

**City of Coral Gables City Commission Meeting  
Agenda Item C-6  
October 30, 2012  
City Commission Chambers  
405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Jim Cason**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Maria Anderson**

**Commissioner Rafael “Ralph” Cabrera, Jr.**

**Commissioner Frank Quesada**

**City Staff**

**City Manager, Patrick Salerno**

**City Attorney, Craig E. Leen**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Chief Procurement Officer, Michael Pounds**

**Public Speaker(s)**

**Sylvester Lukis, Representing Downtown Towing Company**

**John Shawde, Representing Sunshine Towing**

**Tim Dourazel, Owner of Downtown Towing**

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C-6 [Start: 9:17:23 a.m.]

Resolution extending the towing services contract with Downtown Towing Company, pursuant to Section 2-829 of the Procurement Code entitled “Approval of Change Orders and Contract Modifications” on a month to month basis from November 1, 2012 for a period not to exceed six (6) months to provide time for a new Request for Proposal (RFP) to be issued and to award and execute a towing services contract.

Mayor Cason: Alright, let’s start with Item C-6.

Commissioner Quesada: C-6, thank you Mr. Mayor. This is an item that’s been floating around for quite some time, for more than a year, this towing contract. I had some conversations with the

City Attorney yesterday, and I thought for clarity I had asked him to speak on this item today, so I just think that it's been going on for such a long time I think we just needed that clarity.

Mayor Cason: Mr. Attorney.

City Attorney Leen: Thank you Commissioner. As was mentioned by Commissioner Quesada, this item has been going on for more than a year, and I was asked to look at the matter along with Michael Pounds, our Chief Procurement Officer. Just to give a little background on the procedure that occurs here, generally if there is a protest, which there was in this case, the protest can be resolved by the City Manager who can reject all bids, but in doing so the Manager must consult with the City Attorney and is supposed to take the recommendation of the Chief Procurement Officer and consider it. Of course if the Manager had not resolved the protest like that, the matter would eventually come to the Commission in one form or another, either through awarding the contract or through resolving the bid protest. I have been asked does the City Manager have the authority to reject all bids?- and under our Code, and I did do research last night, under the RFP proposals the Manager does have the authority to reject all bids, and then if the Manager doesn't, then it comes to the Commission. The Commission also has the authority to reject all bids. So it seems that our Code does have that built within it the idea that it's better to be careful and make sure that the award that's given is the best possible one for the City by allowing multiple officers to reject all bids at different stages, which is what's occurred here. Now in terms of the specific proposal here, I agreed with the City Manager's decision to reject all bids, and the reason why it's nothing specific to do with Downtown Towing, who I see has a representative here, or Sunshine Towing; the issue is the process, and we want to make sure the process was as fair as possible for all parties. There seems to be some confusion regarding the RFP documents and what they have acquired. On the part of Sunshine Towing there was the issue of whether they had an appropriate facility and they were able to demonstrate that through the showing of a lease. Initially, they were found to be responsive, they went through a process for quite a while and were in fact were the Evaluation Committee's number one firm to do this project. It came to light later that they may not have a lease, or they might not have at the time of the initial proposal had a lease that would demonstrate that they could have a facility for towing during the entire length of the contract. They dispute Downtown Towing, pardon me, Sunshine Towing disputes that...

Mayor Cason: Still disputes.

City Attorney Leen: Still disputes. I don't think they dispute whether they have a lease or not, they dispute whether they have a facility sufficient to maintain the vehicles, but our bid documents, at least in my view, required more. Likewise, Downtown Towing there was an issue about whether they had a secure facility. Now if you look at the recommendation of the Chief

Procurement Officer, he found that Downtown Towing was in violation, but that it was not material; nevertheless there seemed to be some confusion as to what we meant by a secure environment. Likewise, the process took a year and there were discussions with both sides by the Chief Procurement Office, which is legal under our Code, but it was a protracted process and we learned a lot through it. So ultimately my advice and the decision of the City Manager was that it would be in the best interest of the City and the City Commission to reject all bids, to review the RFP documents, and I will take a personal look at them as well, to make sure that they are as specific as possible so that this doesn't happen again, and then we could have a shorter process and hopefully get the best possible deal for the City.

Commissioner Quesada: Mr. City Manager, your decision to reject the bids here and to send it out again, was it based on that same rationale that the City Attorney just mentioned?- or is there anything else that you considered?

City Manager Salerno: I considered the totality of everything that has transpired, including the recommendation of the Chief Procurement Officer and advice and counsel of the City Attorney.

Commissioner Cabrera: Commissioner Quesada, may I add something to your item?- if I may for just one second, because I took the opportunity to go back to the last time we discussed this item here on the Commission dais and that took place July 24, 2012, and at that time staff had brought this item, a resolution for our approval. If you all recall, our City Attorney asked to be heard and he expressed his concerns with a potential protest; however, at that time there was no protest, no one had filed a written protest. I know you don't have a copy of these minutes, but he says at some point in the discussion after Mrs. Anderson had a comment to make, he said, "I would request just to protect the City that the Commission extend the towing contract for an additional, I believe staff wants 90 days so that pending review." Interesting enough he goes on to say in his discussion that there is no written protest at that time, and then I chose to ask, let me just read what I actually said on that day, "Can I just say Mr. Leen when you come back with this I'd really like see staff's full report on this item, just so that everybody is clear on how we came about to the decision that was before us today. I don't want the "cliff notes" version; I want the full version so I can get a level of comfort." I don't know about the rest of you, but that never happened, I never got any additional information. Mr. Leen said, "Certainly Commissioner, that would be the Manager and his staff regarding the full item, he's here though, so I'm sure he knows the full item." Then the City Manager said, "Mr. Mayor, just to clarify on the 90 days that the City Attorney was referring to, it should be on a monthly basis up to 90 days, because it may be shorter and therefore we wouldn't need the whole 90." And I then said, "OK." But I never got the full report, and none of us to the best of my knowledge have received the full report on this item. So I wanted you all to know that this is public record, this was discussed on July 24<sup>th</sup> and here we are October 30<sup>th</sup> and we are about to, I'm assuming, throw out a bid because there

may be some concerns with the protest, and personally I see that our current vendor has played by the rules, and I see no reason why we should be doing this. I think it's unfair, I think it sets precedence, I think it's very negative, and those are my two cents.

City Manager Salerno: Mr. Mayor.

Mayor Cason: Mr. Manager.

City Manager Salerno: Mr. Mayor thank you. Mr. Mayor and Commissioners the comment that Commissioner Cabrera just read I listened to those comments, I heard them at the time, I went back and listened to them, in reviewing the entire matter and that was one of the words, one of the parts of what he was saying was, when you come back to present this item, this matter again, the item that was before you was a recommendation to award to Downtown Towing at the time. This matter changed from being a recommendation to bring forth a contract with Downtown Towing to a motion to extend and rebid. So it was clear to me from the statements that the Commissioner made that if we were going to recommend Downtown Towing, he wanted to see the whole record of everything that was in support of the recommendation at the time was Downtown Towing. This item before you today is not a recommendation to proceed with Downtown Towing and that's why you don't have any additional information regarding a recommendation for Downtown Towing.

Commissioner Cabrera: Sir, your rebuttal has absolutely nothing to do with my recollection of the minutes, absolutely nothing to do with it, but that's OK, I'm used to you bringing up issues that have nothing to do with the point at hand. It's quite alright sir, it's going to be a long morning, I can feel it. It's a full moon.

City Manager Salerno: I understand. It happens to deal with what you said; it may not have to do with recollection.

Mr. Sylvester Lukis: May I speak?

Mayor Cason: Yes, go ahead.

Mr. Sylvester Lukis: My name is Sylvester Lukis, 836 Madrid Street, Coral Gables. I hope we don't get bogged down in the weeds. I have the utmost respect for the Manager, the Procurement Director, your City Attorney, you Mr. Mayor and your colleagues, but this would be in my view, based on the record, a travesty of the procurement process. I believe in my heart of hearts based on the facts that if we bring it back to May 2011, there was a recommendation to award a contract to a group called Sunshine Towing. My client, Downtown Towing, saw some issues in

connection with that bid. As an aside, you should know that Downtown Towing has provided exemplary towing services to the City of Coral Gables for almost ten years, has absolutely no problems with your Police Department. I think that would be confirmed. When we saw that there were some issues, the item was deferred and we were asked to meet with the City Attorney and the Procurement Director, which we did, we pointed out some issues. They decided, the City Attorney and the Procurement Director, they were going to investigate what we pointed out; it had to do with whether or not Sunshine had an adequate facility; and with all due respect to the City Attorney, the RFP was pretty clear you had to have a specific facility, they didn't have it. We went through that process where there was an investigation; during the investigation Procurement had asked Downtown Towing and others to basically put some meat on the bones of the issues, and we did. They determined, Procurement determined we were right, there were some issues, and it came back to you in the form of a recommendation that Downtown Towing was the most responsive responsible bidder and thus should be awarded the contract. There were some issues raised by the City Attorney, I respect the issues that he raised, he said of course there may be a protest, and if in fact there is a protest if I represented the other side I'd like to have an opportunity to raise my protest. So I totally agreed with him that you should defer once again. Now you have to understand, it took a long time because Mr. Pounds had been ill during a great deal of this process, and obviously we are sensitive to him and we wanted to just work with whoever is responsible and I think that the Manage gave the action item to Mr. Pounds, and I think he was right, Mr. Pounds knows his business. However, after the protest was filed by Sunshine Towing another investigation took place, and in that protest instead of basically talking about how responsive and responsible Sunshine was, it raised a number of false accusations, I should say accusations that proved to be false with respect to Downtown, whether in fact Downtown had given background checks, whether it had a facility itself, whether it had this or that, the Procurement Director determined that, yes indeed, Downtown was right, it had all of the appropriate facilities. The Police Department who is in charge of towing confirmed that Downtown Towing met all of the requirements, and as far as I knew the Procurement Department it was determined that we didn't have any material defects, that Sunshine did have material defects, thus we were the most responsible and responsive. Typically, in my 30 years of doing this if you are the most responsive, responsible bidder, you don't throw the process out, you basically award it to that next bidder. This would have the perverted effect by allowing Sunshine's protest to result in a brand new bid when in fact we played by all the rules, you would reward a protester in essence by allowing the protester to come back with a new bid, which would of course cure all of his material defects. This isn't right, it's not fair, and I don't want to get into a bunch of legalese, but it's essentially arbitrary and capricious and I don't think based on everything that I've seen and heard and read and participated in there is any reason why at this time after we played by all the rules that we were found to be responsive and responsible that Downtown Towing should not be provided that contract, there is absolutely no reason why.

Mayor Cason: Thank you very much.

Commissioner Quesada: There is something that the City Attorney stated that I didn't hear you respond to, and that is still holding me up is that he said that the RFP wasn't written as tightly as it should have been written, and that's one of the reasons he gave his recommendation.

Mr. Lukis: You know, I respect the City Attorney's opinion on that Commissioner, I have looked at the RFP, I have dealt with RFP's like I said for 30 years, I mean it was pretty clear. This is a towing contract, this is not building a chemical plant; you know you are supposed to have a facility, you are supposed to have certain trucks, you are supposed to give background checks, you are supposed to have secure storage, you are supposed to have experience, you are not supposed to have any problems with any other government entity, these are things that are pretty clear, and we met them; Sunshine had a problem with its storage facility as it was determined by your Procurement Director.

Commissioner Quesada: My concern is that the RFP wasn't written properly and I rely on staff to give me this, I don't have experience with RFP's, but I rely on the individuals who do have that experience, and if they are telling me that the RFP wasn't written properly or wasn't written as tightly as it should have been written then there could be procedural issues. That's my understanding of this and maybe someone is being left here.

Mr. Lukis: There was a process, there may be procedural issues, but the issues were followed.

Commissioner Quesada: But if the RFP is written incorrectly, then there is not proper notice to people giving bids. I'm not playing devil's advocate here; I'm trying to go on what the recommendation of staff is.

Mr. Lukis: I understand, I understand.

Commissioner Anderson: If I might say something, I believe – way back when, when we originally did this towing when I was on the Commission, we had to throw that RFP out, but that was a really mucked up process, this doesn't – I mean I respect the City Attorney, but it doesn't rise to the level of that. We did throw it out as a Commission; I don't see what it is.

Mayor Cason: Alright. There is another representative here, John Shawde.

Mr. John Shawde: Good morning Mayor, City Attorney, City Manager and Commissioners, my name is Jack Shawde, I am with the law firm of Rascal Klock, I represent Sunshine Towing who

was your original top ranked recommended bidder. Like Mr. Lukis, I have done this type of work for 27-28 years...

Mr. Lukis: You are a lot younger than I am Jack (laughter).

Mr. Shawde: Well, I appreciate that fact.

Commissioner Cabrera: But you look good Syl, you look good (laughter).

Mr. Shawde: We have worked together and we have worked against each other in many cases. If you would listen to my colleague Mr. Lukis, you would think that this was a piece of cake to resolve, and that there was really nothing here to talk about. Well, it's a little bit of revisionist history, I'm sorry to inform you. If you read Mr. Pounds initial response to our protest because we were the original top ranked bidder for a year; a year went by before the City came back to us and said, Oh by the way, even though we've been telling you for the last year you are the top ranked bidder, now a year has passed and we are now telling you that you are being, your bid is being rejected as non responsive. Well what happened during that year is critical; what happened during that year is that Downtown Towing realizing that they weren't the top recommended bidder filed a series of defacto illegal protest that were not warranted under the City's Procurement Code, and I specifically refer to Mr. Pounds August 24, 2012 memorandum to the City Manager in which Mr. Pounds says exactly that on May 19, 2011, prior to a recommendation being made on a towing contract, an untimely Notice of Protest, was filed by Downtown Towing through their attorney. Now this untimely Notice of Protest which was this big was not authorized by the Procurement Code and started a process of delay that ended up a year later. Yes, during that time period Mr. Pounds was ill for approximately two months, but the delay in this is attributable to Downtown Towing, because they filed this untimely protest notwithstanding the fact that it was not authorized under the Code the City decided to look into these issues and as Mr. Pounds himself points out in his August 24<sup>th</sup> memorandum the Evaluation Committee was reconvened to take a look at all these issues they had raised in their unlawful protest and on page 2 of Mr. Pounds written recommendation, Mr. Pounds says, at this second Evaluation Committee meeting, the Evaluation Committee reviewed the protest filed by Downtown Towing and nevertheless continued to recommend the award to Sunshine Towing. Well undaunted Downtown Towing didn't like that, now we have a second Evaluation Committee awarding to Sunshine Towing, undaunted Downtown Towing filed another untimely and unlawful protest in October of 2011, again delaying the process for another 6-7 months. So this is really important to understand how disingenuous it is for Downtown Towing to stand before this Commission and talk about a travesty of justice, because the travesty has been the way that Downtown Towing has delayed this process from coming to fruition. Remember we were the recommended bidder for an entire year until Downtown Towing filed these improper

and illegal protests which delayed the process. I might also point out that Downtown Towing never submitted with their original bid submittal a five year written lease as required by the RFP, they have convicted felons as drivers that they did not disclose in their RFP, they are sharing a facility with another company and – excuse me, I didn't interrupt you Mr. Lukis, and I appreciate....

Commissioner Anderson: Excuse me a second, I might ask the City Attorney, is that issue of convicted felon – I hate to throw that out there unless it was true.

City Attorney Leen: That was not the basis for the decision. We can look into that and....

Commissioner Anderson: But do it on the merits....

Mr. Shawde: Well it is factually correct....

Mr. Lukis: No, it is not, no it's not factually correct.

Mayor Cason: If you could conclude in one minute please so we can...

Mr. Shawde: Yes, yes. The most important point is, and I think this is getting to what Commissioner Quesada was referring to and that is the ultimate issue of, two things: number one, whether there were cone of silence violations based on a cone of silence code?- that you have that is inherently internally contradictory, and let me read to you what Mr. Pounds himself said in connection with the cone of silence violation, and as you all know any award that you might make, if there is a cone of silence violation under your Code, a cone of silence violation would vitiate any award that you might make. Now Mr. Pounds himself says on page 13 of his recommendation, he notes the conflict in your own cone of silence Procurement Code and Mr. Pounds himself says any conflict in the ordinance of the cone of silence section was unintended and should be referred to the City Attorney's office for clarification, and if necessary amended as a housekeeping item by the City's Commission at its earliest opportunity. Now Mr. Leen and I have an intellectual disagreement on whether the cone of silence as written is currently properly worded or not, we contend it is inherently contradictory, he does not, but even Mr. Pounds thinks there is a problem with the cone of silence.

Mayor Cason: OK. Thank you very much.

Mr. Lukis: Mr. Mayor just 30 seconds. We learned in law school when substance isn't on your side you stand on the process and Jack is an excellent lawyer and he is standing on the process, but the proof is in the pudding. Thank God, Downtown sent the letter talking about the errors in

their proposal, the material defects, because they ultimately were proved to be correct and you would have had a towing service provider in this town with materially defected storage facilities that were not secure; you would have had a towing facility that had a problem with Florida Department of Transportation where an administrative hearing officer on the record stated that this firm took out FDOT officials to influence a bid by bringing them to strippers, I mean come on, let's be clear about this.

Mayor Cason: OK. I think that's enough input. Thank you both. I would like to – go ahead Bill.

Vice Mayor Kerdyk: I'd like to ask Mr. Pounds, if I could ask him a couple of questions.

Commissioner Cabrera: First of all, how are you feeling?

Mr. Pounds: Feeling good, thank you.

Commissioner Cabrera: Good, good.

Vice Mayor Kerdyk: Mr. Pounds, I'd like you to just take me through your thought process of how you arrived at making a recommendation to rebid the contract?

Mr. Pounds: Well I feel that there was an effort on the part of both parties, Downtown Towing and Sunshine Towing, to alter their bids to respond to issues that we had in the RFP, and the other two firms that submitted proposals were not given that same opportunity. In one case, I believe Downtown was able to cure their issue with the outside storage. In the case of Sunshine Towing they were not able to cure their issue. The other factor in my thinking was that there are – because of the amount of material that was submitted to us did reveal some problems with our RFP. I believe that both sides confused what was required in the RFP was what was required in the contract. So they were constantly raising issues that the background checks were stale, that they were required to submit background checks, this is just one example. They are not required to submit background checks in the RFP response, they are required to submit it as part of the contract, and there are other issues like that. I don't believe the RFP is a disaster, but there are things that need to be corrected, to be made better so that when we go out, we don't have these same problems.

Vice Mayor Kerdyk: I mean what you are saying and what we want, all of us want up here is to make sure the process is pure as possible, and to make sure we get the best bidder that's possible for the City of Coral Gables. Now what I don't remember and you are helping enlighten me is that initially I guess were there four bidders?

Mr. Pounds: There were initially four bidders.

Vice Mayor Kerdyk: OK. And then we knew that Sunshine was number one initially and Downtown was number two.

Mr. Pounds: That's correct.

Vice Mayor Kerdyk: And then there were three and four ranked.

Mr. Pounds: Yes.

Vice Mayor Kerdyk: And you said that both of these, one and two, had issues and they tried to cure them where as three and four were not allowed to cure their issues. Please sit down...

Mayor Cason: Have a seat.

Vice Mayor Kerdyk:...please sit down, we'll call you up here, thank you, then you can answer as much as you like. So what you are saying is based on the fact that the first two had the opportunity, other three and four did not have the opportunity that we should go ahead and rebid it to try to get the process more pure, you have a better RFP from that point forward we would be able to award the ultimate bidder.

Mr. Pounds: Yes.

Vice Mayor Kerdyk: You know, I've got to tell you Mr. Pounds, I've sat up here for a while as has Commissioner Anderson and Commissioner Cabrera, every time we have these towing contracts we have a problem, it's either that or the waste contracts, we are going to have some issues whatsoever. So, I don't know if it will be pure at that point, but I understand and I understand your point, I understand the advisement of the City Attorney who has taken a position in saying that we throw it out and also the City Manager too that is part of the triumvirate here that is suggesting that we throw this out and give another RFP and rebid the process.

Commissioner Anderson: Interesting because the waste management was the existing contractor...

Commissioner Cabrera: 22 years.

Commissioner Anderson: ...22 years, so they still managed to get the contract. So no process is pure, I have to tell you, I've sat here long enough as well too to know that, and it just boggles my mind, because it's nowhere near rises to any occasion with all due respect to our officers here.

Commissioner Anderson: I'd like to just say that I concur with Mrs. Anderson, in fact, I took a step back to recall how long Downtown has been with us, they've been with us 10 years, and I'm now addressing my colleagues, in the time that you've been on this Commission how many complaints have we received about the towing services?

Vice Mayor Kerdyk: Actually, I think they do a very good job, as I thought Southland did too before that.

Commissioner Cabrera: And you know what....

Vice Mayor Kerdyk: Southland had done a great job.

Commissioner Cabrera: ...the only complaint that I received was my own complaint when a family car was towed some years ago and rightly so, they were parked in the wrong space, but the other comment that I'd like to make is to you sir, and there is no opportunity for rebuttal. Number one, I didn't appreciate the allegations that were made up here about criminal activity by some of the drivers or records, so I didn't think that was necessary, but number two, you brought this up, so now I'm going to give it right back to you – cone of silence your firm tried to reach out to me and talk about this contract. I did not take their call because I do believe in the cone of silence and I tried to tell that to one of your partners. So if there is any thought or concern about cone of silence it came from you folks; to the best of my knowledge sir, I've had no conversations with anyone else other than to say good morning to Tim this morning because I know him, I know him and his wife. No, I'm not giving you a chance to rebut, if the Mayor wishes to do so it's his call, but his wife is ill, she is a friend and I wanted to make sure she was well. So that was the only reason we had that discussion.

Mayor Cason: I think no more rebuttal, but I would like to give you a chance to say who you are and....

Mr. Tim Dourazel: Sir, my name is Tim Dourazel, I've been towing, my family has been towing with the City for 9 years doing a good job, no complaints or nothing. I just want to make one thing about the allegations about we are not responsive. We've been in the same location for 9 years, never had one theft, never had nothing stolen, in the row of buildings there are warehouses there, and there is one thing is a pest control that we already discussed a long time ago that has an emergency exit in the rear of the pest control for fires only. When Mr. Pounds went over

there, when they pointed out that there was a violation to the yard, the only thing the man showed and went in there and said we never used it move the stuff out because it's a fire exit and there are trees growing out of there, it's never been open, he couldn't even open the door. Now, I told Mr. Pounds, I said listen, we never had a problem with them, the owner said, he comes in there and he never used it, but I said to Mr. Pounds we have a camera, we have 17 cameras in the yard, we'll put one on there, and I even put a bell because we are there 24 hours a day, he said that wasn't necessary, I said we've been here for 9 years and never had a problem. That's the only incident that he found, so he is talking about the whole contract we did something different, we've been doing the same thing for the City of Coral Gables time after time, we have not altered our contract sir. What we bid it, everything is in there; we have a lease for five years, everything was inside that package.

Mayor Cason: I'd like to ask the attorney again, anything else you'd like to....

City Attorney Leen: Yes, two things. In my view a determination of response in this, which this is really about, because Sunshine Towing was found to be non responsive, their bid protest was that Downtown Towing was non responsive. Those types of things should be determinable at the time the bid proposals are open. It should be easy to determine that, it should not be something subject to interpretation, subject to curing over a one year period, and both parties attempted to cure their alleged non responsiveness over a one year period, and that was the issue. For example, the RFP says that the office and storage facilities shall be separate from any other business or enterprise. Now in this particular case there is a door between Downtown Towing, pardon me, between Target Pest Control and Downtown Towing's yard. Now it was found to be non material because you were able to take curative steps, but it seems to me that at least reading the plain wording of this there is a technical violation, that is just an example. We should make this clear exactly what we mean, because the idea of this is that if you make it really clear what you mean and allow five or six people to bid the other companies may be able to lower their bid now, because they may be able to get a better storage facility because now they can have a door to another entity. That's the whole purpose of making sure that the responsiveness determination is easy to determine, so that it is not subject to interpretation. One other issue I wanted to respond to was the cone of silence. I have reviewed this issue and I can give any of you my opinion on it, but I made a determination there was not a cone of silence violation here. Under our Code, the Chief Procurement Officer is allowed to speak, in my view, to bidders or to proposers. The entire Request for Proposal process anticipates that the Chief Procurement Officer will engage in additional negotiations. The issue here was that they were protracted, they went on for a year, and at some point you need to give everyone an equal opportunity, that's what our Code says and that's one of the reasons why I believe Mr. Pounds is recommending this; but I will say, and I just want to put this on the record, it does say in our Code that it's exempt from the cone of silence communications with the City Attorney, City Manager, our Chief Procurement Officer. I

understand Mr. Shawde's issues with some other language in the exemptions, but my view is that each exemption stands alone and that exemption allows communications with the Chief Procurement Officer. There is obviously room for disagreement and debate, but ultimately under the Code my interpretation is the one that is made on behalf of the City and is the one that it is the way it's read, it's a fair interpretation of this and it's the most workable one in light of the fact we need our Chief Procurement Officer speaking to bidders.

Commissioner Anderson: You know, it's interesting because I won't be here, if you decide to bring it back, I won't be here, because you are going to have to deal with it because these contracts have inevitably some process problems and what I've learned is that you try to make sure it's the least amount and that it's as clean as possible as it can be. I don't know, I saw the last one and there were shrapnel the last time we did RFP early in the 2000's, there were shrapnel everywhere, there is not shrapnel here, but whatever the Commission decides – I believe there is muck being thrown around just to dirty the process, that's just my thought.

Mayor Cason: Frank.

Commissioner Quesada: Thank you for that Commissioner Anderson, you've said that in the past related to these types of contracts, so I appreciate that. Mr. City Attorney you said something that doesn't really register with me, the example you gave with the door. I would imagine again, I don't have experience with the RFP process, but I would imagine that whether it's for a catering contract, tow truck, or whatnot, it's never going to line up perfectly, am I correct in that assumption?- or not, because the example you just gave to me just seems it's something that needs to be worked out, it was a unique circumstance and they worked it out. Is that common throughout the RFP process?- is that grounds to start again from anew?- because I would imagine this is going to take us, the City, it's going to cost us time and money to go out again.

City Attorney Leen: Yes Commissioner. I used that as one example to show why we allowed them to cure an issue in the RFP. Yes, actually that could be an issue because security is a very important component of a towing contract and the RFP states, again the office and storage facilities shall be separate from any other business or enterprise; and there are reasons why you do not want to allow unauthorized access to a towing yard, and sir I'm not saying that you do allow that, but there is a door there. So for example, let's say you have the third or fourth firm and they have a towing yard at a certain rate, but does have access by other businesses, and perhaps they can put an alarm system up and keep people out, but because of the way it's written they think, Oh, we can't have any access, so we are going to get another towing yard that meets the specification, it's going to be more expensive, and so thus – because it's hard to find a place where there is absolutely no access from any other business which there was here. So it could affect the price that you get. I'm not saying that's the best example, there are other examples that

I'm sure Mr. Pounds can give in this particular RFP, but the idea is that if we are going to allow a company to have a towing yard and allow access as long as there are alarm systems and protection, we should put that an example of how we can be more specific in the RFP itself regarding security; and so ultimately the issue for me was that we allowed over a period of a year both sides, including Sunshine to attempt to cure their initial RFP; Sunshine took the position they did have as towing facility, but that they didn't have a specific lease, and initially – for about a year that was considered to be fine, and then at some point it was considered not to be fine, and they attempted to cure that by finding another facility and then another one, and eventually it was my determination that whatever facility they are going to use has to be contemplated by the original response to the RFP or else its non responsive, but it doesn't mean that Sunshine could not perform and they were the top bidder, so in light of all of that and the fact that it took so long it seemed to me and I understand there is room for debate, but in giving my advice that the best thing to do in terms of the Commission and the public, in light of the fact that the RFP could be improved and maybe we could get better bids would be to reject all bids, but you know that was just my advice and the Manager agreed and I stand by it.

Mayor Cason: OK, do we have any more discussion up here? I think we have not any more public input on this; any other discussion?- if not, do we have a – so the motion before us – the proposition before us is that Downtown continue for six more months, reject all bids...up to six months and tighten up the Request for Proposal, and go back, is that correct? Do I have a motion?

Commissioner Quesada: So moved.

Vice Mayor Kerdyk: I'll second it.

Mayor Cason: The motion is made by Commissioner Quesada, seconded by the Vice Mayor.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes

Commissioner Anderson: No

Commissioner Cabrera: No

Mayor Cason: Yes

(Vote: 3-2)

[End: 9:55:49 a.m.]