

**I. CALL TO ORDER**

The special meeting of the Matanuska-Susitna Borough Assembly was held on April 27, 2010, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 11:02 a.m. by Deputy Mayor Lynne Woods.

**II. ROLL CALL**

Assembly members present and establishing a quorum were:

Ms. Lynne Woods, Assembly District No. 1 (*Deputy Mayor*)  
Mr. Pete Houston, Assembly District No. 2  
Mr. Ronald Arvin, Assembly District No. 3  
Mr. Mark Ewing, Assembly District No. 4  
Ms. Cindy L. Bettine, Assembly District No. 5 (*arrived at 11:05 a.m.*)  
Mr. Jim Colver, Assembly District No. 6  
Mr. Vern Halter, Assembly District No. 7

Staff in attendance were:

Ms. Lonnie R. McKechnie, Borough Clerk  
Mr. John Duffy, Borough Manager  
Mr. Nicholas Spiropoulos, Borough Attorney  
Ms. Cheryl D. Marino, Deputy Borough Clerk  
Ms. Elizabeth Gray, Assistant Borough Manager  
Mr. Russ Krafft, Purchasing Officer (*via teleconference*)  
Mr. Todd Lindstrom, Assistant Purchasing Officer  
Ms. Tammy Clayton, Finance Director  
Ms. Nancy Cameron, Land and Resource Management

**III. APPROVAL OF AGENDA**

Deputy Mayor Woods inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved as presented without objection.

**IV. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Mr. Todd Lindstrom, Assistant Purchasing Officer.

## V. ITEMS OF BUSINESS

### A. MOTION TO RESCIND

1. Resolution Serial No. 10-015: A RESOLUTION AWARDED PROPOSAL NO. 09-151 TO VALLEY UTILITIES, LLC, FOR THE DESIGN, BUILD, OPERATE AND FINANCE OF A WATER AND WASTEWATER FACILITY TO SUPPORT THE GOOSE CREEK CORRECTIONAL CENTER.
  - a. Resolution Serial No. 10-016: A RESOLUTION DECLARING THE OFFICIAL INTENT TO REIMBURSE EXPENDITURES MADE PRIOR TO THE ISSUANCE OF BONDS.
    - (1) AM No. 10-026: AWARD OF PROPOSAL NO. 09-151 TO VALLEY UTILITIES, LLC, FOR THE DESIGN, BUILD, OPERATE AND FINANCE OF A WATER AND WASTEWATER FACILITY TO SUPPORT THE GOOSE CREEK CORRECTIONAL CENTER.

MOTION: Assemblymember Arvin moved to rescind Resolution Serial Nos. 10-015 and 10-016 and AM No. 10-026.

Mr. Howard Nugent, Valley Utilities LLC:

- queried the reasons why this meeting was occurring as everyone was aware that the Goose Creek Correctional Center did not have sewer and that the sewer would need to be provided;
- spoke to the involvement between the Borough and Valley Utilities LLC in regards to the water and wastewater project;
- spoke to the design build operate and finance (DBOF);
- reported that they are in compliance with the DBOF;
- advised that there have been issues that have been resolved and they are ready to move forward;
- noted that the project is five weeks behind schedule;
- opined that rescinding the legislation would further delay the project;
- noted that the request for proposal (RFP) process was followed;
- spoke to the April 17, 2010, Anchorage Daily News (ADN) article; and
- stated that a lot of people are ready to go to work.

Assemblymember Woods:

- spoke to the February 17, 2009, memorandum which outlined the utilities, the estimated costs, and schedule;
- noted that there could be more questions as the Borough has new members on the Assembly; and
- stated that the reason for the meeting is to resolve member's specific questions and to review how the Assembly got to this stage.

Assemblymember Ewing:

- noted that he has not seen a project drawing, blueprint, or plan;
- spoke to the way the legislation was brought forward; and
- stated that he is not feeling like he is in the loop.

Mr. Nugent:

- reported that everything regarding the project had been presented;
- advised that Valley Utilities LLC is providing the financing and building of the project;
- noted that the pass through is coming through the State;
- commented that everyone is working to get the project going; and
- stated that he was not aware that the Assembly wanted to see blueprints and drawings.

Deputy Commissioner Peeples provided an overview of the procurement process that was used.

Assemblymember Ewing queried if the Alaska State Department of Corrections (DOC) wanted to be in the sewer and water business.

Commissioner Peeples:

- advised that the DOC is reluctant to be in the sewer and water business;
- stated that the size of the project requires specialty knowledge; and
- spoke to the issues with training and retaining employees.

Assemblymember Ewing:

- noted that subdivisions did not move in around the Sutton prison; and
- opined that it is a misconception that subdivisions will move in around the Goose Creek Correctional Center (GCCC).

Mr. Don Simmons, RISE Alaska, LLC.:

- advised that he helped the Purchasing Officer, Russ Krafft, with the procurement for the project; and
- provided an overview of the procurement process that was used.

Mr. Russ Krafft, Purchasing Officer:

- noted that this was not a commonly used procurement process in Alaska; but more commonly used in the lower 48 states;
- spoke to the steps that were used in the procurement process;
- spoke to the three proposals that were received and the financing packages in each proposal;
- stated that Valley Utilities LLC., has worked extensively to keep the costs down;
- stated that the procurement process was fair and everything was documented;
- advised that JL Properties have been informed as much as code allows;
- spoke to working with the State on the contract; and
- spoke to moving forward to taking trees down due to the bird window.

Discussion ensued regarding:

- whether the procurement process was deviated from;
- concerns with the Assembly digging into deep with the procurement procedures;
- the 30-year ownership issue;
- concerns with the Assembly not receiving accurate information;
- concerns with the procurement process that was used;
- issues with the contract;
- concerns regarding conflicts of interest; and
- concerns that the Borough is not friendly to businesses.

*(The meeting recessed at 12:38 p.m. and reconvened at 12:50 p.m.)*

*(Assemblymember Houston exited the meeting at 12:35 p.m.)*

Mr. Krafft:

- stated that Valley Utilities Inc., had identified that Mr. Ted Trueblood was going to be a part of process;
- stated that there was another level of separation later on when Tryck Nyman Hayes Inc., was sold to URS;
- reported that all of the work that Tryck Nyman Hayes Inc., performed previously was available to all of the public along with the Borough's information;
- noted that the information was available to anyone who submitted a proposal on the project and that the Borough made sure that full disclosure occurred;
- reported that Neeser Construction is a member of the JL Property team, and that the Borough does not have all of the data that Neeser Construction acquired in their investigation during their design build competition for the prison;
- noted that Neeser Construction verified that the water source on tract one was the same aquifer that the Borough found on the east side of tract one; and
- reported that the Borough has made every effort to ensure a fair playing field.

*(Assemblymember Houston reentered the meeting at 12:55 p.m.)*

Discussion ensued regarding:

- the estimated water usage;
- the quality of the water;
- the testing of the water; and
- the information that was provided to the bidders.

Discussion ensued regarding what information was provided to the bidders.

**MOTION:** Assemblymember Ewing called for the question (to stop debate).

**VOTE:** The motion to stop debate passed without objection.

VOTE: The motion to rescind Resolution Serial Nos. 10-015 and 10-016 and AM No. 10-026 failed unanimously.

B. MOTION TO AMEND SOMETHING PREVIOUSLY ADOPTED (*This can only be moved if the motion to rescind fails*)

1. Resolution Serial No. 10-015: A RESOLUTION AWARDED PROPOSAL NO. 09-151 TO VALLEY UTILITIES, LLC, FOR THE DESIGN, BUILD, OPERATE AND FINANCE OF A WATER AND WASTEWATER FACILITY TO SUPPORT THE GOOSE CREEK CORRECTIONAL CENTER.
  - a. Resolution Serial No. 10-016: A RESOLUTION DECLARING THE OFFICIAL INTENT TO REIMBURSE EXPENDITURES MADE PRIOR TO THE ISSUANCE OF BONDS.
- (1) AM No. 10-026: AWARD OF PROPOSAL NO. 09-151 TO VALLEY UTILITIES, LLC, FOR THE DESIGN, BUILD, OPERATE AND FINANCE OF A WATER AND WASTEWATER FACILITY TO SUPPORT THE GOOSE CREEK CORRECTIONAL CENTER.

MOTION: Assemblymember Colver moved a primary amendment to AM No. 10-026 and Resolution Serial Nos. 10-015 and 10-016 to add the following language to the end of each piece of legislation to read: "Until after the Assembly has reviewed the findings of an inquiry of the Goose Creek Correction Center Water and Wastewater procurement process, release of said suspension will require a vote of the Assembly and that the Manager shall not execute any contract or agreement concerning the Goose Creek Correctional Center Water and Wastewater facilities during said suspension.

Assemblymember Colver:

- stated that the intent of the primary amendment is to clear up the apparent conflict of interest with Mr. Trueblood and the ownership issue;
- spoke to the intent of making a motion to direct the Clerk to procure an attorney to provide a legal opinion within 21 days on the following: procurement process, whether or not there were any conflicts of interest, whether the contract was ethical and legal; whether the contract should be issued;
- noted the previous discussions regarding financial terms and costs of delays;
- commented that the Assembly is entering into a 30-year deal; and
- spoke to the need for the Assembly to take caution.

Assemblymember Woods queried if there were any legal opinions with regards to conflicts of interest on this issue.

Mr. Spiropoulos advised that there has not been a legal opinion completed on the issue.

Discussion ensued regarding:

- the three week timeline for a legal opinion being too long;
- concerns with delaying the project;
- the need to hire a private sector attorney;

- concerns with the process not being a level playing field;
- the design build procurement process;
- the need to receive a legal opinion on the procurement process and possible conflicts of interest;
- whether the Alaska State Department of Administration could give a legal opinion;
- the process for hiring a private attorney; and
- the possible changes that could take place before the contract is signed.

**MOTION:** Assemblymember Houston moved a secondary amendment to add the following words to the end of the first sentence: “, not to exceed 10 days” to read: “to suspend award of AM No. 10-026 and to suspend implementation of Resolution Serial Nos. 10-015 and 10-016 until after the Assembly has reviewed the findings of an inquiry of the Goose Creek Correction Center Water and Wastewater procurement process, not to exceed 10 days. Release of said suspension will require a vote of the Assembly. The Manager shall not execute any contract or agreement concerning the Goose Creek Correctional Center Water and Wastewater facilities during said suspension.

Assemblymember Ewing queried if a private practice attorney could provide a legal opinion in one week.

**Mr. Spiropoulos:**

- reported on what the private attorney would need to have in order to complete a legal opinion; and
- opined that a legal opinion could be provided in a one-week timeline.

**Discussion ensued regarding:**

- what the private attorney would need to have in order to complete a legal opinion;
- the broadness of the primary amendment; and
- the affect of the timeline limitations on the legal opinion.

**MOTION:** Assemblymember Ewing called for the question (to stop debate).

**VOTE:** The motion to stop debate failed with Assemblymembers Arvin, Ewing, and Halter in support.

**Assemblymember Bettine:**

- queried whether Mr. Duffy had spoken to the State regarding potential conflicts of interest;
- commented that Mr. Duffy told the Assembly that he did not think there was a conflict of interest; and
- noted that Mr. Duffy stated that Mr. Ted Trueblood’s involvement was with the prison site selection.

Mr. Duffy:

- reported that he spoke to Commissioner and the Deputy Commissioner of the Alaska State Department of Corrections; and
- stated that the Commissioners did not feel that there was a conflict of interest or anything else wrong.

VOTE: The secondary amendment passed without objection.

Assemblymember Bettine queried the definition of inquiry.

Assemblymember Colver:

- spoke to what the attorney would be reviewing to form his legal opinion on whether there was a glitch in the procurement process;
- noted that there has been no legal review of the RFP or process; and
- spoke to what questions that he would like answered in the legal opinion.

Discussion ensued regarding:

- the same opportunities being available to whoever received the contract;
- the need for the Assembly to take up procurement code concerns at a separate time;
- whether the members of the Citizens Advisory Committee on the Goose Creek Correctional Facility have been kept informed of the changes;
- concerns regarding the public process with the project;
- the importance of the Assembly being able to make a good decision;
- concerns with the perceived conflicts of interest;
- concerns with costs associated with delaying the process;
- the need for the Assembly to have addressed the issues at a meeting versus the media;
- the cost estimate for the legal opinion;
- concerns regarding the procurement process and Purchasing Division; and
- concerns with having to spend funds to get a legal opinion every time there are questions from the media regarding the procurement process.

VOTE: The primary amendment as amended failed with Assemblymembers Arvin, Ewing, and Colver in support.

C. DISCUSSION REGARDING THE IMMEDIATE AUDIT OF THE WATER AND SEWER PROCUREMENT PROCESS FOR THE GOOSE CREEK CORRECTIONAL CENTER AND ASSEMBLY SELECTION AND SUPERVISION OF THE AUDITOR

Assemblymember Bettine:

- asked that the Manager provide answers to all of the questions the Assembly asked during the discussion;
- requested that the Assembly submit questions to the Clerk so that the questions and answers could be given to the Assembly prior to the May 4, 2010, regular meeting;
- noted that she would like to know who would have ownership of the facility;

- opined that the State should be understanding in regards to what the contractor and the Assembly are being put through; and
- opined that it was inappropriate for this to be aired in the media; and
- spoke to the need to continue the forum in public at the May 4, 2010, regular meeting.

**MOTION:** Assemblymember Colver moved to have Assembly approval of the final contract through an action memorandum.

Assemblymember Ewing queried if the intent of the main motion was to postpone the award of the contract to have the answers to the questions.

Assemblymember Colver:

- spoke to outstanding issues that would need to be resolved;
- noted that the Assembly delegated the Manager to make changes to the contract in a previous approval; and
- stated that the motion enables the Assembly to have the final seal of approval on the contract.

Discussion ensued regarding:

- whether the project would be delayed by having the Assembly approve the final contract;
- the authority the Manger has with the contract;
- whether the bidder could withdraw the bid;
- the timeline needed for the legislation to be brought forward to the Assembly; and
- the changes being driven by the State's desire to deal with some issues have been identified.

**VOTE:** The motion passed with Assemblymembers Woods, Houston, and Ewing opposed.

Assemblymember Woods:

- noted that the Assembly would only have 30 minutes to take up the Committee of the Whole before the 3 p.m. meeting; and
- queried whether the Assembly would like to reschedule the comments to the Alaska State Department of Natural Resources Hatcher Pass Management Plan.

Ms. McKechnie noted that she would bring the item up for Assembly rescheduling at the regular meeting this evening.

There was no objection noted.

~~D. COMMITTEE OF THE WHOLE~~

~~1. COMMENTS TO THE ALASKA STATE DEPARTMENT OF NATURAL RESOURCES HATCHER PASS MANAGEMENT PLAN~~

**I. AUDIENCE PARTICIPATION**

*(There was no one present who wished to testify.)*

**II. MAYOR, ASSEMBLY, AND STAFF COMMENTS**

*(There were no Assembly comments provided.)*

**III. ADJOURNMENT**

The special meeting adjourned at 2:15 p.m.

  
TALIS J. COLBERG, Borough Mayor

ATTEST:

  
LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes approved: 06/01/10