CITY COUNCIL MEETING MINUTES
MONDAY, JANUARY 3, 2011

The City Council of the City of Bellaire, Texas, met in Regular Session on Monday, January 3, 2011, in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401, for the following purpose(s):

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Cindy Siegel.

Mayor Siegel called the City Council of the City of Bellaire, Texas, to order at 7:00 p.m. on Monday, January 3, 2011.

Also present were Mayor Pro Tem Phil Nauert, Councilmen Will Hickman, James P. Avioli, Sr., Corbett Daniel Parker, and Andrew Friedberg, Councilwoman Mandy Nathan, City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, and City Clerk Tracy L. Dutton.

B. INSPIRATIONAL READING AND/OR INVOCATION – Councilwoman Mandy Nathan.

Councilwoman Nathan provided the inspirational reading for the evening.

C. PLEDGES TO THE FLAGS – Councilwoman Mandy Nathan.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Councilwoman Nathan led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

D. PERSONAL/AUDIENCE COMMENTS.

Al Kashani, Principal of Horizon Group, 409 Mulberry Lane, Bellaire, Texas:

Mr. Kashani addressed City Council regarding the Bellaire Library Competitive Sealed Proposal. He indicated that he had a great deal of respect for his fellow contractors and it was not his intention to discredit any of them. He merely wished to point out the flaws in the evaluation and scoring process used for a recommendation of a contract for this project.
Mr. Kashani requested that the advertisement of the scoring process be reviewed before awarding any contracts. The advertised criteria stated that up to 70 points would be awarded based on the bid that the contractor submitted as a part of a competitive sealed proposal. The lowest price should have at least received 70 points. Panorama, the lowest bidder, received 39 points from one reviewer, 70 points from another reviewer, and 51 points from the last reviewer. This showed that the process advertised had not been followed and the scoring of the remainder might be flawed as well.

In addition, the alternate bids were not included in the scoring process. The advertised criteria did not exclude the alternate bids from the scoring process, but City Staff decided to exclude certain alternate bids which changed the ranking of the prices simply because of this exclusion. Thus, the selection committee did not follow the advertised process, which might cause the final score to be manipulated to cause an unfair result.

The award of this contract was a highly visible process that needed to be performed with the utmost transparency. All procedures used in the selection needed to be performed in a manner that would clearly demonstrate that the recommendation had been carefully reviewed and not arbitrarily selected.

In this case, the process of the scoring was not transparent. In fact, the scoring had clearly varied from the advertised scoring. Even if there was a 1% factor of manipulation, this process should be restarted to ensure that an arbitrary award was not being approved.

**Ben Westcott, 1923 South Boulevard, Houston, Texas:**

**Mr. Westcott** addressed City Council and advised that he was the attorney for Horizon Group. He had reviewed the situation Mr. Kashani just presented and he believed the law supported rebidding the job. He felt that the *Texas Local Government Code, Chapter 252*, was very clearly that the request for proposals had to be followed. It had to be clear. What had happened here was that the City had received bids in relation to a request for proposals (RFP) that should have been scored in total. Only parts of the bid had been scored in this instance, and certain other parts of the bid had been thrown out.

Mr. Westcott gave an extreme example to show how the process could be manipulated wherein the entire bid could have been set up with alternates and then, depending upon which contractor was wanted, the City could choose the alternate in which the low bid was provided for and the remainder could be thrown out and rebid until the desired contractor received the award for all of the add alternates.

In closing, Mr. Westcott urged City Council to address this situation by rebidding the proposals for the Bellaire City Library Renovation Project.
Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council and presented a book entitled “Houston’s Silent Garden – Glenwood Cemetery 1801-2009.” She provided a brief background of the book by noting that in London in 1830, a Scottish born horticultural theorist proposed that cemeteries should be planted with trees and shrubs so that they would function as botanic gardens. The need for people living in crowded, industrialized cities to connect with nature and have access to fresh air was one of the compelling arguments of those who proposed a public park in New York City at mid-century. In the 1970s there was a cry in Bellaire about open space.

Now that the City was on the eve of another open space in the form of the Teas property, now the Rubenstein Foundation property, Ms. McBee wanted to let City Council know that open space, gardens, beauty, and aesthetics had been going on for some time and were thought to be the way in which one combated plagues, malaria, and disease. Open space was an incredible and important ingredient to a community.

Bashar Aburosia, Panorama Construction, 822 Durham, Suite 100, Houston, Texas 77007:

Mr. Aburosia addressed City Council and advised that the Bellaire City Library Renovation Project bid proposal required each contractor to provide a very robust explanation beyond just the price—such as project approach, project schedule, and, of course, the company’s history.

The bids were required to be submitted the day before Thanksgiving. This was the reason that Mr. Aburosia felt that the prices ranged from $600,000 down to his price, $172,000, as the low bidder on the project. He was also the low bidder across all of the addendums.

After placing several calls in which he wished to be able to provide clarification of his well presented explanation of the approach and the project schedule, he received a call back from the City and the only explanation that was provided as to why Panorama was not considered higher up on the process was that he was a smaller company. Mr. Aburosia did not feel that this should be a disqualification. If the City had wanted a larger company with more experience and had provided a higher score for that, then he could understand the scoring. Instead, 70 points was to be provided for the lowest bid.

E. CONSENT AGENDA:

1. APPROVAL/CORRECTION OF MINUTES:

a. APPROVAL of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on
Monday, November 15, 2010 – Item submitted by City Clerk Tracy L. Dutton.

b. APPROVAL of the minutes of the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, held on Monday, November 29, 2010 – Item submitted by City Clerk Tracy L. Dutton.

c. APPROVAL of the minutes of the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, held on Monday, December 6, 2010 – Item submitted by City Clerk Tracy L. Dutton.

d. APPROVAL of the minutes of the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, held on Monday, December 13, 2010 – Item submitted by City Clerk Tracy L. Dutton.

2. ACCEPTANCE OF GRANT:

CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the City Manager of the City of Bellaire, Texas, to execute, as Grantee for and on behalf of the City of Bellaire, Texas, Bellaire City Library, a contract and other applicable forms with the Texas State Library and Archives Commission for the Loan Star Libraries Grant, Grant Number 442-11948, in the amount of $9,310.00 - Item submitted by Library Director Mary Cohrs.

Councilwoman Nathan moved to approve and adopt the Consent Agenda dated January 3, 2011, consisting of the following items:

- Minutes of the Regular Session of the City Council held on Monday, November 15, 2010;
- Minutes of the Special Session (Executive Session) of the City Council held on Monday, November 29, 2010;
- Minutes of the Special session (Executive Session) of the City Council held on Monday, December 6, 2010;
- Minutes of the Special Session (Executive Session) held on Monday, December 13, 2010; and
- Ordinance authorizing the City Manager to execute, as Grantee for and on behalf of the City of Bellaire, Texas,
Bellaire City Library, a contract and other applicable forms with the Texas State Library and Archives Commission for the Loan Star Libraries Grant, Grant Number 442-11948, in the amount of $9,310.00.

Councilman Parker seconded the motion. The motion carried unanimously on a 7-0 vote as follows:

FOR: Mayor Siegel, Mayor Pro Tem Nauert, Councilmen Hickman, Avioli, Parker, and Friedberg and Councilwoman Nathan

OPPOSED: None

ABSENT: None

{Ordinance was subsequently numbered: 11-001}

F. ADOPTION OF ORDINANCES:

1. CONSIDERATION of and possible action on a recommendation from the Bellaire Public Works Department to award engineering services to HDR Engineering, Inc., for the FY2011 Paving and Rehabilitation Project in the amount of $97,580.00 and on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, for and on behalf of the City of Bellaire, Texas, a Contract and Agreement for Engineering Services with HDR Engineering, Inc., for engineering services in an amount not to exceed $97,580.00 – Item submitted by Director of Public Works Joe Keene.

Councilman Avioli moved to approve a recommendation from the Bellaire Public Works Department to award engineering services to HDR Engineering, Inc., for the FY2011 Paving and Rehabilitation Project in the amount of $97,580.00 and to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, for and on behalf of the City of Bellaire, Texas, a Contract and Agreement for Engineering Services with HDR Engineering, Inc., for engineering services in an amount not to exceed $97,580.00. Councilman Parker seconded the motion. The motion carried unanimously on a 7-0 vote as follows:
FOR: Mayor Siegel, Mayor Pro Tem Nauert, Councilmen Hickman, Avioli, Parker, and Friedberg and Councilwoman Nathan

OPPOSED: None

ABSENT: None

{Ordinance was subsequently numbered: 11-002}

2. CONSIDERATION of and possible action on the approval of a recommendation from the Department of Facilities Management to award Competitive Sealed Proposal (CSP) No. 11-01 to Gilbane Building Company for the Bellaire City Library Renovation Project in a base amount of $215,000.00, as well as the approval of a recommendation from the Department of Facilities Management for three add alternates under CSP 11-01 totaling $42,000.00; adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor of the City of Bellaire, Texas, to execute, for and on behalf of the City of Bellaire, Texas, AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor, in an amount of $257,000.00 (base amount plus add alternates); and approval of a contingency not to exceed $38,550.00 (15%) upon the submission by Gilbane Building Company and approval by the City Manager of the City of Bellaire, Texas, of appropriate documentation substantiating the need for said contingency prior to the performance of work or purchase of supplies, parts, furniture, fixtures, materials, or equipment associated with said contingency – Item submitted by Director of Facilities Management Karl Miller.

Item Summary:

Director of Facilities Management Miller advised that in August of 2010, City Council approved moving forward with the Bellaire City Library Renovation Project. The focus of the renovation was for Code compliance, program needs, ADA (Americans with Disabilities Act) compliance, and minimal aesthetic improvements. After that initial approval, City Staff began moving forward with PGAL in finalizing the renovation plans and developing the design-build process for selecting a general contractor. The process selected was a competitive sealed proposal process that was outlined in the Texas Local Government Code, Chapter 271. This process was different from a competitive bid process in which the low bid would be selected.

The competitive sealed proposal process allowed the City to take a more comprehensive approach in evaluating the submittals. The
process allowed City Staff to ensure that the City was receiving the best value for its dollar. The Texas Local Government Code, Chapter 271, stated that the selection criteria and point value must be assigned and identified in the request for competitive sealed proposals.

The City used five (5) criteria in evaluating the competitive sealed proposals that were submitted for this project. The first was quality of the proposed project personnel and experience (five points), project approach (ten points), proposed construction schedule and phasing (ten points), testimonials and references (five points), and the bid quote (seventy points). Exhibit A of the posted “Request for Competitive Sealed Proposals,” outlined the criteria.

Each company that submitted a bid had a potential of scoring one hundred (100) points. The maximum points for bid selection was rated at seventy (70), which was to ensure that the City got the best dollar value for the project and sound fiscal stewardship.

The scoring was done on a rated scale (one to five), meaning that the highest score that a bidder could get was a five and the lowest score was a one. Each of the criteria had a weighted value. For example, the bid had a weighted value of fourteen points (weighted value). The low bidder did not receive seventy points because the project was identified in its scope to be performed in three phases. The bidder submitted the bid as a single-phase project, meaning that the whole building could potentially be under construction at one time. City Staff intentionally set up the bid in three phases so that the Bellaire City Library could remain open during the renovation process. The low bidder could technically have been thrown out of the process, but City Staff decided to score and evaluate it.

The evaluations or assessments were based on the base bid and not the add alternates. The following statement was included on the bid submittal form right above the signature line that each bidder was required to sign: It is understood that the owner reserves the right to reject any and all bids, to accept or reject any and all alternates, or to accept any combination of alternates considered advantageous and to weight any informalities or irregularities in any bid which, in its judgment, is in its own best interest.

Director Miller continued and advised that the City had six add alternates in its request for competitive sealed proposals as follows: 1) to look at the project from a single-phase approach; 2) to include the new circulation desk, 3) electrical improvements, 4) mold abatement, 5) exterior improvements (that were not included in the base bid, such as power washing, painting, replacement of wood, etc.), and 6) use of recycled plastic for the bench and deck versus treated lumber.
Fourteen (14) submittals were received and base bids ranged from $172,000 to $542,625. All three reviewers rated Gilbane Building Company as the bidder to recommend for this project. Gilbane Building Company’s base bid was $215,000. The add alternates that City Staff believed should be included in the project were the new circulation desk ($9,000), electrical improvements ($16,000), and mold abatement ($17,000).

City Staff did believe that the exterior work could be rebid at a much better value than what was proposed by Gilbane Building Company. If City Council agreed with the recommendation, City Staff wished to move forward and rebid the exterior work that was not included in the base bid.

The total cost of the add alternates was $42,000. Gilbane Building Company was prepared to start work in mid-January and believed that the work could be completed by the end of March.

Councilman Parker moved to approve a recommendation from the Department of Facilities Management to award Competitive Sealed Proposal (CSP) No. 11-01 to Gilbane Building Company for the Bellaire City Library Renovation Project in a base amount of $215,000.00, as well as to approve a recommendation from the Department of Facilities Management for three add alternates under CSP 11-01 totaling $42,000.00; to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor of the City of Bellaire, Texas, to execute, for and on behalf of the City of Bellaire, Texas, AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor, in an amount of $257,000.00 (base amount plus add alternates); and to approve a contingency not to exceed $38,550.00 (15%) upon the submission by Gilbane Building Company and approval by the City Manager of the City of Bellaire, Texas, of appropriate documentation substantiating the need for said contingency prior to the performance of work or purchase of supplies, parts, furniture, fixtures, materials, or equipment associated with said contingency. Mayor Pro Tem Nauert seconded the motion.

Councilman Friedberg moved to postpone consideration of an award of CSP 11-01 and adoption of an ordinance authorizing execution of AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor until the next Regular Session of the Bellaire City Council or January 17, 2011, in order to allow City Council an opportunity to review
the agenda item further, and specifically the effect of the add-alternates included in the proposal. Councilman Parker seconded the motion to postpone. The motion failed on a 3-4 vote as follows:

FOR: Councilmen Avioli, Parker, and Friedberg

OPPOSED: Mayor Siegel, Mayor Pro Tem Nauert, Councilman Hickman, and Councilwoman Nathan

ABSENT: None

After further discussion, Councilman Friedberg moved to amend the original motion by accepting the recommendation from the Department of Facilities Management to award Competitive Sealed Proposal (CSP) No. 11-01 to Gilbane Building Company for the Bellaire City Library Renovation Project in a base amount of $215,000.00, but without taking any action at the present time regarding the add-alternates included in the proposal, and adopting an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor of the City of Bellaire, Texas, to execute, for and on behalf of the City of Bellaire, Texas, AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor, in an amount of $215,000.00. Councilman Parker seconded the amendment.

The amendment failed on 1-6 vote as follows:

FOR: Councilman Friedberg

OPPOSED: Mayor Siegel, Mayor Pro Tem Nauert, Councilmen Hickman, Avioli, and Parker, and Councilwoman Nathan

ABSENT: None

Mayor Pro Tem Nauert moved to call the question. Councilman Hickman seconded the motion to call the question. The motion carried on a majority vote of 6-1 as follows:

FOR: Mayor Siegel, Mayor Pro Tem Nauert, Councilmen Hickman, Avioli, and Parker, and Councilwoman Nathan

OPPOSED: Councilman Friedberg

ABSENT: None
The original motion carried on a 4-2-1 vote as follows:

**FOR:** Mayor Siegel, Mayor Pro Tem Nauert, Councilman Hickman, and Councilwoman Nathan

**OPPOSED:** Councilmen Avioli and Friedberg

**ABSENT:** None

**ABSTAIN:** Councilman Parker*

*Councilman Parker abstained from voting on this item.

G. COMMUNITY INTEREST ITEMS FROM THE MAYOR AND CITY COUNCIL:

Community interest items from the Mayor and City Council included wishes that everyone have a Happy New Year; reminder that the first meeting of the Sunset Review Committee would occur on Monday, January 10, 2011; and a reminder that interviews for openings on the Building and Standards Commission and Recycling Committee, as well as a Regular Session, would be held on Monday, January 17, 2011.

H. ADJOURNMENT.

Councilman Parker moved to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 8:57 p.m. on Monday, January 3, 2011. Councilman Hickman seconded the motion. The motion carried unanimously on a 7-0 vote as follows:

**FOR:** Mayor Siegel, Mayor Pro Tem Nauert, Councilmen Hickman, Avioli, Parker, and Friedberg and Councilwoman Nathan

**OPPOSED:** None

**ABSENT:** None

Respectfully submitted,

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas
Approved:

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Cynthia Siegel, Mayor
City of Bellaire, Texas