

## 11-02-2020 Commission Workshop Verbatim Request

**Question: Why rebid Wastepro contract and not CGA contract?**

**[2:47:54] Commissioner Good:** So I guess I am a little focused on this final 1 year renewal and why that statement is made as opposed to the prior incident we had, why that statement wasn't made for the Calvin Giordano contract?

**City Attorney Goren:** A couple of reasons if you will. The Waste Pro contract was a bidded item. It was sent out to the street for bids and people responded based upon unit costs and other components that were in the RFP bid document for when they proposed their services to the City among others who bid at the time. The Calvin Giordano contract was a little more fluid in the context of how that RFP was drafted and it was more towards the issue of ultimate negotiation as opposed to the bidded items. So when you look at them, they are different in my view legally than they are similar. The process is not dissimilar, but the method by which the proposal was put on the street was somewhat different and that relates to the fact that when you bid for garbage service or waste collection service at a per unit cost or weight. Or whatever the componentry was for the regard of how you get to the calculus of the answer, was different than the particular services being provided for by a vendor who was going to be doing permitting and other related services that were different in the context of how they were proposed. And that's how we saw it differently.

**Mayor Ortis:** Mr. Mackie did you have a comment on that?

**Mr. Mackie:** Yeah sure.

**City Attorney Goren:** Put the mike on Mr. Mackie please. (Mayor Ortis: Inaudible)

**Mr. Mackie:** Ok you know. The only issue I have with the legal opinion is where was this opinion when we renewed for the 3 year period? And we didn't get just CPI. We put two extra trucks in, we raised the price a lot more than just the CPI to collect the extra bulk that was out there. It just, I was at that meeting. There was no direction given to the Commission that they couldn't do what was trying to be done. So I disagree with that assertion. You have wide latitude to negotiate a health safety and welfare on the best conditions for your residents and what we are putting in front of you is the best possible deal for your residents and I feel very strongly about that. (Mayor Ortis: I didn't say anything.)

**Commissioner Good:** So I just wanted to confirm then with the City Manager to follow up to what Mr. Mackie said, the City Commission does have the ability to enter into a longer term extension to this contract or a restated contract so to say?

**City Manager Dodge:** Commissioner Good that's a question for the City Attorney.

**Commissioner Good:** Did I say City Manager or did I say City Attorney? My bad. Sorry, I apologize. I was looking right at the City Attorney. (Laughs) Keep the glass clean.

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**City Attorney Goren:** I can hardly see you, but I can see you generally through the various panes of glass. (Inaudible) Yes. Do I have any more hair? That was my main concern. Mr. Mayor and Commission I'm not going to take on Mr. Mackie and give a legal debate with him on the record. That's not what I am here for. I don't represent him. I represent your interests. And what occurred x number of years ago when that contract was bid out. Some things have changed as a matter of fact and that was why the Memorandum was drafted; was to remind the Commission about the fact that there is now an Inspector General in Broward County that performs certain roles and functions. And I wanted to make sure the record reflected that. If it be the will of this Commission to find a way, a method, a manner, a pathway, a destination to do some things that would otherwise require extensions, I can give you the best advice I can further which is the following if I may:

Number 1; Waste collection and garbage collection; the case law tells us in the readings we read as lawyers is a specialized commodity. There is nothing else like it. And I think you know that; we've had these discussions before. It is a uniquely specialized commodity. Cities, municipalities have 5 basic services they must provide under the Florida Law: Basically, water, sewer, garbage, Fire, Police. Those are the 5 basic services and then the 6<sup>th</sup> service depending upon whether you run charter schools is to provide education under the charter school law of chapter 1000. So this City happens to have 6 components. Within those 6 components is waste collection, is garbage and garbage is a very unique commodity. In the context of what might have happened a couple years ago without getting into the history of the whys and the wherefores. Yes there was an amendment no question about it. We amended the rates, we amended the terms. It did happen. But I will tell you that since that time there has been the implementation of the Charter amendment, there is also an Inspector General. There are things that did not exist before that do exist now. We raise those issues only as matter of back drop and background to protect the better interests of the City and of course the Commission. If it be the wish of this Commission to find a way to modify the 1<sup>st</sup>, the 1 year extension, we will support whatever we can to help you get to that conclusion. And if the wish of the Commission to look towards not bidding the contract out. I'm sure that there will be a record of immense specificity on this dais and publicly discussed we should provide all the basis on which this Commission if it so desires, by the way Mayor and Commission to extend that contract, would find the basis to do so. Because I can guarantee you that at some future moment, your papers will be graded by 3<sup>rd</sup> parties. Not only the people that are in the office of the Inspector General, but any of the competition that would otherwise provide the service and could offer at a lesser or better price who were not given that opportunity, because it didn't go to the streets for consideration. I'm not the business guy up here, but I'm the lawyer that gives you the advice it must. In the context of those components and I think each of you in your own particular way recognize the impact and importance of competitive selection when you buy a good or service. And if we can harmonize that concept with your need to and belief that it's in the best interest of our citizens and residents in Pembroke Pines to find a way to extend and to modify, I will help you to get there. I'll also comment in closing

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Mayor and Commission, there is a provision which this Commission looks at carefully from time to time. It's called "In the best interests of the City" it's in your procurement code. It's not there by accident, it's there for reasons and it actually turns the corner from competitive selection on the street to decisions by the Commission based upon competent and substantial evidence as to the why part as to why you made that decision. You've done that before and if it be the wish of the Commission after the Manager and his professional staff garner the right information to provide back to you to take that route, I'd be happy to help you get there. **[2:54:52]**