

**SEACOAST UTILITY AUTHORITY
REGULAR MEETING**

February 25, 2009
Seacoast Utility Authority Board Room
MINUTES

CALL TO ORDER: 3:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL:

PRESENT: Don Noel, Chair
Maria V. Davis, Vice Chair
Joseph Lo Bello, Member
Ron Ferris, Member

ABSENT: Robert Weisman, President Pro-Tem

ALSO PRESENT: Nat Nason, General Counsel
Rim Bishop, Executive Director
Mary Ann Stiles, Authority Clerk

*****THE FOLLOWING ITEMS WERE PLACED ON THE CONSENT AGENDA*****

APPROVAL OF MINUTES FOR MEETING OF JANUARY 29, 2009

Move to approve the minutes for meeting of January 29, 2009.

APPROVAL OF INVOICES

Move to approve invoices as follows: Howard C. Osterman, Inc. in the amount of \$720.00; Nason, Yeager, Gerson, White & Lioce in the amounts of \$408.50; \$11,179.75; and \$6,612.18; and Boyle Engineering Corporation in the amounts of \$1,113.40; \$4,401.00; \$11,676.00; \$1,446.56; and \$8,988.75; for a total of \$46,546.14.

PGA WWTP ADMINISTRATION BUILDING RENOVATIONS

Move to ratify staff's approval of PGA Wastewater Treatment Plant Interior Renovations project change order no. 3, increasing the contract amount by \$1,082.00 as required by Seacoast Utility Authority Administrative Procedure AP89-03H.

JANITORIAL SERVICES

Move to terminate Janitorial Services Contract with Magic Clean, Inc., as recommended by staff.

Move to award Janitorial Services Contract to Sonshine Cleaning, who was the second lowest responsive bidder and whose bid will best serve the public interest, in the amount of \$2,403.58 monthly or \$28,842.96 yearly.

ANNUAL WATER AND SEWER FACILITIES MAINTENANCE CONTRACT

Move to approve extension of Seacoast’s Annual Maintenance Contract for Water and Sewer Facilities with Deevan, Inc. for a period of two years, as recommended by staff.

MOTION

Board Members Davis/Lo Bello moved to adopt the Consent Agenda.

The motion carried unanimously.

*******END OF CONSENT AGENDA*******

ANNUAL GRAVITY SEWER REHABILITATION PROGRAM – BID PROTEST

Attorney Nat Nason stated that before a motion can be made the Board is required to go into quasi judicial proceedings in order to determine the validity of a pending bid protest.

Chair Don Noel announced that staff has recommended award to the lowest responsive bidder and then opened the bid protest hearing. Chair Noel stated that all individuals proposing to provide testimony must be sworn in. Those persons other than Board Members who were to provide testimony stood and raised their right hand. Authority Clerk Mary Ann Stiles then administered the oath to tell the truth and nothing but the truth. Attorney Nason then stated that before proceeding, the Board Members must disclose on the record whether or not they have had any ex parte communications with any of the parties to this bid protest. Board Member Joe Lo Bello stated he has not. Vice Chair Maria Davis stated she has not. Chair Don Noel stated he has only spoken with Executive Director Rim Bishop. Board Member Ron Ferris stated he has spoken with staff, specifically, Executive Director Rim Bishop.

Chair Don Noel told the Board that they are free to interrupt presenters for questions and clarifications during their presentations. Chair Noel then asked Executive Director Rim Bishop to present staff’s recommendation.

Executive Director Rim Bishop then explained that the nature of the work being considered today is “cured in place” lining services for gravity sewer. Authority staff opened competitive bids on February 17, 2009; there were seven bidders. The apparent low bidder is SAK

Construction with an aggregate bid of \$1,026,975.00; second low bidder is Lanzo Lining Services, Inc. with a bid of \$1,061,350.00. Staff recommendation is to award SAK Construction, LLC. Staff received notice of a bid protest from Lanzo Lining Services late last week and forwarded that to the Board. This protest is to be heard and decided upon by the Board today. The letter from Lanzo Lining Services, Inc. outlines Item 1, which alleges that SAK has submitted an incorrect bid form package and Item 2 that SAK lacks experience required by the Authority's bid documents. Staff's response is that neither staff nor Seacoast's legal counsel finds any material deficiencies in SAK's submittal as to Item 1. As to Item 2, the bid documents do require that bidder's document experience. However, the experience does not have to be in Florida. There is a question in the bid package as to what the contractor's Florida experience is, but there is nothing, in staff's opinion, in the bid documents that expressly or by implication requires the successful bidder to have Florida experience. SAK has submitted documentation of fourteen (14) public contracts, all of which are outside Florida, but all of which provide for work precisely as specified in this bid. Staff has contacted a number of the references directly and received excellent references from each one. The crew that is proposed to perform Seacoast's work is a crew that formerly worked for a contractor that did Seacoast's slip lining work for approximately 20 years for a firm known as Insituform. They have since moved over the SAK operation. All things considered, staff believes that award to the low bidder is the appropriate action and that SAK does have the requisite experience.

Attorney Nason stated that at this point in time it would be appropriate to call on the bid protesting entity in order for it to present its statement for the record. Chair Don Noel asked if there is a representative from Lanzo Lining Services present and asked him to come forward.

Mr. Fred Tingberg, Assistant Secretary with Lanzo Lining Services, and has been with Lanzo since 1993, when the company was formed to perform "cured in place" pipeline restoration since then they have installed over 5 million feet in many of the communities that the Board Members represent. Mr. Tingberg stated that he is disappointed and surprised with the Authority staff's recommendation. Mr. Tingberg stated that he believes a company goes where it is wanted and if someone else is wanted for this work and he apologized for wasting the Board's time. Mr. Tingberg stated that this will be the first Florida municipality that has seen fit to award to SAK. SAK has not been awarded in such places as Pinellas County and other municipalities where they have been low bidder specifically because they do not have the Florida experience. In Mr. Bishop's recommendation letter, he found a paragraph that talks about 18 years of Seacoast using Insituform's "cured in place" contract, and he understands the relationship of Insituform and some of the alumni that have gone on board with SAK. However, an alumni does not an entity or a bidding entity make, it is a company that bids, puts forth the bond and financial wherewithal. In his case, Lanzo has a fully integrated lining facility 45 miles from where these jobs take place. Mr. Tingberg stated that his facility has been there for many years and has not had a failure or problem or a situation that could not be rectified quickly. "Cured in place" pipe installations are used specifically where excavating is a problem. That becomes evident in a location where the utility cannot afford to go Plan "B". The fact that Lanzo has a local plant and has been here working in this environment in these conditions for 17 years and the fact that the contract documents speak to a five year experience level led Mr. Tingberg to conclude that this would have been a foregone conclusion. Mr. Tingberg feels that Authority staff has a certain comfort level with some of the individuals with SAK. The other point that Mr. Tingberg wanted

to make is when you have a low bidder in a defined contract, it is more meaningful than an annual contract. This particular contract is going to be based upon work issuances; this is a menu style bid and has no tabulation of footages to come up with the amount that was bid. It is rather how much per foot for a collection of units, so it is the work issuances that are selected that will make the difference. When you have two bidders who come within \$40,000.00 of one another, which is the case here, who is really low? The reason Lanzo felt they should forward this protest is that they understood that an Addenda 2 was not recognized. Also, another liability source for the Authority is that the company being chosen is having “bags” shipped in from other entities that are now making this product available. Whether or not staff changes their recommendation, the proof will be what happens over the next two years. Mr. Tingberg went on to reiterate that his company is familiar with the entities and environment in this area. Mr. Tingberg thanked the Board for the opportunity to present their case.

Vice Chair Maria Davis asked what the relevance is to have Florida experience versus somewhere else. Is the process any different elsewhere? Mr. Tingberg stated that the process of dealing with residences and communities and knowing how to access the water and deal with the maintenance of traffic and DOT lanes closures, where to haul the material that is dragged out of some of the lines, are all important. For example, Mr. Tingberg stated that the Florida contractor approval process for work in Atlanta, GA is about a five year process. He further stated that the primary difference is that his company manufactures its tubes here in Florida and SAK will ship them in from some entity in another state. More discussion took place but Mr. Tingberg stated that even if the process is the same, it is about product, strengths, finished product and while it might look the same, it is the company that stands behind the work that is important.

Chair Don Noel asked how important it is to have the facility close to the job. Mr. Tingberg responded that it is a matter of service. If the plant is closer, problems can be handled quickly.

Board Member Ron Ferris asked staff that Addenda 2 was commented on, that it was not recognized in the packet from SAK. What is that and what is the story? Mr. Rim Bishop asked Keith Haas, Wastewater Department Manager to respond to that question. Mr. Haas stated that staff reviewed each of the bids and with the bid tally, SAK was the low bidder. During the bid opening, the Authority’s Purchasing Agent checked the bids for the bid form and all the addenda were in each package. All bidders submitted the three addenda items.

Board Member Ron Ferris asked what Addenda 2 is. Mr. Haas responded that there was a typo in the bid document where a line was repeated; Addenda 2 basically deleted that one line. It really is not counted as part of the bid. Attorney Nat Nason stated that he was looking at it and it did state that it was required to be submitted with the bid package to verify that whoever prepared the bid package saw the item, recognized it and thereby included Addendum 2. The bid package that Attorney Nason has from SAK did in fact include Addendum 2. Attorney Nason is satisfied that Addendum 2 was properly included back in the response to bidders as required by the terms of Addendum 2. Mr. Ferris reiterated the second concern in the bid protest as the low bidder not meeting the experience level needed. Mr. Tingberg stated that for this bid, there may be some individuals with the low bidder that have done this work before, but he feels that the Authority should be looking for an entity, not just the people working for it.

Mr. Ferris apologized that he had not read the contract in its entirety, but generally speaking, the Authority establishes some professional standards in the contract and have a mechanism of surety or insurance or bonding to be sure that whatever work is done is bondable and the Authority can take corrective action if there is no performance. Mr. Keith Haas stated that all of those provisions do appear in the contract. Vice Chair Maria Davis asked how much of a bond is held on this contract. Director of Operations Bruce Gregg stated the bond is for the full contract amount. More discussion took place as to how the quantities of pipe were determined and at what cost.

Board Member Ron Ferris stated that one of the things that he is familiar with is that this type of work at his municipality is that the City brings in a number of RFPs, awarding them to a number of businesses so they can be qualified (RFQ) for future use by the City for a specific application. Mr. Ferris stated that might be a good idea for the Authority to review this type of process to give the Authority more flexibility in the future.

Attorney Nason then directed Chair Don Noel to call on anyone from SAK who might wish to present its case. Chair Noel then asked if there was anyone from SAK to present their case. Mr. Gordon Marshall, Business Development Representative with SAK, addressed Mr. Fred Tingberg's point, acknowledging its validity because SAK is only a three year old company. However, SAK is made up of professionals that have been in the business since 1982. Mr. Marshall agreed that installing "cured in place" pipe in Florida is different from other states because of the high water table. Crews that are used to this environment are the ones that will be working on this job. They will be based in Tampa with a leader that has over 10 years of experience and a crew with more years than that. Mr. Marshall knows through records and contacts that the company that previously employed this crew has installed over 500,000 feet of "cured in place" pipe in Florida and that is going back only four (4) years. Mr. Marshall pointed out that this crew has the experience necessary and have worked in this environment and community previously. Mr. Marshall agreed with Mr. Tingberg when he stressed that it is good to have experience where you will work and the leadership you have. That is why SAK has chosen the leader and crew it did; all of them went through the non-compete clauses with Insituform before they could work this project.

Chair Don Noel asked if the Board had any questions. None were asked. Chair Noel asked if there was anything Authority staff would like to add. No further comments, questions or evidence was presented. Chair Noel then asked if Attorney Nason had any legal instructions or guidance for the Board. Attorney Nason stated that the primary issue relates to the conditions of the bid. These conditions state that firms who are regularly engaged in the particular business and can provide evidence that they have established a satisfactory record of performance for a reasonable period of time will be considered. The conditions of the bid do not specify that experience has to be in the State of Florida. There is a question in the package that asked if the bidder has experience in Florida. SAK answered that by stating that SAK does not have experience in Florida, but the actual employees who would be working on this project do have substantial experience in Florida. That being said, legally speaking, the condition of bid did not require the experience to be shown to have been in Florida. Attorney Nason informed the Board that its options at this point are as follows: the Board can move to reject the bid protest and then proceed to the next phase of this, or the Board can uphold the bid protest, which would have the

effect of disqualifying SAK. If the Board moves to the next phase, the Board would have to decide whether or not to accept staff's recommendation, assuming the Board denies the bid protest, determine whether to accept staff's recommendation and award to SAK or determine that they are not the best, lowest responsive bidder and move to another bidder. That is the decision that must be made at this time. Attorney Nason asked the Board to consider the questions one at a time, the first being whether or not to uphold the bid protest filed by Lanzo.

MOTION

Board Members Davis/Lo Bello moved to deny bid protest.

The motion carried unanimously.

MOTION

Board Members Lo Bello/Davis moved to award contract for "cured in place" slip lining repairs to SAK Construction, LLC, the lowest responsive bidder and whose bid will best serve the public interest in the amount of \$1,026,975.00, as recommended by staff.

The motion carried unanimously.

Chair Don Noel then closed the bid protest proceedings.

RICHARD ROAD WATER TREATMENT PLANT LIME SLAKER

Board Member Joe Lo Bello asked why this item was not on the consent agenda. Executive Director Rim Bishop responded that it is because it is a sole source bid award and is above his purchasing limits.

MOTION

Board Members Davis/Lo Bello moved to designate Siemens Water Technologies, Corp., a sole source supplier for the purchase of one lime slaker for the Richard Road Water Treatment Plant, as recommended by staff and moved to approve proposal from Siemens Water Technologies, Corp., for the purchase of one lime slaker for the Richard Road Water Treatment Plant in the amount of \$69,694.00, as recommended by staff.

The motion carried unanimously.

ANNUAL REPORTS

MOTION

Board Members Ferris/Lo Bello moved to receive and file the Executive Director's Annual Report and the Engineers Report on the Condition of the System, as recommended by staff.

The motion carried unanimously.

ANNUAL PERFORMANCE EVALUATION/EXECUTIVE DIRECTOR

Board Members Ferris/Davis moved to postpone this item until the next meeting when a full Board can be present.

The motion carried unanimously.

OTHER BUSINESS

COMMENTS FROM BOARD MEMBERS

Board Member Ron Ferris stated he is happy to see the flurry of activity with SFWMD representatives and hopes everything works out the way the Authority would like it to. Mr. Ferris complimented staff on their outstanding job with working with the SFWMD and representing the Board's position. Board Member Joe Lo Bello concurred with Mr. Ferris.

Chair Don Noel stated he had attended the organizational meeting of Palm Beach County Water Resources Task Force meeting and that it is an honor to be the Authority's Board representative for this Task Force. Chair Noel will keep the Board apprised of what happens with this Task Force.

ENGINEERING REPORT

Engineer's Report included in Board package. Bruce Mowry was present for questions. None were asked at this time.

STAFF REPORT

MONTHLY REPORTS

Executive Director Rim Bishop stated that the monthly reports are in the Board package.

SFWMD YEAR ROUND IRRIGATION RULE CHALLENGE

Executive Director Rim Bishop told the Board that he and Attorney Nat Nason recently attended a meeting regarding the proposed SFWMD year round irrigation rule. Attorney Nason and Board Member Joe Lo Bello offered comments on the Authority's behalf at this meeting. After those comments, SFWMD staff was directed to review the consequences of moving to three day/week irrigation as opposed to the two day irrigation as previously proposed. At this point, staff is waiting for an updated draft of the rule. The next meeting is March 12, 2009 in Clewiston.

Attorney Nason stated that yesterday he received a couple of emails from some of the attorneys working on the draft Year Round Irrigation for other clients and apparently SFWMD staff is attempting to stay with the two day/week irrigation schedule notwithstanding direction from the Board. Attorney Nason stated it was pretty clear when he was there that the SFWMD Board had at least five Board votes to go to the three day/week irrigation. He will attend future SFWMD meetings, including the March 12 meeting and offer appropriate written recommendations to try

to be sure the SFWMD Board continues on its track to a three day/week irrigation restriction. If three day/week is granted, staff does not intend to challenge the rule; however, Attorney Nason is not sure he is finished negotiating with SFWMD staff.

HOOD ROAD WATER TREATMENT PLANT MEMBRANE CONVERSION PROJECT

Executive Director Rim Bishop stated that staff meets tomorrow with CDM engineers to offer comments on their 90% engineering design submittal. Director of Operations Bruce Gregg is finalizing his comments. The engineer report for the Official Statement for Bond Issuance is just about complete also.

SFWMD WATER USE PERMIT RENEWAL

Attorney Nat Nason informed the Board that staff met with Mirasol representatives earlier in the week and it was interesting because Mirasol has commenced lobbying efforts with individual Board Members of SFWMD to challenge staff's interpretation that there are negative impacts to the wetlands in Mirasol as a result of the Authority's pumpage. It was brought to Authority staff's attention during the course of that meeting that there was some factual information that the SFWMD Board Members had not been getting from their staff. Mirasol has scheduled additional meetings with individual Board Members; they have attended three thus far and of the three attended, Mirasol has suggested that Authority staff set up meetings with two of those members. Rim Bishop, Bruce Gregg and Nat Nason will attend and will clarify what the Authority's water supply and treatment plans; whether the Authority seeks an alternative water source from the Floridan; why the Authority is trying to keep its 13.8 MGD at the Hood Road Water Treatment Plant; and that the Authority is not looking to increase that allocation. Evidently Mirasol has left some of their meetings with the impression that the Authority is trying to increase its allocation and it is not: SFWMD Board Members have been left with the notion that the Authority does not plan to use alternative water sources like the Floridan Aquifer. Those are just a few items requiring clarification. Attorney Nason stated that he and staff will follow through on these meetings so that everyone is getting the correct information.

Chair Don Noel stated that at the meeting he attended, Commissioner Koons made a big announcement that caused Mr. Noel concern. Chair Noel asked how the absence of a SFWMD permit might affect comprehensive land use plans of Seacoast's constituent governments. Attorney Nason responded that the practical assessment is that no one is going to turn off the municipal public utilities, but the real question is "where do those entities go for their future allocations?" Attorney Nason explained that the Authority is legally operating under the provisions of its most recent water use permit during the renewal process. As a result of this, Attorney Nason does not feel that anyone is out of compliance with their Comp Plans. Legally speaking, Attorney Nason feels that the Authority's municipal entities are going to be fine, but he is not sure of all the other municipalities.

Attorney Nat Nason stated that he does not think there is any water utility that doesn't have a permit; there may be a number of utilities in the process of permit renewal and be in the same boat as the Authority. The reason he says that is because Seacoast was one of the first entities to come into the permit renewal process after the new modeling requirements were made effective.

For a long period of time, Seacoast was the “guinea pig” of that process and there may be others that were held up in that same process.

PROPOSED LEGISLATIVE BILL

Chair Don Noel asked if Attorney Nason has heard back from Senator Atwater and Representative Domino regarding the proposed legislative bill. Attorney Nason stated that he had not; letters were mailed and no response to date. Executive Director Rim Bishop asked if all the Board Members were aware of this bill. Mr. Bishop explained that there was a bill that was filed in this legislative session that would have placed entities like the Authority, Interlocal governmental entities created pursuant to Chapter 163 Florida Statutes, under the jurisdiction of the Public Service Commission for rate making purposes. Attorney Nason was asked to register as a lobbyist and file comment on that on the Authority’s behalf.

COMMENTS FROM THE PUBLIC

None

ADJOURNMENT

There being no further business to come before the Authority, Board Members Davis/Lo Bello moved to adjourn at approximately 3:44 PM.

APPROVAL:

DON NOEL, CHAIR

MARIA V. DAVIS, VICE CHAIR

ROBERT WEISMAN, PRESIDENT PRO-TEM

RON FERRIS, MEMBER

JOSEPH LO BELLO, MEMBER

ATTEST:

MARY ANN STILES, AUTHORITY CLERK