

## **City of Coral Gables City Commission Meeting**

**Agenda Item H-2**

**July 15, 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**

**City Manager, David Brown**

**City Attorney, Elizabeth Hernandez**

**City Clerk, Walter J. Foeman**

**Finance Director, Don Nelson**

**Police, Major Scott Masington**

### **Public Speaker(s)**

**Jimmy Morales, Attorney Representing Haul-O-Way Towing**

**Miguel DeGrandy, Attorney Representing Westbrooke Transport**

**Tim Durasell, Downtown Towing**

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H-2 [Start: 11:45:00 a.m.]

A Resolution authorizing the award of Downtown Towing pursuant to Section 2-828[c] of the Procurement Code for Towing Services RFP 2008-03-13. Further authorizing the City Manager to execute a two (2) year contract with an option to renew for three (3) one (1) year period.

City Manager Brown: Commissioners, today we have a two part presentation. Mr. Nelson will take you through the RFP process, upon his presentation, I will take you through the protest process, we do have two protesters to this bid, and then I will describe my process after Mr. Nelson.

Mr. Nelson: Good morning. The Police Department utilizes the services of One Towing Company to facilitate towing in the City to remove vehicle accidents, unauthorized parking, abandoned cars, and unless the owner of those vehicles determine that they would like a towing company of their choice. The Procurement Department issued a Request for Proposal on March 14, 2008, and we sent it out to twenty six (26) potential bidders, twenty six potential bidders; on April 10, 2008, we received eight responses; two were no bid, six were qualified bids. Of the six, a selection committee was selected, it was comprised of the Police Chief, the Fire Chief, and an Assistant City Manager. On April 17<sup>th</sup> the selection committee completed their evaluation of the six towing operators based on five criteria; and the five criteria have a maximum point up to one hundred (100) points. The five criteria that they judged these six towing companies were based

on their equipment, their experience, their presentation, their pricing, and their references. The selection committee recommended Downtown Towing with 98 points; the other points are in the bid document. The Procurement Division reviewed the selection committee's recommendation along with an analysis of the pricing. There are many pricing components of this bid. We looked at the whole matrix of their pricing, and it was recommended to the City Manager that the Procurement Division sit down and do what is called a best and final offer on pricing, and negotiate that with the top three of the six which is allowed under our Procurement Code, even though pricing represents only 10 points of a hundred point scale. On April 21<sup>st</sup>, we received the best and final offer of these three towing companies. We reviewed them; Procurement reviewed them independently of the three selection committee members, which were independent...

Commissioner Cabrera: Let me just stop you for a second; when you asked for a best and final from these three companies, did you give them any kind of parameter in which to base their pricing on?- or was it just a general question of...OK, you are one of the finalists, you now have the opportunity to come back to the City with your best and final offer.

Mr. Nelson: The latter – we offered them to come back, and offered them to present their best and final offer without a criteria.

Commissioner Cabrera: OK.

Mr. Nelson: On April 23<sup>rd</sup>, the best and final offers were analyzed; they were compared and the pricing structure was reduced on those three bidders down significantly in all categories. When we reviewed the pricing along with the other four criteria, it was the recommendation of Procurement to concur with the committee's recommendation of the three, to continue and recommend the top rated towing company which was Downtown Towing; and that was the final recommendation; we presented that to the City Manager. So in concurrence with the evaluation selection committee, Procurement analyzed the entire method; we looked at the process, we looked at the legality, and we looked at how we did the entire process and found no...nothing wrong with the process. That was then of course taken to the City Manager, and there was a bid protest by two of the towing companies, and the Manager is now going to speak on the process, which is provided for in the Procurement Code on what transpired after that.

Commissioner Cabrera: Is that going to include the reason for the protest?

City Manager Brown: Yes.

Commissioner Cabrera: OK.

City Manager Brown: I received two letters of protest on May 21<sup>st</sup> and May 27<sup>th</sup> respectively from the second and third vendors which was Haul-O-Way and Westbrook. I made appointment that to see each; I saw Mr. Miguel DeGrandy and I also saw Mr. Jimmy Morales, and representatives of both vendors. Mr. Nelson was in the meeting; we met with them to discuss their individual concerns on the process of the selection. In short respectively Haul-O-Way described that they felt that the decision was arbitrary and there was no criteria for the selection process, and...

Commissioner Cabrera: Is that...no criteria for the entire selection process, or for the best and final?

City Manager Brown: They thought it was, when I quizzed them they said that they felt the decision was arbitrary, and there was no criteria.

Mr. Nelson: For the best and final offer.

City Manager Brown: Well...

Commissioner Cabrera: That's what I'm trying to get at, because I saw you had criteria initially in the RFP.

Mr. Nelson: In the meeting that the Manager and I had, my understanding was, and you'll hear from them, was that they didn't have a problem with the initial bid, it was with the best and final offer that there was no criteria on the pricing structure, even though it was all laid out and very clear on how they were to provide their pricing, there was no change in the way they present their pricing, they just lowered...they have the option to lower.

City Manager Brown: Additionally, when Westbrook and Mr. DeGrandy came they thought the criteria used overall should have been broken down even further into owner requests, Police tows, and City tows; they also felt that they should have had a criteria in the (BAFO) best and final offer, and one other point they made is they thought that Downtown should have not received perfect scores in certain categories that were judged by the committee. Don and I sat there and I looked at it, and as I re-reviewed the Procurement Code and I sat down with the City Attorney, I couldn't find anything in their criteria or their concerns that rose to the level of voiding the recommendation committee or finding fault in the process through the Procurement Code. So I went ahead and submitted a letter to the attorneys and made a final package to you on top of the recommendation to award to Downtown. Both haulers or towers are in the audience should you wish to recognize them.

Mayor Slesnick: OK. Anything else? Thank you.

Mr. Nelson: Thank you.

Mayor Slesnick: So let's...Don, before you leave though; let's make it clear, we have the papers, we have the agendas some people watching this do not; it is the recommendation of a committee that the bid is accepted as Downtown.

City Manager Brown: That is correct.

Mayor Slesnick: They are our current providers.

City Manager Brown: They are.

Mayor Slesnick: It is the recommendation of the City Manager's office, or it's your decision, not recommendation that both objections to the bidding process were denied.

City Manager Brown: That's correct.

Mayor Slesnick: OK, so we are clear on all of that.

City Manager Brown: Yes.

Mr. Nelson: Yes.

Mayor Slesnick: I didn't ask the City Attorney if we had to do this, but I told her that I would like to have the people speak on behalf of other towing companies, and she didn't object to that. I would like to ask though that the attorneys for the other towing companies not rehash the entire case, but try to synopsize what your objections are; and what I'm doing is we have two distinguished attorneys representing the two companies; so I'm shuffling the cards so it will be the luck of the draw – Jimmy Morales, and I apologize for keeping you all here this long, but the fact is we've kept you out of the weather. So this is Jimmy Morales, he is here representing Haul-O-Way Towing, is it Hard-O-Way...Haul-O-Way Towing.

Mr. Morales: Good morning Mr. Mayor...

Mayor Slesnick: You are not writing very well...

Mr. Morales: Actually my associate wrote it for me. (Laughter). Good morning Mr. Mayor, Commissioners, Mr. Manager, Madam Attorney, Mr. Clerk; my name is Jimmy Morales with the law firm Stearns Weaver and we are representing Haul-O-Way Towing, the company that came second here, and since today I'm a one-armed attorney I will be very brief, I can assure you...

Commissioner Cabrera: Mr. Morales, do you want us to listen to you or look at this?

Mr. Morales: Well, I'm going to quickly walk you through, just an aide for me – I put in Tab 1 and Tab 2 the letters I sent to the City, so it's very clear. If you look for example Tab 1 the first paragraph we wrote, our protest has always been the pricing component. This is an RFP, we understand that eighty percent, eighty of the hundred points were subjective criteria on experience, etc., but twenty points were based on price, which is an objective criteria and it is there where we believe this RFP terribly flawed because it never really had criteria, and it didn't have the data for the evaluation committee to be able to evaluate that pricing component; and in Tab 2 you'll see in our letter again in our first paragraph we reiterate that we felt the RFP was flawed on the issue of pricing component, so I'll focus you on that. Tab 3 is simply the selection committee results where you'll see the pricing was in fact twenty points, I think you he'd mentioned ten, but in fact it was twenty points of the one hundred, and in the process our client came in second, and actually lost points in the pricing process; we were closer to the number one company, we were only five points behind; we ended up seven points behind altogether in the pricing process. Tab 4 will show you the kind of matrix that we were all asked...all these companies were asked to submit with prices in all kinds of categories. This wasn't just a one price, which made it more complicated; this was three major categories of Police towing, private

towing, City towing; within those categories, sub-categories, there were a lot of prices; and everybody I'm sure, my client included, sharpened their pencils and gave the best price to the City. In fact as you know, your current contractor is at fifty-five dollars (\$55.00) per tow, whether it be private, Police, or City; my client offered at twenty nine fifty (\$29.50) for private tows and Police tows, private tows being by far the largest category of tows, and fifteen dollars (\$15.00) for City tows. So he sharpened his pencil in his best and final as much as he could. The problem is that when it gets to the evaluation committee, number one, the RFP had no criteria for those members of that committee to evaluate and compare prices; and we believe as a result they did make an arbitrary capricious decision because they didn't know how to compare the prices, more over, and we keep asking for this data; the City doesn't have the full data on how much for each category. So if you were going to go to the store to buy apples, oranges and pears, you need to know how many of each one you want to buy, so you know how much money you are going to have if I give you the price of each item.

Commissioner Cabrera: Well, did you ask for that?

Mr. Morales: Well, we've actually...subsequent, we've asked for a public records request for that data and have never received that; I'm not sure it actually exist in complete form...

Commissioner Cabrera: Did you ask for that during the time that you were sharpening your pencil?

Mr. Morales: At that time we didn't, we did not; we asked for a subsequent to the best and final. The only time that we've ever seen any kind of that data, and I refer you now to Tab number 5, was the towing recommendation made by your Procurement Supervisor, where in it he acknowledges that, I refer you to page 2, that there are over 2,393 unclassified tows in the past year, as he analyzed them seem to fall under the private tow category; and in the last paragraph when he reaches his conclusion, he acknowledges that by getting...by saving the City \$3,300 on 60 repairs per year at \$55.00, and a significant decrease in pricing on all categories. Number one, our offer was \$15.00 on tires, so the real savings to the City on the City tows and tire repairs was \$900.00, which my client came second, than the number one company. The flip side of that, however, if you look at the private tows, Downtown increased their rate by sixty percent (60%), from \$55.00 to \$88.00. When you multiply that by 2,393 tows a year, the difference is my client would save; maybe not the City budget, but it saves the residents and visitors to Coral Gables nearly \$140,000 a year. So I ask you how do you compare prices, because it looks like from the Procurement Supervisor's memo, the only criteria he ultimately picked was the budgetary savings to the City of 3300; I save \$900, and completely ignored the hundreds and thousand of dollars over the course of this contract that would be saved to the people whose cars are being towed because the sharpening of pencils in the other categories. It was almost as if those categories were given zero weight in the process, which was never indicated in the RFP, and certainly was not indicated when you asked these folks to give you their best and final offer, and that's why we think it was arbitrary capricious because if you had in fact considered a \$900 saving in one category versus a \$140,000 savings in another, we believe Downtown Towing, excuse me Haul-O-Way Towing would be number one on price, and perhaps even come in number one overall by the time you calculate the points. Again, we are asking on number one, in the best case scenario we'd like it awarded to Haul-O-Way, but in the alternative we believe it

should be thrown out because at the end of the day how the pricing was used to make a determination is completely unclear to the process, and as a result, all we can determine is someone making an arbitrary decision by how to rate it. Thank you.

Commissioner Cabrera: Can I ask a question to the Manager? In this kind of contract, and Madam City Attorney, you might want to listen on this one, in this kind of contract could we in fact instead of throw out the entire process, the entire RFP process, go back and submit to the three finalists, the pricing finalists, criteria in which to come back and price it so everyone is on the same level playing field, can that be done under Procurement, or does it in fact have to be thrown out and started over again?

City Manager Brown: Commissioner, I'm not sure.

City Attorney Hernandez: You would have to state the process over.

City Manager Brown: That's what I was thinking.

Commissioner Cabrera: Really?

City Attorney Hernandez: Yes.

Commissioner Cabrera: Because I mean...the reason I would like us to think about doing this is number one, it will save time; number two, it will save money both on the vendor side and on the City side, so you could then get an outcome where everyone is on a level playing field, because what Mr. Morales says really hits home in terms of the criteria, and therefore if we did take on the responsibility of giving them the parameters, the numbers...I'll give you an example, in the health care business, the employee benefits business, when you have a bid before a municipality, and you get to the best and final stage, you typically get a lot more information from the client, so that you can hone in on your pricing, and typically it's done by telling the vendor, well of the thirty thousand employees that we employ here, twenty three thousand are single employees without dependant coverage, and then you provide the other tiers, and then this allows the underwriting department to come back and say now, well everybody is going to be on the same level playing field, and therefore everybody is going to get a pricing that is accurate and allow the client to make a real business decision versus just saying, you know, just give us your best and final offer and you come up with the criteria.

City Manager Brown: I think, just talking off the cuff, I think that the "cat is out of the bag" with regard to this respect, because we'd asked their best and final offers; all the vendors know each other's prices, so I'm not sure that we can ask for a second best and final offer.

Commissioner Cabrera: Why not?

City Manager Brown: Because everyone knows what their pricing is.

Commissioner Cabrera: So what? Who cares?

Mr. Morales: My client would be happy to do it again.

Commissioner Cabrera: I mean, you know, its competition. So what, I don't care; I only care about the citizens and the City, they are a vendor; I want them to do a good job, I want them to be polite when they are taking somebody's car away, I don't want to get a call from somebody telling me that somebody threaten to beat them up.

Mayor Slesnick: Well, I mean, I think we've had a pretty good record.

Commissioner Cabrera: I've had some distressing calls, but they've been very few in all fairness to the existing contractor, they've been very few, but I've had them, you know, I've had complaints, but you get complaints from towing contracts, it's a tough business.

Mayor Slesnick: Interestingly, I haven't had one towing complaint.

Commissioner Cabrera: I could tell you some stories, but I don't think that's appropriate to do that here, but I expect that to happen, it's not a fun thing to have your car towed.

Mayor Slesnick: But let me ask you this, and I'm not jumping to any conclusions...

Commissioner Cabrera: My wife's car was towed; I just remembered that.

Mayor Slesnick: She complained?

Commissioner Cabrera: She complained to me, she had one of those little orange discs.

Mayor Slesnick: If we were to just rebid prices, they'd all come back at the same good prices.

Commissioner Cabrera: They are not going to.

Mayor Slesnick: You don't think that they'll all come back at the same good prices?

Commissioner Cabrera: Oh, no. I think they'll come back with good prices for us, but I don't think they're all going to say, OK, let's all talk to each other and come up with the same price.

Mayor Slesnick: No, no, I don't mean that they have to talk to each other; they just have to show us this book and match the best price on each category.

Commissioner Cabrera: They may do that; they may end up doing that.

Mayor Slesnick: Shouldn't we know more about our experience, you've raised that, what has our experience been?

Commissioner Cabrera: I don't know. I don't know. It doesn't sound like we have it.

Vice Mayor Kerdyk: It's part of the criteria.

City Manager Brown: Major Masington oversees the towing contract, Major.

Commissioner Cabrera: Now, do I think that we should have given that information, I don't know, I think the vendor should have asked, the interested contractor should have asked.

Mayor Slesnick: Yes, but what I'm curious about is let's say they are all competitive pricewise, what has our experience been with our current and why would we drop them?

Commissioner Cabrera: Oh no, I wouldn't; I'm listening to Mr. Morales' argument and saying...

Mayor Slesnick: Oh no, no, I'm not disagreeing, I'd just like to...you've raised it so I'd like to hear it.

Commissioner Cabrera: OK.

Mayor Slesnick: Before we get to you...Major, my question is what has the Police department's experience been in working with the tow company that we now have, which is Downtown, and which has been the recommended provider?

Major Masington: I've been mostly responsible for managing our relationship with the tow vendor for about seven or eight years now, and we've been through a couple of different vendors during that time period. It's difficult for me to respond and not make it appear that I'm speaking on behalf of the selected company...

Mayor Slesnick: Just give us the facts.

Major Masington: We have had good relationship with the particular vendor that we have now, which is Downtown Towing. They have been responsive to me, certainly their concerns; I've never heard as dramatic a concern as you just alluded to.

Commissioner Cabrera: Well, I did take it, no, I did take it down the chain of command, maybe you didn't get to it, but I raised it with Mr. Brown. In fact I met with the gentleman that made the allegations in Mr. Brown's office, so he works for me, and so whether he decided to go down to your level, I don't know.

City Manager Brown; I sent that over to Chief Hammerschmidt.

Commissioner Cabrera: You do remember this incident?

City Manager Brown: I do remember this.

Commissioner Cabrera: OK.

Major Masington: I didn't know about that particular situation, we've had things throughout the years, but nothing that I consider to be unusual in the industry. We've had the ability to move cars around; we've had situations where maybe an injured party didn't get to their vehicle in

time, meaning they were having an extended stay at the hospital when they had to go get the vehicle, the storage fees were somewhat dramatic and Downtown was very gracious in working with us and often times eliminated those types of fees so that people in our community aren't penalized for things that are beyond our control. So our working relationship has been quite well from my perspective, and we've learned a lot over the years, and its grown in the respect that we have different types of situations, its not just Police related, where we have our parking vendors which has grown through the years. So now we have centralized valet that's created other situations. So we deal with different people from the community on all levels and we've even enjoyed the relationship with our current vendor and haven't had any problems that are recognizable.

Vice Mayor Kerdyk: Can I ask the City Manager one question?

Commissioner Cabrera: Wait a minute...the question was weren't you bringing the Major up to tell us about do we keep statistics on the towing.

Mayor Slesnick: No, I asked...

City Manager Brown: You asked if our experience was current.

Vice Mayor Kerdyk: And the answer is yes.

Commissioner Cabrera: But I'm curious, is there statistical information available?

Major Masington: We have a lot of different statistics when it comes to vehicles that are towed. We had an internal audit done about two years ago now, and what it revealed is that our computer system doesn't query as well as we would like it to, and we've been a little bit fragmented, if you may, in our ability to recapture some statistics. I believe that Mr. Morales asked for some statistics through this appeal process, and the last that I was told is that I did some research in response to a letter that he had sent to the City, and what he wanted was in the numbers of seven or eight thousand records; so we didn't prepare those records, in fact we sent a response back saying, do you want to come and review the material first before we start making this type of voluminous copies, and we haven't really heard back.

Vice Mayor Kerdyk: I'm sorry; I just wanted to ask the City Manager, how did you answer Mr. Morales' compelling arguments about the private tow difference?

City Manager Brown: Well, in our meeting with Mr. Morales, he said his two ideas were that the decision was arbitrary, and I counted that by saying that there were members of the selection committee that came up with the Downtown Towing; there was Mr. Nelson and I who supported that even through...we didn't think that the decision was arbitrary because there was a number of eyes looking at it, and then I met with the City Attorney to go over the legal brief that was forwarded and we all agreed that the decision was not arbitrary.

Vice Mayor Kerdyk: I don't even know that the pricing skews the overall because there are other criteria that's put forth, but what does bothers me is when one company says their estimate is

going to be two hundred and fifteen thousand dollars difference than the others for private tows, that is bothersome.

City Manager Brown: Right, but the other issue he brought up in the protest, I was addressing the two issues of the protest, was that he thought there was no criteria in the best and final offer, but the best and final offer was an insert of pricing into a large category of other issues to be considered when you are selecting a towing company.

Vice Mayor Kerdyk: I understand that.

City Manager Brown: So I discounted the price; its eighty-eight dollars, I think its eighty-eight dollars, that is within the standard of the industry for an owner request tow throughout Dade County, and so I felt that I was not going to...I couldn't find anything that was going to overrule the selection committee, or Mr. Nelson, and the City Attorney did not find anything legally that was wrong.

Mr. Morales: Saying something that's within the standard is not saying its better than somebody else's offer, that's the thing; how do you compare one hundred and forty thousand dollar savings per year in one category, to a nine hundred dollar savings per year in another category. We've never seen how they got to the point that Downtown was actually better on pricing on that comparison, that's what troubles us, and the [inaudible] of passing that kind of points...

Vice Mayor Kerdyk: How many points did Downtown give for pricing, Mr. Nelson?

City Manager Brown: Mr. Nelson has that.

Mr. Nelson: There were three selection committee members and the combined total for Downtown was 18 points out of 20 for pricing; for Haul-O-Way, it was 15 points. Now assume – they had a score, Haul-O-Way had a score of 91, assume they got a perfect score of 20, add another 5 points they would have a score of 96.

Vice Mayor Kerdyk: Right.

Mr. Nelson: The other criteria of many other factors still had Downtown Towing at 98, even giving Haul-O-Way a perfect score of 20 and we go through the whole process again unless they were to lower the Downtown, which they were firm on, on an average, Downtown would still have a higher score of 98 versus 96.

Vice Mayor Kerdyk: You answered my question, thank you.

Mr. Morales: Thank you very much.

Mayor Slesnick: Thank you all. I was remiss by the way in introducing Mr. Morales and Mr. DeGrandy. We are very honored to have two attorneys representing people here that are great public servants in their own right, and have served the citizens of South Florida both in the State Legislature and the County Commission, and we thank you for your past service and glad to have you both here, whether we agree with you or not.

Mr. DeGrandy: Well thank you, thank you very much, that's part of the process. Let me say, I had a prepared presentation, let me go off of that, because Jimmy has very eloquently made some of our points. Let me go first to Vice Mayor Kerdyk's question. The numbers that were given by the Finance Director are different from my client, because my client got perfect scores on all the qualitative criteria; it also had lower prices in the private tows, and so assuming that same example by Mr. Nelson, if you give my client 20 points they win; so it could make the difference; price was significant enough to make the difference. Now, here we are talking, I think, about a greater issue, which is the integrity of the Procurement process. You have criteria that is twenty percent (20%) of the selection; you have a situation with my client where going into price they are tied with the recommended bidder, and they are given fifty percent (50%) less points. Now, there were three sub-categories of pricing – they were City tows, in which both my client and Downtown said zero dollars, we'll do it for free; there were the Police tows; the Police tows is a vast minority of the activities as defined in the RFP your Police tows are basically when there is Police involvement and there has to be a chain of custody for that vehicle; your private tows are the bulk of the activity, that is the price to your constituents. Now, what we couldn't understand, and why we feel its arbitrary and capricious is, you cannot be in a situation if you have a fair process with objective guidelines, where a proposer that proposed better pricing to your constituents gets half the points, that's the first problem in the initial one. Now, if you look at the April 30<sup>th</sup> memorandum of your Procurement Division, your Procurement Division uses the word speculate, and your Procurement Director says, notes that we got fifty percent (50%) less points, had a better price and said, we speculate it could have happened because of this, this, and this.

Commissioner Cabrera: So why, so what's the big deal he's speculating? You should be able to speculate.

Mr. DeGrandy: Well, for the Procurement Department Director to have to speculate as to how the selection committee came to a result creates a problem...

Commissioner Cabrera: I hear you, I hear you, I'm agreeing with you, but what I'm asking is, so what if he speculated?

Mr. DeGrandy: Well, what I'm saying is that that statement proves my point...

Commissioner Cabrera: OK.

Mr. DeGrandy:...the fact that you have to speculate as to what a selection committee did shows that the process has no objective guidelines. If you have objective guidelines you can replicate a process. Price is a mathematical proposition; it is ascertainable; it's either higher or its lower, its not like the qualitative criteria, which we've also invested in our submission where you can say, Mr. DeGrandy I disagree with you as to why you think the audit of Downtown Towing two years ago, which was very negative, should not prevent them from getting a perfect score, that's a subjective analysis. The price is an objective criterion, and so I believe that because the serious problems that were evidenced in the initial rounds that's why you went to a best and final offer, but you compound the problem when you do that, and again you do not have criteria. The only

response that the Procurement Department gave to our protest is, there is a section of the Code 2-447 that says protests to specifications have to be made five days before the bids are open; well for the best and final offer process, number one, there wasn't even five days of notice, but number two, there were no guidelines, and what I said to your Manager when I sat with them, four years of college, three years of law school, twenty-seven years practicing law, I still don't know how to protest something that is not published, and it doesn't exist. The point is that the process itself was done without objective criteria; it was not done in the "Sunshine", we were not even told who the individuals that made the evaluation are, and if you ask today no one can give you what the points were in the best and final offer process because it wasn't published.

Commissioner Cabrera: But I think you bring up an interesting point. May I...

Mr. DeGrandy: Of course.

Commissioner Cabrera: Why is it important for you to know who the people were in the selection process?

Mr. DeGrandy: Well, it's not determinative of the issue, but I'd like to know for example, if there was a selection committee in one, was it sent back to the same selection committee, was there a different group in panel. If so, what instructions were they given?

Commissioner Cabrera: So you are more interested in knowing the structure of the committee and perhaps the experience of the committee to make this decision?

Mr. DeGrandy: And the guidelines.

Commissioner Cabrera: OK. Alright.

Mr. DeGrandy: And...

Mayor Slesnick: Wait, wait let me...and whether or not it's the same group of people that adjudicated the best and final offer as it was.

Commissioner Cabrera: Yes, I understand now. Because typically what happens is, and you know this as well as I do, that regardless of the contract people try to find out who is on the selection committee so they can find people to lobby those individuals one way or the other even though there may be a cone of silence, but this is what really happens in real life, but I understand why you were doing it.

Mr. DeGrandy: Yeah. My thing is, I want to know what the process was and how it was conducted. Now, the other thing about scoring; when you have something that is worth 20 points, and you have three sub-categories; in fairness to all the bidders, what is usually done and you say City tow is worth 5 of those 20 points, this is worth 10, this is worth 5, so that you tell proposers this is what we weigh in terms of what we believe is in the best interest of the City. Now sharpen your pencil accordingly. Now, nobody knew that, and it is only the incumbent vendor that decided to bid, not only zero for City tows, but then zero for Police tows. Now if we had known

that that was important maybe there would have been a different consequence in the bid, but the bottom line is we look at it objectively and we see that Police tows are minimal activity compared to private tows, that is where we need to give the best price to your constituents. So there should be criteria that is known to everyone, and that is fairly and openly articulated.

Commissioner Cabrera: But you see I think what happened here is that the only group that had the true criteria was the incumbent...

Mr. DeGrandy: That is true.

Commissioner Cabrera: ...the City had no...I mean you heard Major Masington, sorry, I apologize, you heard Major Masington bring up the fact that they are not up to the statistical information data base that they need to be at, so in essence because they were the incumbent they had that advantage over the rest of you, and what's wrong with that?

Mr. DeGrandy: There is a lot wrong with that.

Commissioner Cabrera: Well tell me, I'm not engaging you to argue...

Mr. DeGrandy: Under Florida case law, there are concepts such as, the concept of an unfair competitive advantage, and what courts say is that proposers should all be on a level playing field; guidelines help in that regard. If you put point consequences to each one of the sub-categories, you at least put them in the same level playing field, in all fairness. There is always an incumbent, or when there is an incumbent that person may have an edge, but you need to minimize that edge. Here we were in a position where everybody else except the incumbent was running wide, and that creates an unfair competitive advantage.

Commissioner Cabrera: And did you have access to...once the initial bids were submitted to the City of Coral Gables, did you have access to reviewing those bids including the pricing?

Mr. DeGrandy: Once the bids were tendered...?

Commissioner Cabrera: Once bids were submitted...

Mr. DeGrandy: Yes sir.

Commissioner Cabrera: ...you know, we received the bids; we opened the RFP's...

Mr. DeGrandy: We all had access.

Commissioner Cabrera: You had access to it?

Mr. DeGrandy: Yes.

Commissioner Cabrera: So at that point...

Unknown: ...[Inaudible – off mike]...

Commissioner Cabrera: Why is that? Why wouldn't you give...if you got six, seven, eight vendors, and you get the bids in and you open them, and you analyze them, and you decide you are going to bring people back for best and final, why wouldn't you allow anyone to look at every other vendor's bid?

Commissioner Withers: Can I...?

Commissioner Cabrera: Sure, because it's...

Commissioner Withers: I don't think, and correct me if I'm wrong, Don and Dave, but I think what happened was the selection committee was confused with pricing that was all over the board, and that the City asked for the City Manager to make a recommendation on the last top three to come back, when they say throw out the criteria, they didn't throw out the criteria, all they said was we are going to keep the same criteria in place and we are just going to look at the specific pricing of the three.

Mr. Nelson: Correct.

Commissioner Withers: So you weren't throwing criteria out, it wasn't that there weren't any criteria, it was just this was simply the matrix in pricing, but more importantly it wasn't reviewed by the whole committee, it was only reviewed by two or three individuals?

Mr. Nelson: Correct, it didn't go back to the committee; once the committee made their recommendation those criteria and their numbers of each three were then added up, and we know their scores, that was the first process. The best and final offer didn't go back to the committee for their evaluation, it only was evaluated by the Procurement Supervisor; it was evaluated by myself and David Brown. We looked at the pricing structure because the pricing structure that was originally submitted was a matrix of pricing options, and it was not to say it was confusing to committee members, but it was a lot to look at, by six bidders with three committee members, and multiple pricing structures; they had to evaluate that, the members, they did; they put their scores down, we accepted the scores and then we looked at the pricing structure which was very large and very matrix-looking, and we made a recommendation to the City Manager to bring in a best and final offer; and again that best and final offer was only received by the Procurement Supervisor, it did not go back to the evaluation committee; we looked at it, it was congruent with the original bids, they just basically lowered in proportion their pricing structure, and we concurred that the process was correct, the evaluation that the members made was correct, and we made a recommendation to the Manager to accept the original recommendation of the three committee members of Downtown Towing.

Commissioner Withers: So the other bidders had the opportunity to look at the public record as to what was quoted to the other pricing?

Mr. Nelson: They could have, yes.

City Manager Brown: It's not a public record until I make this recommendation, and that's what triggers...

Commissioner Cabrera: I don't understand that part, maybe procurement laws have changed dramatically since I was on the corporate side of health care. But I remember submitting a bid to a municipality and within twenty-four to forty-eight hours sending a member of staff to that municipality to camp out there for the next ten to twelve hours to review every other competitor's bids, and take notes, not copy, take notes and bring them back so that we can formulate an analytical approach to how we were going to combat or compete for the business if in fact we got to be one of the finalists. That's the way I did it for like twenty-sum years, so has the procurement laws changed that much that you are not allowed to if you are a public company, if you are a company trying to do business with us and you submit a bid, that you are not allowed to come in and review everyone else's bid, I mean, I don't understand, and I'm not trying to be difficult, I really don't understand; if there's been some changes somebody educate me.

City Attorney Hernandez: Its ten days under the law.

Commissioner Cabrera: OK, that's probably changed in the last six or seven years.

City Attorney Hernandez: Yes.

Commissioner Cabrera: OK, well OK, in my day it was twenty-four-forty-eight hours, I think Procurement, all they had to do was log in the documents and make them available to the public or whomever wanted to review them.

City Manager Brown: Now one thing we should add here that I haven't brought up; there are two sets of protests here; there is a protest on the process itself, if the RFP went out and you think that the criteria is wrong or you think it should be City tows, Police tows, that has to be done in five days after the bid goes out, so you are protesting the process. Now, as soon as I make my recommendation to you all, they've got, I think, five days to protest the decision, the actual subjectivity of the recommendation, and so that's what I was going on when I met with Mr. DeGrandy and Mr. Morales, was the subjectivity of the decision by the committee...

Commissioner Cabrera: But the subjectivity, gentlemen correct me if I'm wrong, OK, but the subjectivity from what I hear from both parties is a lack of criteria.

Mr. DeGrandy: That's correct.

Commissioner Cabrera: OK, that's the subjectivity.

City Manager Brown: But that should have been...if that's what they really wanted, that should have been protested five days after the bid went out, and said, hey – I don't like your criteria.

City Attorney Hernandez: Right.

Mr. DeGrandy: But you can't protest criteria for best and final offer when you announce on a Tuesday we are going to have best and final offers, you have deadline for Thursday, that's not even five days, there's no criteria, how can you protest?

Commissioner Cabrera: Got it.

Mr. DeGrandy: And we still don't know today, if I may, we still don't know today...

Mayor Slesnick: Let me ask you this, if there was no criteria on these pricing on the first go around, why would there be criteria the second go around?

City Attorney Hernandez: Right.

Mayor Slesnick: What would lead you to believe that we were in the middle of the process provide criteria that we didn't provide in the first place?

Mr. DeGrandy: Well there are two issues here, number one is, was it wrong not to provide criteria in the first and second?- and the answer is yes; and the second is do we have, do we weigh that argument as to the best and final when that's announced as a new process, and you are not given five days to protest, and the answer is no.

Mayor Slesnick: I think that's what the City Manager was saying is that had your client decided at the very beginning we need the criteria, that was the time to protest that.

City Manager Brown: That's correct.

Mayor Slesnick: Not having protested that then the procedure went ahead the same as it had.

Mr. DeGrandy: But Mr. Mayor, under your Code if that's the final offer of the new process.

Mayor Slesnick: Is it?

Mr. DeGrandy: Yes.

Mayor Slesnick: Best and final offer totally divorced from the first?

City Attorney Hernandez: No, its not; it's the same, as you alluded to Mr. Mayor, how can I protest, I think what Mr. DeGrandy was saying, how can I protest a criteria when there is no criteria, that is your protest, that there is no criteria, and that just never occurred, so.

Mayor Slesnick: Mr. DeGrandy though, alludes to the fact that he believes the best and final is a separable procedure from the first.

City Attorney Hernandez: Right, and what we are saying it is not.

Mayor Slesnick: You disagree, OK.

Mr. DeGrandy: If I may Mr. Mayor, in that regard, in the best and final there were new things added that weren't in the original; the tires weren't in the original...

Mayor Slesnick: I'm sorry – the what?

Mr. DeGrandy: Tires weren't in the original; it shows that it was a new process because if it was a continuation of the same process you can't have different things to bid on.

Mayor Slesnick: Don did you or did you not add?

Mr. Nelson: That was an offer by one of the bidders to add that...

Commissioner Cabrera: Which bidder?

Mr. Nelson: ...that was Downtown added that as...it wasn't requested but they added that as an offer.

Mayor Slesnick: So you provided that information to the other bidders to match it.

Mr. Nelson: That was there...that was actually not our request, that was Downtown's additional offer that they were going to provide.

Commissioner Cabrera: Good for them, you know they were smart to do that.

Mr. Nelson: They just added that onto it.

Mayor Slesnick: That's fine, so they added it, but how did they know about it? Did you then add it...did you say...?

Mr. Nelson: No, not to the others because we had already received the best and final offer of the...

Mayor Slesnick: But Mr. DeGrandy is suggesting that you did ask for that in the best and final.

Mr. DeGrandy: The tires were asked for additionally in the best and final.

Mr. Nelson: As negotiation?

Mr. DeGrandy: As an item to bid.

Commissioner Cabrera: It was a criterion; Mr. Morales used that as an example between the nine hundred dollars and the one hundred and forty thousand dollar savings.

Mr. Nelson: But then they came back and said we are not going to charge you, that was their offer.

Commissioner Cabrera: Yeah, you know why they said they are not going to charge you, because they know it's a throw away; they are smart, I mean, kudos.

Mr. Nelson: But then they also bid lower on their other pricing and they also no charge to...

Mayor Slesnick: Wait, wait, wait...

Commissioner Cabrera: I hear you, I hear you.

Mayor Slesnick:...Don, I'm not trying to defend that, I was just trying to determine Mr. DeGrandy's statement was in support of his argument, whether we buy his argument or not, in support of his argument he said the reason I'm classifying the best and final as a separate thing is there were criteria added, he said as an example of that, tire service was added.

Mr. Nelson: Right, we are classifying it as pricing items that they are to bid on where criteria they wanted to talk about weighting the different weights on the various pricing items, that's a whole different subject; we never put weights on Police tows, private tows, and that's what they are saying, because as an example Downtown is not charging for Police tows – zero, Mr. DeGrandy's company is and that's why they were weighted on pricing half the score of Downtown because they are charging for Police tows.

Mayor Slesnick: Whether we overturn this bid process or not, or whether we do anything with this bid process, I think Mr. DeGrandy and Mr. Morales make good points that I would like to know if this committee and this Procurement person directed the committee as far as what is the impact of Police tows versus the impact of private tows; what does it mean to the citizens of the City? If I was asked to rate, and I was just given a sheet of prices that said this person is charging nothing and this person is charging a hundred dollars, I'd say gee, that's horrible, but if I knew that the Police tows accounted for point two percent of the tows, it would make a big difference in my pricing decision. So again, I'm not suggesting that's flawed enough to overturn, I'm only saying that there's been some good points raised that trouble me as I have always been troubled by the Procurement Department of this City since I came here.

Commissioner Cabrera: You know its ironic, the last time...we went through this exercise a few years ago, and it was a real educational experience for me, what hinged last time was, I remember two things, one was the performance bond, and the inability for one vendor not to be able to provide one, and the second one had to do with locations of the storage areas; I'm just curious, were those part of the criteria this time around?

City Manager Brown: Yes they were.

Commissioner Cabrera: They were, OK; they are not going to come back and haunt us today?

City Manager Brown: I don't think so.

Mr. Nelson: The committee members independently rate their evaluation on all these criteria.

Mayor Slesnick: I appreciate that; I'd like to find out after all this, what kind of guidelines they were given? - I mean, if they weren't given guidelines and if they weren't given criteria for the different pricing then obviously the committee members shouldn't have been; so if the committee members weren't then they were flying blind too, and you know I have a tendency to rate very high to a company that says they are going to do Police tows and City tows free, and charge everybody else a lot of money, unless someone sat me down to think about what is the impact of that, and so I don't know. So I think that, that point is well made; again I'm not saying it's enough to make me...

Commissioner Cabrera: You know what I find ironic; I find ironic that I made this recommendation about letting them go back and sharpen their pencil one last time, the three companies, and the Manager and the City Attorney are not comfortable with that approach, but yet we are comfortable with allowing one of the vendors to put in an additional criteria between the initial RFP process and the best and final process.

City Manager Brown: But the Code calls for that; the Code allows for that, that wasn't...

Commissioner Cabrera: So the Code allows you to do that?

City Manager Brown: Yes.

Commissioner Cabrera: And the Code does not allow you to go back in this process and say...

City Manager Brown: I don't know that the Code prohibits that.

Commissioner Cabrera: OK, but you don't want to do that.

City Manager Brown: Well, I really think...

Commissioner Cabrera: Just tell me, its OK, I'm not going to get upset.

City Manager Brown: I made a recommendation; I listened to the protest, and...

Commissioner Cabrera: You're sticking with it.

City Manager Brown: I'm sticking with it, but I wanted to bring up one more item because it just showed up; if there was a question on the guidelines of the pricing or any of the matrix of the qualifications, any actual or prospective bidder offer who proceeds itself agreed in the connection with the solicitation of the contract may file a written protest with the City Clerk within five business days prior to the date set of the opening of the bids as they receive the proposal, that would have been on guidelines.

Commissioner Cabrera: Got it.

City Manager Brown: So I took their protest as the decision, they are protesting the decision arbitrary and capricious, and I didn't find it to be that.

Mayor Slesnick: I'm not sure I find it to be arbitrary and capricious, maybe in some parts flawed, but not arbitrary and capricious.

Mr. DeGrandy: Let me, if I may close...

Mayor Slesnick: OK, we'll let you close and we'll let...if this discussion has brought anything to your mind, now we have a representative of Downtown Towing, I don't know if we need to...you are more than welcome to say something, but I'm not sure that will add anything to the discussion.

Mr. Durasell: ...[Inaudible – off mike]...

Mayor Slesnick: Hang on, let Mr. DeGrandy close and then you can.

Mr. DeGrandy: I think that the greater issue when, as I hear the discussion, and the concern about flaws in the process, etc., is what's more important than who gets the towing contract, and that's the integrity of the procurement process. I think you all recognize that there were serious flaws and we can argue till the cows come home, should my client who didn't have an attorney at the time protest the initial specification, he didn't; but there is nothing in the initial specification that said we may use the best and final offer process either, and he was not given five days when that was announced to protest. The issues are significant, I think that...I'm not here to ask you, give it to my client, even though my client got perfect scores on qualitative, I think that the best thing that can be done is to send it back out on an expedited process. You now have a limited universe of companies that have been deemed qualified through the qualification process, and the real issue is price; so this could be a very simple process as a bid as opposed to an RFP, which is in effect where it merged to because this remember was put out as an RFP, which is supposed to be driven by qualitative criteria and ended up being best and final offer, which is purely price, and so if you are all satisfied right now as to the qualifications of the different proposers, a very expedited bid process could be done, and all that I would ask in that regard is when you set out the categories, let people know how important you think they are, you know, if Police tows are the most important, you know what, you'll probably get everybody give you a zero value on that because to them it's not a lot of money. What is a lot of money is the private tows, that's the bulk of the activity, but whatever points you assign people will know, and people will know then how to bid, because people will know what you believe to be in the best interest of the City. Thank you.

Mayor Slesnick: Mr. DeGrandy thank you very much. Did you want to say something?

Tim Durasell: My name is Tim Durasell, Downtown Towing. No tires at Downtown Towing, there is some confusion there; asked or talked about the tire change, I didn't do that; everything that Downtown did was in writing before hand, and I don't know, maybe the motor pool or something put the tires in there, but Downtown Towing was never asked about that, it just came up in the paper, and we bided on that sir. So we never did say put a tire in there, we never had any communication because it was a cone of silence, and we didn't talk to nobody about this contract; we had time to ask questions and put it in writing; so we would fax it to them and we

had time to answer about different things we wanted to know, but I don't know where the tires came in, but it didn't have nothing to do with us, we didn't bring that up.

Commissioner Cabrera: Thank you sir.

Mayor Slesnick: Thank you. Mr. Morales.

Commissioner Cabrera: But you know, if you had, if you had, I don't see anything wrong with that OK, I'm not trying to tell you that you did anything wrong, so if you had I don't see anything as a problem.

Mr. Durasell: Just wanted to clarify, it just came up on the paper we bid on; it wasn't like we said, hey, put a tire there...

Commissioner Cabrera: But I'm not alleging you did anything wrong.

Mr. Durasell: I just want to clear up...

Commissioner Cabrera: And I appreciate, and I appreciate that, but if you had I would see it as, you know, doing a smart thing.

Mr. Morales: Mr. Mayor, to follow up on your question as to why this was arbitrary and capricious, you yourself just indicated that if you had different prices thrown at you, you would want to know how to weight each because a great price here and a better price there could mean nothing depending on how much of each you buy, and what you've been told today by your own staff is the City itself doesn't even have accurate data on that because of their computer records. So your evaluation committee could not have known how to weight these things, all they could have done is looked at the numbers and said this one looks better than the other, because they couldn't have done an analysis on their own, to me that's the essence of arbitrary and capricious, because pricing is supposed to be objective; you should be able to say a nine hundred dollar savings here versus a hundred and forty thousand dollar savings to the residents and visitors here, boy, that's an objective criteria, that clearly didn't happen here, they didn't have that weighting, they didn't have that criteria, and I think that's why the decision on pricing was ultimately arbitrary and capricious.

Mayor Slesnick: OK. And the question becomes Jimmy, is the challenge after the best and final arbitrary and capricious as far as the decision of the Manager based on the recommendation of the committee, or are we going back to challenge again the lack of criteria on the pricing things, and I need guidance from our City Attorney.

Mr. Morales: This is the decision made by the evaluation committee...

Mayor Slesnick: Oh, I know your point you are making, but you are saying what we are really doing is then attacking whether the evaluation committee maybe termed arbitrary and capricious because of lack of weighted factors, my question to the City Attorney is are we determining in your challenge, whether or not your challenge was whether or not the decision of the City

Manager was arbitrary and capricious based on the recommendation of the recommending committee; in other words you had two times to challenge, one you had time to challenge the criteria as being wrong-headed as being arbitrary and capricious, being nonexistent or whatever; and then you had a chance to challenge the Manager on his final recommendation to the City Commission as being arbitrary and capricious; the Manager based his decision on the criteria, have I got this straight?- am I wrong?

City Attorney Hernandez: What the Manager does is make a recommendation to you and you as well look at what the final recommendation of the selection committee is; if you disagree with the Manager your decision is upheld, so you do look at what the...

Mayor Slesnick: I'm going back into the arguments being made before us by Mr. DeGrandy and Mr. Morales and that is their challenge that they are here to talk about, they would like to get the contract, I understand that, but their challenge that they are now disputing...the Manager denied their challenge; the challenge is denied unless we overturn it; their challenge was to the best and final offer, well actually it was not; their challenge was to his recommendation to us, and he says he based his decision on whether or not they had lived up to the obligation of showing him that his first recommendation was arbitrary and capricious. That a correct diagnosis of this?

City Attorney Hernandez: It is. Can I...yes; first yes, then secondly what you're looking at is whether or not the selection committee acted arbitrarily and capriciously, that's what you're looking at; that is what you are looking at Mr. Mayor under the Procurement Code.

Mr. Morales: My argument is they didn't have the data to make a rational decision.

Mayor Slesnick: Mr. Morales is correct, that we are not looking at the Manager's recommendation; we are looking at the entire process.

City Attorney Hernandez: No, you are not looking at the entire process.

Mayor Slesnick: I thought you just said that.

City Attorney Hernandez: I did not say that; I said...Mr. Mayor; their challenge to the criteria is when they pick up the package...

Mayor Slesnick: They didn't do that.

City Attorney Hernandez:...and they did not do that; what they are saying is the committee in applying the criteria/lack of criteria acted arbitrarily and capriciously because they gave more ranking to the pricing that one company gave which was higher than the others.

Mayor Slesnick: Then we are going back to the committee action and we are skipping the Manager's action.

City Attorney Hernandez: You are not skipping; you're both on the same level.

Mayor Slesnick: OK, no, no, let's go back to the committee action; in your estimation as our attorney, if they are given no weighting criteria and they rate to the best of their ability based on the criteria that was not challenged, are they acting for that and that reason only in an arbitrary and capricious manner?

City Attorney Hernandez: It is my opinion that they are not acting arbitrary and capricious manner, but I am not the fact-finder.

Mayor Slesnick: No, no, but you are legally defining the term arbitrary and capricious. OK. Thank you.

Commissioner Cabrera: But then how do you...I'm not a...obviously I'm between two attorneys...

Mayor Slesnick: I'm asking, so I'm not telling you I know.

Commissioner Cabrera: So if you don't have a criteria...

Mayor Slesnick: I have a criteria but not a weighted criteria.

Commissioner Cabrera: OK.

Mayor Slesnick:...and then there are categories, but there is no weight.

City Attorney Hernandez: Their argument was that there wasn't any; staff's argument is that there was, so you know...

Commissioner Cabrera: Well I think they also had another argument and that was the incumbent had information that was not readily available to them; we decided not to give them that information because we were not tracking it or keeping a statistical data base of that information, and therefore I believe they had a responsibility to ask for it; when they attempted to get that information we had no real way of providing it.

City Manager Brown: It was in seven thousand pieces of documents.

Mayor Slesnick: But that was after the fact.

Commissioner Cabrera: It was after the fact, right, right. So I blame them for not asking for it initially, but then I blame us for not tracking that information, but I don't know why we would be willing or wanting to track that kind of very detailed information.

City Manager Brown: I can't answer that, maybe Major Masington can.

Commissioner Cabrera: Well you don't have to.

Major Masington: But simply put, when new issues arise, people often want supportive documentation for it, and you haven't always thought about it, and your computer software hasn't always thought about how you would recapture that information. So it's available, it's absolutely available, but it may not be easy to get, you may have to do it manually. So that's all we were saying, was when it was asked for after the fact that we can provide it, but it's voluminous, and before we do that labor would you want to come in and look at it to make sure its what you are trying to capture.

Commissioner Cabrera: OK.

Commissioner Withers: So Don, your issue, let me understand, or your position, is that the time the appeal on the whole criteria issue should have taken place was at the time the bid package was picked up and evaluated and said, wait a minute, there is a problem with the bid package, as opposed to the second time around that David made the recommendation, is that the crux of your....?

Mayor Slesnick: Um huh.

Commissioner Cabrera: But so what if they had done that, if they had had a problem with that issue, we would not have been able to provide that information.

Mayor Slesnick: Well, even if they had asked for a weighting of the criteria...

Commissioner Withers: Clarification.

Mayor Slesnick: ...in other words a clarification or weighting of the criteria.

Commissioner Cabrera: Well if you weighted it equally across all lines then it would be very fair and just.

Mayor Slesnick: Exactly, and...

Commissioner Cabrera: But it wasn't.

Mayor Slesnick:...and the fact of the matter is that there would be on record an appeal of the criteria that we could now consider, I think, in other words their arguments would be much more effective had they appealed in the first place and said we appealed in the first place, but they didn't; if you don't like the results you look for reasons and the attorneys have done a very good job of analyzing reasons I think...

Commissioner Cabrera: They're compelling.

Mayor Slesnick: Yes. You know, let me offer a suggestion, and I don't want to complicate things, but it seems to me that again this Commission, at least some of us have expressed ourselves that we are troubled by some of the things that's been brought to our attention that we think could have been done better. I don't believe that the things rise to a lack of good

process...it may not be a perfect process, but I think that the process was justifiable and it was not arbitrary and capricious; on the other hand I'll be willing to consider a shorter term on this contract in order to get back to this and instill into the process some of the suggestions that have been given to us today by the other bidders, that's not to disadvantage Downtown; by the way before you came here today Major Masington gave a very fine report on your cooperativeness and your work with the City, and the good job you've done, this is not any kind of...I mean we have no reason to dislike what you've done. But the other bidders have raised some issues that are not your problem, our problem.

Vice Mayor Kerdyk: What kind of time line are you thinking about?

Mayor Slesnick: Well this was proposed as a two year with extension, but I consider the two years and then go back and try to make the process more perfect.

Vice Mayor Kerdyk: So two years with no options, right.

City Attorney Hernandez: It was a three year, right.

Commissioner Cabrera: Can we do that under the Procurement Code? I want to know if we can do that first of all.

City Attorney Hernandez: Yes...yes, we can.

Commissioner Cabrera: We can change the...we can do a lot of things, I'm just so surprised that we can't tell these people, which I believe all three of them would be willing to go back and...that's OK, I'm willing to support Don's recommendation.

Mayor Slesnick: We need a motion from somebody.

Commissioner Cabrera: What's the motion to give to award the contract to Downtown for...

Mayor Slesnick: Well it would be to approve...

Vice Mayor Kerdyk: ...The two year term.

Mayor Slesnick:...to approve item H-2 which is a resolution awarding Downtown Towing contract for continuing towing service to the City of Coral Gables for a period of two years.

Commissioner Cabrera: Now what happens if we approve this and the other two companies decide to take this further?- they would go to a legal...

City Attorney Hernandez: Right, legal recourse.

Commissioner Cabrera: Legal recourse rather than the City of Coral Gables. So we would not see this again.

Mayor Slesnick: This was to be, and again I'm not trying to penalize Downtown at all, but because of my concern about our Procurement process and making it right, making it perfect, this was to be the possibility of a six year contract; and so I'm suggesting that if it's reduced to two years, we'll go back again and try to make it even better than last time.

Vice Mayor Kerdyk: I'll go ahead and make that motion for two years.

Mayor Slesnick: It's been moved by Mr. Kerdyk, have a second.

Commissioner Withers: I'll second it.

Mayor Slesnick: Second by Mr. Withers; is there any further discussion?

Commissioner Withers: Can I, can I...I don't know if the vendor is amenable to that two year, how do we...

Mayor Slesnick: Two years of work with the City.

Commissioner Withers: No, but no, how does that work if the vendor says that's not acceptable, do we rebid the whole process?- is that...

City Attorney Hernandez: Well if the present vendor is not amenable, we go to the next highest rank and the Manager would be able to negotiate with them.

Commissioner Withers: OK, that was my question; we go to the next highest vendor and give them the two options, or do we rebid the whole process?- that was what I wanted to...see that's my concern.

Mayor Slesnick: I would like to add as part of the motion and if we get a super majority vote we can do this; if the current vendor is unwilling to accept the two year contract then that we rebid it.

Commissioner Withers: To the whole group or to the three or...

Mayor Slesnick: I think you got to rebid it.

City Manager Brown: Wide open.

City Attorney Hernandez: You have to rebid it.

Mayor Slesnick: I mean, everybody in this business knows each other and as Mr. DeGrandy said we already know who the qualified bidders are, I don't think you are going to get a lot of people back that we didn't find qualified.

Vice Mayor Kerdyk: I accept that.

Mayor Slesnick: It's been accepted by the maker of the motion, and been accepted by the seconder that if Downtown...

Commissioner Cabrera: Contracts or agreements?

Mayor Slesnick: ...no, I don't know...I think that's in negotiations with David, if they don't accept it...which goes back to your method. OK, we have a motion and a second, any other comments?

**Mr. Clerk**

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: Yes**

**Commissioner Anderson: Yes**

**Commissioner Cabrera: Yes**

**Mayor Slesnick: Yes**

**(Vote: 5-1)**

Mayor Slesnick: I hope that we can come to a contract with you, and I hope that the other bidders and all of the tow companies and their attorneys will work with the City. David, what I'd really like to do, this is the second time now that this exact Commission has had these exact companies before us in the same...I would really like your administration to sit with the tow truck companies to talk about how do we get the bid process to where there is no complaints about missing something, about overlooking something, how to do put a document out which they all agree to first?- doesn't mean they can't object under the law, but something that they can all agree to and say that they feel comfortable with, and then its up to them to bid.

City Manager Brown: I'll be glad to.

Mayor Slesnick: Thank you.

[End: 12:52:19 p.m.]