entire process thrown out because of some issues with the Procurement Code, or how procurement did their due diligence or did not. If SP Plus did their job and Laz was non responsive and what should be done is Laz bid should be thrown out and SP Plus should be awarded the contract. SP Plus should not be penalized for a lack of proper handling of the process. So we ask that you do just that, throw out Laz bid and in fact award this contract to SP Plus. With that I'm happy to take any questions.

Mayor Cason: Thank you. Let's here from David Zell.

Mr. Zell: David Zell, I'm with Laz Parking. I'm a little bit of a novice getting in front of folks like yourselves; I'm certainly not as eloquent as this gentleman is here. Laz Parking submitted its proposal back in August, end of July. We complied with all of the information that was required of us. We were elected to go before a review committee, at which time we put on an oral presentation with a lot of audio video work, which in today's day and age...

City Attorney Leen: Sorry to interrupt. Could you identify yourself for the record, your name and position?

Mr. Zell: David Zell, Director of Laz Parking.

City Attorney Leen: Are you registered as a lobbyist?

Mr. Zell: No. I'm an employee of Laz.

City Attorney Leen: An employee of Laz.

Mr. Zell: Yes –

City Attorney Leen: And you are here speaking on their behalf.

Mr. Zell: Yes.

City Attorney Leen: You should register.

Mr. Zell: I thought I did that.

Commissioner Quesada: No, you filled out a speaker card. You need to register at the Clerk's office as a lobbyist to speak on behalf of the company.

Mr. Laz: As an employee?

City Attorney Leen: Yes. The County Ethics Commission who was here earlier today, they take a very strict view of that. Our Code is a little more, it would allow a principal to speak, but the County Ethics Commission has indicted that even for principals they want them to register as lobbyists.

Mayor Cason: So what does that do to...?

City Attorney Leen: We can just take a moment for him to register.

Commissioner Keon: As a director – you are a director of what?- what does that mean?

Mr. Zell: Of Marketing.

Commissioner Keon: Oh, you are a Director of Marketing.

Mr. Zell: Yes ma'am.

Commissioner Keon: OK.

Mayor Cason: Is that something you can do in 5 minutes?

City Attorney Leen: Yes. Is there anyone else here from your company who is registered as a lobbyist?

Commissioner Quesada: Craig, what we could do is we can let him speak and as soon as he's done go file downstairs. Can we allow that or no?- is that allowed?

City Attorney Leen: Well the issue here, there is one of due process too, because I don't want him to lose his opportunity to speak, but he is doing it at his own risk.

Commissioner Lago: Craig why don't we do this? Why don't we just put this on hold for one second and move on to Items I-2 and I-3 and come back after you fill this out. You want to do that?

Mayor Cason: You go register and then we'll move on and you'll come back and finish up.

City Clerk Foeman: I'll ask someone to bring up the form so you can fill it out.

Commissioner Keon: They'll bring the form to you.

Interim City Manager Olazabal: Someone will be bringing the form for you.

[Note for the Record: The Commission put Agenda Item I-1 on hold until Mr. Zell completed the Lobbyist Registration Form. The Commission went on to Item I-2. I-1 was reconvened at 1:58:48 p.m.]

Mayor Cason: Let's go back to I-1. You are now legally registered.

Mr. Zell: Thank you again. David Zell, Laz Parking and I guess I'm not officially a lobbyist. Anyways thank you for letting me speak.

City Attorney Leen: Sir one issue, the Commission actually has to do a waiver.

Mr. Zell: OK.

City Attorney Leen: He has to pay a fee to register as a lobbyist. He has agreed that he will only lobby in this matter right now. You do have the authority to waive the fee, I would recommend it in this situation, he has to register again in the future if he wants to be...

Commissioner Quesada: I'll make a motion to waive the fee.

Vice Mayor Kerdyk: I'll second.

Mayor Cason: OK. Commissioner Quesada makes the motion to waive the fee, and the Vice Mayor seconds it.

Mr. Zell: Thank you gentlemen, my wife thanks you.

City Clerk

Commissioner Lago: Yes
Commissioner Quesada: Yes
Commissioner Keon: Yes
Vice Mayor Kerdyk: Yes
Mayor Cason: Yes
[Vote: 5-0]

Mayor Cason: Proceed.

Mr. Zell: I started by saying that we entered into this process to respond to the RFP back in the end of July. We were then short-listed for lack of a better word and asked to come and do a verbal presentation and we were one of three operators that were so given that directive. We put on a presentation and a lot of what we talked about and explained there was done through a series of PowerPoint presentation, and today's day and age of how presentations are done, I think that there is a lot of weight and a lot of things that you can't put down on a piece of paper that you can through a PowerPoint presentation. There are a lot of pictures and what not that you can use to explain your systems that just can't do justice with a pen and paper. I think we answered all the questions that they asked for us. I think there are a lot of things that were put out there that were things that seemed innovative to them and I think that's why they liked our proposal. In terms of the responses that you guys are bringing up about not addressing a certain aspect of the RFP. We had our technical people come down here, people who are computer savvy, much more computer savvy and technologically savvy than I am. We came here; we walked the properties of the garages that were asked to provide the specialized equipment for. We came up with the pricing for that predicated on the specifications that you guys gave us, and we did not say that we are going to give you – I guess that if we would have put down, yes we were going to give you this and we would have listed every single thing that you had put in there reduce that to writing and said that, we wouldn't be having this conversation. We understood that there are certain battery back-ups and things that are required and our prices reflected those items that were put in there. We talked also a little bit today about, would this procedure be any different if you put it out to bid again?- and I tell you that – and I'm sorry, let me back track. When I was here for the meeting last month someone said that this was a huge, huge contract and you really need to look at this thing and see if there is any merit in this protest that SP One was stating, and I tell you that by and large this is not a very large contract. The majority of the money that's involved in this contract is to basically reimburse the operator for the hours that you guys are specifying at a rate of pay that you are asking us to pay people. Almost 85 percent of the cost of this contract goes right back out to pay the individuals that are here, so the actual value of the contract and that's not counting the insurance, that's not counting the cost of this automation, it's about \$70,000 all of this stuff over and above the direct reimbursable cost for labor, that's really all we are talking about in terms of the value of the contract. I hope you looked at some of the other

items in this proposal that talked a lot about the condition of your parking garages and I listen today and I can't tell you how many times today I heard this City be mentioned as the City Beautiful. Tell you gentlemen and ladies, walk through your garage and you tell me if you think your garages look beautiful. I think that they are a very poor reflection of the City and we invested time and money in our proposal to make sure that that doesn't happen, and I think technology aside, the condition of your parking garages is not very good today and if you hire Laz Parking your technology will improve and the condition of your parking garages will look much better than it does today. That's all I have to say – any questions you have.

Mayor Cason: The items that said must, must, must, are you saying that all of those your solution will take care of?

Mr. Zell: Yes sir.

Commissioner Keon: The issue is though Mayor is that our Procurement Code requires that they be put into writing and that it not be done verbally. I think the issues that we are dealing with are procurement and sadly people are being affected by it, but the issue is the procurement process.

Commissioner Quesada: Agreed. It's unfortunate that we are discovering it through this process today.

Mr. Zell: In all fairness to the process, there were no doubts in our mind exactly what you wanted.

Commissioner Keon: It's not your fault, you know...

Commissioner Quesada: Hold on a second. I saw the PowerPoint presentation you were talking about and pictures. You guys put pictures in your bid and a lot of what you had in your PowerPoint presentation was in your actual presentation, let me finish, you said a statement that you can put things in PowerPoint presentations that you can't put in a submission...I disagree with that because you guys did exactly that; and my biggest problem is, what Commissioner Keon said, procedurally you guys didn't comply with putting everything in the written format in the beginning, so technically under Section 1.9 of the RFP, any additions that you are making at the oral presentation can be deemed an oral modification which is where I'm stuck.

Mr. Zell: Well again, what I'm saying to is that we didn't make any exceptions to exactly what they asked us to bid. We didn't say...

Commissioner Quesada: But you also didn't specify all the minimum requirements which were called for in the RFP, specifically pages 13, 14, and 15 of the RFP, you didn't specifically respond.

Mr. Zell: But again, I think one of things that were mentioned here as well, we didn't put in there that there was going to be a power back-up system.

Commissioner Keon: But it was a requirement of the RFP.

Commissioner Quesada: That's one of like 10 items.

Mr. Zell: If we would have put in there that hey, we are going to give you a power back-up system, we wouldn't be having this conversation?

Commissioner Quesada: No, that's not correct.

Commissioner Keon: That's not correct.

Commissioner Quesada: That's not correct because there were at least 7 or 8 items that I specifically went through.

Mr. Zell: No, I understand.

Commissioner Quesada: You are pointing out one.

Mr. Zell: I used the one example.

Commissioner Quesada: OK. But even then, hold on, but even under your argument you still lose; you still lose under your argument because you did not meet the minimum requirements in writing which is called for under Section 1.9 of the RFP.

Mr. Zell: We didn't exclude them either. We didn't say we are going to do this – we are excluding this one because we can't provide it our system.

Commissioner Lago: But that's a problem, that's a problem, and it goes back to, I hate to go back to my prior experience in regards to these RFP's and RFQ's. Just because you write exclude this from our scope someone is still responsible for that at the end of the day.

Mr. Zell: At that point in time if you are excluding something then someone who is reviewing this has the option of saying, these people are...

Commissioner Lago: Hold on, you just said it, you just got it, you just said it right there. Someone that is reviewing this it becomes their responsibility. That sums up why we are here today. I'm not blaming you, I'm not blaming anyone. I'm saying I just want to be clear that we need to do a little bit of a better job and I agree with Commissioner Quesada's statement before, we need to do a better job, a more comprehensive job in regards to these type of procurement policies, because there are several things, like I mentioned before in regards to, excuse me, the references. Your references don't come close to even comparing in regards to what Standard Parking had there. As a matter of fact your references are incomplete. In the ones that I've had to fill out for large government agencies, for multi-million dollar contracts either CM or job contracts, we are talking about from the school to all the way to U.S. Postal Service. If you do not sign a document, if you do not notarize a document, if you do not initial a document, you are voted non-compliant; you are excluded from the bid. This happened to me when I've lost multi-million dollar bids based on not having initial the document where someone did a protest and I was found to be deemed non-responsive just based on that issue. Now you need to get away from the fact of whether we are blaming Laz or Standard Parking, that's not the issue; the issue is you just made a very candid comment. It's the responsibility of the person who is reviewing these documents to understand that if you leave something out from your scope at the end of the day the system still falls short.

Mr. Zell: Well that's not really what I said.

Commissioner Lago: OK. What did you say?

Mr. Zell: What I said was that if we were to have pointed out that we cannot fulfill this obligation of the RFP, if we would have put that in there and somebody wouldn't have said hey, they put this in there we didn't notice it. We didn't object to anything that was put in there. We totally agreed and signed to that effect that we agreed to provide you what you asked for in the RFP. The fact that we didn't put down a list literally in black and white those points on a piece of paper that we were going to give them to you, that's what you are hanging your hat on.

Commissioner Keon: That's right because that's what is required by the procurement process.

Mr. Zell: But does the procurement process not also give you an opportunity that you cannot meet these obligations you are required to state that you cannot meet them, otherwise you are agreeing to provide them.

Mayor Cason: Mr. Pounds what's your view on this?

Mr. Pounds: First of all, the Procurement Code is not specific as to what is required in terms of specifications. All the Procurement Code says as far as RFP is the evaluation factors have to be based on past performance and pricing, we have to include those factors. We do not have a specific language in the Procurement Code that you are supposed to have a certain amount of detail for the requirements contained in the scope of work, which is very flexible. Procurement can basically do what we feel is appropriate in consultation with the user department. As far as 1.9 is concerned, Procurement takes the position that they did not modify at the presentation they clarified, and you all may disagree with that, but that's our position that they clarified rather than modified.

Commissioner Quesada: Under your theory, and I'm sorry I forget your name.

Mr. Zell: David.

Commissioner Quesada: David – under your theory David, I can file as a bidder, in a hypothetical situation, and I'm going to bid \$100 on a bid. I can submit a piece of paper, it says, I'm not excluding anything, my bid is \$100, one line saying just that, under that theory.

Mr. Zell: Well, if that was the only thing, if that was the only thing you were asked to bid, can you provide this for \$100, and I say, yes I can. I would agree with your assumption. But that's not it; there were a lot of things that were put into play here.

Commissioner Quesada: Exactly – there were a lot of things at play, and you guys decided in writing to choose some things to respond to in writing and others not to, and listen to me, you and I can go back and forth forever on this.

Mr. Zell: Absolutely.

Commissioner Quesada: And I think it's a problem with our Code that needs to be addressed specifically on that, because this is a problem for me because Mr. Pounds, I respect your opinion, I don't see it that way. I don't see it as – I did before I got in here today, but as this has played out I'll be honest with you, I ping pong on this back and forth, but as we flush this out I disagree, because it's almost like you can – let me ask you a question, let me ask you a clarifying question. Before the oral presentation, do you get to see everyone else's proposal?

Mr. Pounds: Procurement can see every proposal.

Commissioner Quesada: What about – was Laz able to see Standard Parking?- was Standard Parking able to see Laz before the oral presentation?

Mr. Pounds: They can do a public records request to see.

Commissioner Quesada: Were any public records request made at this time prior to the oral?

Mr. Pounds: No.

Commissioner Quesada: I have a problem with that. I do. I do.

Mayor Cason: Is there a way looking forward apart from this case, you can come up with something so we don't have to face this again?

Mr. Pounds: Well, I don't think there is any question that we can improve our RFP document. I don't disagree with that. My comments have been that the RFP's are not usually very specific, they tend to be to look at other issues other than price. We tend to look at qualifications more in the RFP, but with that said, I think we could work on our document and make it stronger, I don't think there is any question we can make it stronger. I don't believe there is anything wrong with this process though. I do not believe – if I thought so I would tell you, at my stage I could say that I can state that the protest has merit.

Commissioner Quesada: So Mr. Pounds, so you are saying that if a bidder does not say that they take exception to anything, do you guys just assume they can handle everything?- that's what happens?

Mr. Pounds: I'm saying that in an RFP we have that kind of flexibility.

Commissioner Quesada: You say that RFP's aren't very specific, they are not, you just said that; however, it does specify some things, does it not?

Mr. Pounds: There are things specified in this document, there is no question.

Commissioner Quesada: So if it's not terribly specific, yet some things are specifically mentioned you would think that a requirement of a bidder is to at least respond to those specific items in the board RFP request.

Mr. Pounds: We could have stated in the RFP, we could have had in the RFP a check mark where they said we need it; we did not do it that way. In the case of Standard they chose to note

everything that was in there, that's actually has a lot of merit on their part, but we did not chose to do that in the RFP. They followed the RFP as it was written. Now again, there could be improvements made to the RFP documents and we will do that in consultation with the City Attorney.

Commissioner Quesada: I think it's more than that. I think it's our process altogether. It's not just the document itself, I think it should be a requirement rather than just saying, exclude that yes, we can provide this, the request that you are asking for the specific detail by doing X, Y, and Z. Why does that sound unreasonable?- that sounds....

Mr. Pounds: ...what the RFP allowed.

Commissioner Quesada: But I'm speaking about the actual process itself, not the actual RFP document in this specific instance. I'm talking about moving forward, so we don't have an issue like this in the future; and I know that we've really only had two protests in 4 or 5 years, that doesn't mean we can't be better.

Mr. Pounds: There is no question we can always be better. I've told you that yes, we can definitely make our documents better and we can focus on RFP's. We don't do a lot of RFP's, we mainly do bids, we probably need to revisit our documents and see if we can tighten it up.

Commissioner Keon: Why did you do an RFP as opposed to a bid in this?

Mr. Pounds: In this case I think we were probably looking at the qualifications of the firm as well as value added, what they could offer, work considering.

Commissioner Keon: Then you could have done an RFQ, right?

Mr. Pounds: Um?

Commissioner Keon: Then you could have done an RFQ as opposed to...

Mr. Pounds: You know we could do a multi-step process, we could do an RFQ and a bid, but this is a way we could combine all that in a single solicitation.

Commissioner Quesada: OK.

Mayor Cason: Any more discussion? Anybody want to make a motion? Three ways we can go.

Commissioner Quesada: We can accept, we can toss it out, or...

Mayor Cason: Or we can give it to SP or either one, we have three choices.

Commissioner Lago: I'm leaning towards starting the process all over again. I think that's the only way of doing it.

Mayor Cason: You have any other thoughts? I tend to agree with you. I tend to agree with you.

Commissioner Keon: You know, I think because there are so many questions about the due diligence on the part of the procurement staff in determining whether the actual proposals were compliant, and I have no way of knowing that, because you are telling me one thing, the bidders are telling me another thing, someone's telling us that on tape this wasn't said, and I don't believe that anybody is standing up here that is lying to us. I don't think they are. It makes for a very murky process, which I think is exceedingly bad for government, exceedingly bad process. Since I've been on this Commission, I think you and I have had a number of discussions about procurement and I'm not comfortable with our Procurement Code or our procurement process. I think it is very ambiguous. I think if you identify if you are looking for proposals for something then you or if you are looking for how somebody may do something then that's what you ask for, but if you are going to award a bid then you go out for a request for a bid. You want to check somebody's qualifications then you go out for a request for qualifications, but you have made what should be a very objective process you allow a lot of subjectivity in the process. So I have a real problem with your whole process, so I don't know what else to do but to tell you to go start over and if you write your RFP and you make a decision as to what you are going to require and then people meet your requirements. If you want qualifications then go do an RFQ.

Mr. Pounds: Commissioner, you are right, we have had discussions up here very brief because obviously the setting. I would welcome an opportunity to meet with you and discuss how procurement works and how our Code – what is in our Code and how our system works, and I would welcome that opportunity, perhaps maybe I can clarify some things.

Mayor Cason: Let me ask if there is any motion now. We've had a discussion, we know we need to do some work in general at least on the margins you can tighten up some things in terms of the Code, but we have this issue in front of us which is not going to go away, so...

Commissioner Quesada: I'm sorry, I think you are going to make a motion, but if not I'm going to make another motion after.

Commissioner Lago: If you are going to make a motion let's see if Commissioner Keon wants to make that motion after my motion you make your motion.

Mayor Cason: What's your motion Vince?

Commissioner Lago: My motion is to eliminate the current bids that we have in front of us and start the process over again with a brand new either RFQ or RFP.

Mayor Cason: We have a second?

Commissioner Quesada: Second.

Mayor Cason: Alright, Commissioner Quesada seconds it.

City Clerk

Commissioner Quesada: Yes

Commissioner Keon: Yes

Vice Mayor Kerdyk: (Was out of the room)

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 4-0)

Commissioner Quesada: And one more thing. Craig, the procurement process, this exception, I'm learning that this exception language is something that is common in the procurement world, I'm assuming.

City Attorney Leen: It is.

Commissioner Quesada: When you look into this, I want you to meet with Mr. Pounds and the City Attorney so you guys can figure out and come back to us with an idea, but really when we put out a bid, anything, whether it's a bid, whether it's an RFP, whatever it is, an RFQ, specific responses. So for example, I'm saying, if our RFP is that we want delivery of water bottles, I don't want it to say we are not taking exception \$100. It creates confusion. I remember when I first got the document, I guess it was Friday, when I saw it Friday morning, the response to the protest was two sentences – I had to read those two sentences 10 times before I fully understood it. They didn't take exception and they did everything, it didn't really say anything other than the fact that they didn't take exception to it, which again being an outsider is wacky. So maybe as we revise the Code, something for you guys to think about and come back to us, saying that if we

are asking for an example, for 100 water bottles, the City is, we want to know your experience in providing 100 water bottles to other municipalities, how you going to do it, and specifically respond in writing, because again I think it's a fine line on the oral modification. I understand the interpretation of the procurement department, but to me it's a very fine line, its ambiguous, and can be subject to again, I couldn't care less who wins, but the worst thing you can have is come before us or come before the City and feel like you were short-changed and you were messed with in some way, that way it provides clarity all the way through and there can be no discussion, and this is something that's going to benefit us in the future because there were similar arguments raised with the tow truck contract, was it a year ago?- year and-a-half ago?- whatever it was, so I guess it's not a motion but just a request.

City Attorney Leen: I understand.

Mayor Cason: Craig, one other thing. Now that we said start again, do we continue on a month-to-month basis?

City Attorney Leen: Yes – by unanimous consent?- are you OK with continuing on a month-to-month basis?

Mayor Cason: Yes.

City Attorney Leen: OK. I'm going to meet with City Manager and Procurement probably what you want is on any material point; you want some proffer from them in the response to the RFP.

Mayor Cason: Yes.

City Attorney Leen: And we should probably identify all the material points.

Commissioner Keon: I know within municipalities or within government and I don't know cities or who....that there is opportunity for peer review where you have other municipalities or whatever come in and your peers, like other procurement departments or whatever can come in and look at your Procurement Code also, and look for where are the weaknesses or whatever in your Code. Who is it that does that peer review?- who is it through?

City Attorney Leen: Well it would be through the League of Cities, Richard Cooper; I can contact him and see with the Manager, we can try to see.

Commissioner Keon: Could you look into that?

Mayor Cason: Thank you all very much.

Interim City Manager Olazabal: Mr. Mayor, I think Pamela wants to clarify something that was misunderstood.

Ms. Katsaris: I do want to clarify. In my discussions with you as a Commission and all of you, I did not mean to infer that you were lobbied and my intent was to say that my experience has been certain particular firms that have a tendency to protest and it was not meant to be anything in a negative stance. In addition to that and again, I know you've already made the motion, but there was due diligence done on this RFP. There was enough information provided to take it to the next level for an interview process. So again, I wanted to let you know that there was due diligence and if I was misunderstood I apologize.

Commissioner Lago: Thank you very much.

Commissioner Keon: I would like in the next RFP that you do put out that you do include cleaning the garages because our garages are dirty. So if you could please include the cleaning element.

[End: 2:24:25 p.m.]