

**BRUNSWICK REGIONAL WATER & SEWER H2GO
REGULAR BOARD MEETING
TUESDAY AUGUST 18, 2020**

OFFICIAL MINUTES

CALL TO ORDER:

Chairman Ronnie Jenkins called the meeting, located at H2GO via Zoom, to order at 6 p.m.; a quorum was present via ZOOM. The assembly was led in the Pledge of Allegiance.

MEMBERS PRESENT:

Present via ZOOM from the Board of Commissioners were members Ronnie Jenkins, Chairman, Steve Hosmer, Vice Chairman, Rodney McCoy, Secretary, Bill Beer, and Barry Laub, present from H2GO was Bob Walker, Executive Director, Russ Lane, Assistant Director, Scott Hook, Finance Officer, and Deana Greiner, Deputy Clerk to the Board.

DISCUSSION/ADJUSTMENT OF AGENDA:

Chairman Jenkins opened the floor for any adjustments to the agenda. A request was made for the following; to add Hodge Company's request to withdraw bid to the special hearing, Executive Session to consult with legal counsel immediately following the special hearing; to add discussion on the RO Project Financing to Old Business, and to add consideration of the Water Supply and Treatment System Contract 2 under New Business. **Commissioner Beer made the motion to approve the agenda as amended; a vote was called and the motion was carried unanimously.**

CONSENT AGENDA:

Commissioner Hosmer made the motion to approve the consent agenda consisting of the July 21, 2020 Regular Board Meeting Minutes as presented; a vote was called and the motion was carried unanimously.

SPECIAL HEARING: RALPH HODGE CONSTRUCTION

A motion was made for the board enter into a special hearing to hear Ralph Hodge Construction's request to withdrawal their bid. A vote was called the motion carried unanimously.

Attorney William Wolf, representing Ralph Hodge Construction gave a presentation of the bid and why it should be withdrawn; which is incorporated by reference and hereby made part of these minutes as Exhibit A. Mr. Wolf explained the withdrawal request should be allowed under NC General Statute 143-129.1; he explained in his presentation that Ralph Hodge Construction made a substantial error in calculating the cost of the fusible polyvinylchloride pipe. Mr. Wolf explained that this error was clerical in nature in that the formula used for calculation was not complete; he explained that the bid was given in good faith in that it compared reasonably with

the other bids with exception to the items miscalculated. Mr. Wolf explained that bids were read on July 16 and made available on July 21, 2020; he said the withdrawal request was sent on July 24, 2020. Mr. Wolf explained the error was several layers deep and was not apparent until the other bids were made available to them. Mr. Wolf argues that the withdrawal was sent within the required 72 hour timeframe. Mr. Wolf explained that according to the North Carolina Chief Justice's Emergency COVID 19 Order that time frames were extended to July 31, 2020; he explained that the 72 hour limit only applies if the instructions to bidders do not provide a different time period. Mr. Wolf stated that instructions to bidders can be construed to allow up to 90 days to make the request to withdraw a bid.

Chairman Jenkins thank Mr. Wolf for his presentation. Mr. Walker wanted the board to know that when the bids were read there was a representative from Ralph Hodge Construction present. Mr. Walker stated that withdrawal request received on July 24, 2020 did not meet the requirement of the 72 hours after the bid opening.

EXECUTIVE SESSION TO CONSULT WITH COUNSEL PURSUANT TO NCGS 143-318.11(a)(3):

Commissioner Beer made the motion for the board to enter into Executive Session to consult with legal counsel pursuant to NCGS 143-318.11(a)(3). A vote was called and the motion carried unanimously.

Commissioner Hosmer made the motion for the board to re-enter open session. A vote was called and the motion carried unanimously.

Commissioner Beer made the motion for the board to deny Hodge Construction's request to withdrawal their bid. A vote was called and the motion carried unanimously.

COMMISSIONERS REPORT:

Commissioner Beer reported that he attended a meeting with Mr. Walker and Mr. Griffith regarding the WWTP; he explained the purpose of the meeting was to evaluate the WWTP to come up with possible solutions to help reduce/eliminate the Pump and Haul. Commissioner Beer and Commissioner Laub both reported that they attended a meeting with the County. It was said the purpose of the meeting was to improve the working relationship with the County and to explore solutions with the wastewater problem. Both commissioners expressed they felt the meeting went very well. Chairman Jenkins commended Commissioner Beer and Laub for their efforts. Commissioner McCoy stated that he attended a meeting with McKim and Creed and Brunswick County at the WWTP; he said the purpose of the meeting was to evaluate the plant. Commissioner McCoy expressed that he felt the meeting went well. Chairman Jenkins stated that he visited the WWTP and commended the staff for their hard work. Commissioner Hosmer pointed out the new wall emblem behind the commissioner's seats; he thanked the staff for getting this done.

PUBLIC COMMENTS:

Chairman Jenkins opened the floor for public comments.

None of the patrons present spoke.

OLD BUSINESS:

Resolution to Establish Nonprofit Agency Funding Policy: Commissioner Beer had only one addition to the policy. Commissioner Beer said he wanted to add, “H2GO will be more than kind to support local causes to the benefit of areas we serve.” **Commissioner Hosmer made the motion to add the bullet point to the Nonprofit Agency Funding Policy. A vote was called and the motion carried unanimously. Commissioner Beer made the motion for the board to approve the Resolution to Establish the Nonprofit Agency Funding Policy. A vote was called and the motion carried unanimously.**

RO Project Financing—Ted Cole, Davenport Mr. Davenport explained that later on in the meeting the board is to approve the Approving Bond Resolution; he said it is the final approval of the board for the financing before they can go to the Local Government Commission. Mr. Davenport explained that if all goes well the Local Government Commission on September 1, 2020 then they can close with First Bank on September 10, 2020. Mr. Davenport explained that before the board approves the final Bond Resolution that he wanted to give the board an update on the bond market; he gave the board a handout. Mr. Davenport pointed out the first page and showed the board the comparison of the First Bank Loan, an AA Rated Bond, and an A Rated Bond back on July 21, 2020; he reminded the board that they had fully discussed these items and that the board had agreed to move forward with First Bank. Mr. Davenport pointed out the second page of the handout; he said it shows an updated version of the same information. Mr. Davenport stated that even though the interest rates are lower at the this point that we would be 60 to 90 days out to seeing where things fell in terms of bond rating and interest rates. Mr. Davenport mentioned this time frame could carry us past the election. Commissioner Laub expressed that the reason the board went with First Bank was because they were factoring in the ability to prepay; he said the terms First Bank gave outweighed the lower interest rates. Mr. Davenport explained that with a 20 year bond that there’s opportunity to refinance later on if the need arose and he expressed that he felt with First Bank that it could be easily done without costing a substantial amount. Discussion ensues. Mr. Davenport said he wasn’t bringing this up to necessarily change anything; he explained that the Local Government Commission wanted to make sure everyone was aware of how things were changing in the market.

NEW BUSINESS:

Consideration of Water Supply and Treatment System, Contract 2 **Commissioner McCoy made the motion to table consideration of Water Supply and Treatment System, Contract 2. A vote was called and the motion carried unanimously.**

H2GO Bond Resolution Series 2020: It was said this resolution will set the terms for borrowing for our bond counsel and for the First Bank’s bond counsel. **Commissioner Hosmer made the motion to approve the H2GO Bond Resolution Series 2020. A vote was called and the motion carried unanimously.**

Belville WWTP Evaluation—The Wooten Company Task Order 32 Mr. Walker explained that this Task Order was to allow The Wooten Company to look over improvements and/or possible expansion items for the WWTP if the opportunity arose. It was said the total scope of work will cost approximately \$23,000 and will take about two months. **Commissioner Hosmer made the motion to approve the Wooten Company Task Order 32 as presented. A vote was called and the motion carried unanimously.**

EXECUTIVE DIRECTOR'S REPORT:

Update Sensus FlexNet Meter Installation: Mr. Walker reported that the project should be complete by the end of September; he said we have had some hiccups with data transfer but everyone was working diligently to get things running smoothly. Commissioner Hosmer commended staff with handling the billing issues.

ASSISTANT DIRECTOR'S REPORT:

Mr. Lane had to leave early, he had nothing to report.

FINANCE OFFICER'S REPORT:

Sensus FlexNet Customer Portal System Quote: Mr. Hook presented to the board a customer portal system; he said the system will allow the customer to log in and view several different things regarding their water usage. Mr. Hook said the cost of this system initially will be a little over \$27,000 and after that it will be \$7200 a year. Members of the board expressed their thoughts and the consensus of the board was to get more information and to see a demo of the program before making a decision.

Check Register for March 11, 2020 thru April 15, 2020: No comments nor questions made.

PUBLIC INFORMATION OFFICER'S REPORT:

It was said that Mr. Wittkofsky recently got married and was out on his honeymoon.

EXECUTIVE SESSION TO DISCUSS CONTRACT NEGOTIATIONS PURSUANT TO NCGS 143-318.11 (a)(5) AND PERSONNEL PURSUANT TO NCGS 143-318.11 (a)(6)

Commissioner Beer made the motion for the board to enter into executive session to discuss contract negotiations pursuant to NCGS 143-318.11 (a)(5) and personnel pursuant to NCGS 143-318.11(a)(6). A vote was called and the motion carried unanimously.

Commissioner Beer made the motion for the board to re-enter open session. A vote was called and the motion carried unanimously.

It was said there was nothing to report out of executive session.

INFORMAL DISCUSSION:

Nothing was discussed.

ANNOUNCEMENT OF NEXT MEETING:

It was announced that the board would meet again for a regular board meeting on September 15, 2020 at 6 p.m..

ADJOURNMENT:

Commissioner Beer made the motion to adjourn the meeting at 9:32 p.m.; a vote was called and the motion carried unanimously.

Ronnie Jenkins, Chairman

Rodney McCoy, Secretary

Deana Greiner, CMC
Deputy Clerk to the Board

Date of Approval

EXHIBIT A

Ralph Hodge Construction Company

August 18, 2020

Request to Withdraw Bid for System Contract 2
Water and Raw Mains

Standard for Withdrawal of Bid

- ▶ Bid withdrawal without penalty is allowed when:
 - ▶ The price bid was based upon a mistake, which constituted a substantial error;
 - ▶ The bid was submitted in good faith;
 - ▶ The bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error...
 - ▶ NC General Statute 143-129.1

EXHIBIT A

Hodge's substantial error:

- ▶ Hodge mistakenly failed to multiply the per foot cost of the fusible polyvinylchloride pipe (FPVCP) by the plan quantities to establish its intended price for the five Horizontal Directional Drilling line items. (Bid line items 15-19).
- ▶ The total amount of the bid error was \$661,359.57.
- ▶ Attachment 3 is the portion of Hodge's bid where the error occurred.
- ▶ Attachment 1 is the portion of the bid calculations actually used by Hodge in its bid as well as the corrected version reflecting the amount Hodge had intended to include in its bid for the subcontracting cost of these line items:

Hodge's substantial error:

ATTACHMENT 1

BID WORKSHEET FOR BID AS SUBMITTED

Item #	Description	Plan	Actual	Dist	Quote	Pipe	Mud	Diag	Mob	Full	Head	Slur	Fusion	RMC	Subtotal	Round 1.25%	Total
15	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	328	328	\$ 17,000.00	\$ 1,89.00	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 260.80	\$ -	\$ -	\$ -	\$ 48,581.04	\$ 607.27	\$ 49,188.31
16	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	270	270	\$ 229,400.00	\$ 64.38	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,300.80	\$ -	\$ -	\$ -	\$ 242,581.33	\$ 3,032.29	\$ 245,613.62
17	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1277	1277	\$ 199,980.00	\$ 62.00	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,077.80	\$ -	\$ -	\$ -	\$ 212,088.04	\$ 2,650.80	\$ 214,738.84
18	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1238	1238	\$ 211,400.00	\$ 187.81	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 861.20	\$ -	\$ -	\$ -	\$ 219,862.70	\$ 2,748.28	\$ 222,610.98
19	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1024	1024	\$ 259,980.00	\$ 127.18	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,059.20	\$ -	\$ -	\$ -	\$ 270,507.43	\$ 3,381.35	\$ 273,888.78
						\$ 541.73									\$ 1,647,219.78		\$ 1,648,867.01

CORRECTED BID WORKSHEET WITH PIPE COST INCLUDED

Item #	Description	Plan	Actual	Dist	Quote	Pipe	Mud	Diag	Mob	Full	Head	Slur	Fusion	RMC	Subtotal	Round 1.25%	Total
15	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	328	340	\$ 57,850.00	\$ 454.75.00	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 260.80	\$ -	\$ -	\$ 2,500.00	\$ 116,417.05	\$ 1,455.21	\$ 117,872.26
16	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	270	270	\$ 229,400.00	\$ 108,821.28	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,300.80	\$ -	\$ -	\$ 7,800.00	\$ 338,688.21	\$ 4,233.60	\$ 342,921.81
17	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1277	1277	\$ 199,980.00	\$ 98,100.00	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,077.80	\$ -	\$ -	\$ 7,800.00	\$ 311,762.08	\$ 3,897.03	\$ 315,659.11
18	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1238	1273	\$ 241,400.00	\$ 170,080.00	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 861.20	\$ -	\$ -	\$ 7,500.00	\$ 421,207.45	\$ 5,265.09	\$ 426,472.54
19	12" FUSIBLE PVC DRUG HDD - R/WP	15	1	1024	1028	\$ 259,980.00	\$ 181,021.20	\$ 8,751.25	\$ 1,400.00	\$ -	\$ 1,059.20	\$ -	\$ -	\$ 7,500.00	\$ 450,512.65	\$ 5,631.41	\$ 456,144.06
						\$ 462,778.73									\$ 1,880,888.78		\$ 1,882,569.56

Pipe cost mistakenly omitted from bid calculations: \$ 661,359.57
 15% Bond, Overhead & Margin on Subcontract work: \$ 661,359.57
Total Bid Error: \$ 1,322,719.14

Bid Should have been: \$ 28,777,462.07
 Actual Bid: \$ 28,115,742.93

EXHIBIT A

The clerical nature of the error:

- ▶ Intended formula to calculate FPVC pipe cost:
 - ▶ =pipe LF cost x .07 (Sales Tax) x actual quantity needed ÷ plan quantity (This formula calculates the FPVC pipe cost per plan foot)
 - ▶ x Plan LF of pipe= Lump sum amount for the cost of acquiring the FPVC pipe.
- ▶ Hodge's clerical error:
 - ▶ The formulas utilized by Hodge to calculate the lump sum pipe material cost within its subcontracting cost portion of its bid inadvertently omitted the step in red above. The net effect was to only include the cost of 1 LF of pipe for each line item instead of the combined total of 6,067 LF actually required for the 5 horizontal drilling line items.

Hodge's bid was submitted in good faith.

- ▶ Hodge really did want to perform this work for the Authority.
- ▶ Hodge carefully examined the plans and specifications and actually obtained the pipe pricing and calculated quantities needed to properly calculate its bid.
- ▶ Hodge's estimating team included two estimators with combined experience of more than 25 years in bidding projects of similar size and scope.
- ▶ Hodge has submitted approximately 500 public bids in the last five years and this is the only bid it has requested to withdraw due to a mistake.
- ▶ When compared to the pricing of the next lowest bidder, it is clear that Hodge's bid was reasonable except for the five line items that it mispriced by more than a combined total of \$661,000.00. The next lowest bidder priced those work items higher by more than \$1,000,000.00

EXHIBIT A

Delay Justification

- ▶ The directional drills were to include not only the drills, but also any piping, valves, fittings, etc. within the limits of the stationing provided on the bid form and was bid lump sum. Although this is highly unusual, Hodge actually recognized the need to include the piping in its lump sum prices but its clerical error in creating its spreadsheet formulas caused it to only include the cost of one foot of piping for each bore.
- ▶ This clerical error was several layers deep in the spreadsheet hierarchy utilized to add together the hundreds of subparts to Hodge's bid worksheet.
- ▶ Hodge immediately reviewed its bid after it appeared that Hodge would become the apparent low bidder. Since the dollar amounts it listed for the bores were all significant, and its error was part of its subcontractor pricing, the error was not apparent during Hodge's initial post bid review.
- ▶ It was not until the bid tab was issued on Tuesday, July 21st at 1:45 PM reflecting more than a million dollar price difference in bid items 15-19 that the mistake became apparent. Had the bid tab been issued sooner, that error would have been discovered sooner.

Why the withdrawal request was timely.

- ▶ The bids were actually opened on July 21, 2020.
 - ▶ The "opening" of the bids means more than a verbal announcement of the sum total of the dozens of line items that each bidder was required to submit.
 - ▶ Neither Hodge nor any other bidders were given copies of the bids on July 16, 2020.
 - ▶ The actual contents of the bids were not published until the bid tab was issued on Tuesday, July 21, 2020 at 1:45 PM. This date and time is when the contents of the bids were opened to the public and other bidders for the first time.

EXHIBIT A

Why the withdrawal request was timely.

- ▶ North Carolina Chief Justice's Emergency COVID 19 Order Extended Time from making the request through July 31, 2020.
 - On May 21, 2020, the Chief Justice of the NC Supreme Court issued an order extending periods of limitations for civil actions:

"All periods of limitation that were set to expire between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020."
 - 72 hour bid withdrawal period is a prerequisite to a civil action (see N.C.G.S. § 143-129.1) and, thus, is governed by the Order
 - Because 72 hour period here was "set to expire" between March 16 and July 31, it was extended to "close of business on" July 31

- ▶ Citation: Emergency COVID 19 Order of the North Carolina Chief Justice Extending Filing Deadlines (May 21, 2020)

Why the withdrawal request was timely.

- ▶ The 72 hour limit in NCGS § 143-129.1 only applies if the instructions to bidders do not provide a different time period.
- ▶ The instructions to bidders can be construed to allow up to 90 days to make the request to withdraw a bid.
 - "No Bid may be withdrawn after the Bid opening for a period of time as indicated in the Bid Form except in accordance with the provisions of N. C. General Statutes 143-129.1." Instructions § 16.02.
 - "This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner." Bid Form § 2.01.
 - Net result: No bid may be withdrawn after the bid opening for a period of 90 days except in accordance with the provisions of N. C. General Statutes 143-129.1. Simply put, the specifications effectively allow bidder 90 days to withdraw its bid for the reasons allowed by NCGS § 143-129.1