

**MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday March 22, 2005**

Members Present: Alderman Gallagher, Alderman Harenda, Alderman Ament, Commissioner Bob Dude, Jim Morrisey

Others Present: Mayor Wysocki, Ray Grzys (Director of Utilities & Streets), City Attorney Mark Blum, Larry Wilms (Division Engineer), Steve Schultz (Ruekert & Mielke), Peter Nilles (S.E.H.), Paul Meschino (Insituform), Mike Krosnosky (Michels) and Suzette Hanley (Office Coordinator Utilities & Streets)

Alderman Gallagher called the meeting to order at 5:00 pm declaring a quorum with all members present.

ITEM B-05 Approval of minutes from January 25th meeting

Motion by Alderman Ament. Seconded by Alderman Harenda and upon voting the motion passed 3-0. Commissioner Dude and Mr. Morrisey did not vote since they were not on the committee at that time.

ITEM C-05 Approval of minutes from February 22nd meeting

Motion by Commissioner Dude. Seconded by Alderman Ament and upon voting the motion passed 4-0 with Alderman Harenda voting present since he was absent at the meeting.

ITEM D-05 Approval of minutes from March 8th special meeting

Motion by Commissioner Dude. Seconded by Alderman Ament and upon voting the motion passed unanimously.

ITEM 12-04A Milwaukee Water Construction Update #7

Steve Schultz from Ruekert & Mielke gave the Status of construction and indicated we are still on schedule for a early June substantial completion.

- Water mains installed, safe samples received, mains charged
- Punch list items remain to be addressed and restoration work in spring
- Pressure reducing station tested on February 23rd
- Greenridge pumpstation 99% completed – Certificate of Substantial Completion issued March 16th, just Spring restoration and a few minor items to be completed
- Grange Ave pumpstation – 65-70% complete, building temporarily closed to allow winter work, brick work started, generator on site being installed, pumps expected April 12th. Behind schedule due to SBC mislocates during design and prior to construction.

Mr. Schultz said that there are \$72,700 liquidated damages to date. Director Grzys indicated that this amount has already been subtracted from the contractor's invoices. Mr. Schultz said that the contractor does have recourse at the end of the contract to come back to the City for additional money.

Mr. Schultz said that there may need to be additional \$15,000 for R & M site visits, etc. for Grange Avenue pumpstation because of SBC mismarking during design and prior to construction which caused the contractor to be delayed. Commissioner Dude asked why SBC doesn't have to pay for this? Mr. Schultz responded that all invoices have been saved and forwarded to the City. Director Grzys added that a letter had been sent to SBC to make them aware of the situation and that invoices will be forthcoming.

Mr. Schultz said that regarding the pump sizing question at the February meeting, he asked the Committee members if they had received his March 1st letter explaining why we do not want to put in oversized pumps. He explained that this relates to the capacity of the Milwaukee water system at peak flow and how it relates to the rates and it would not be wise to use a max pumping rate until the City

requires it. Mr. Schultz said that if the City does get water to the rest of the service area, we may need to install increased sized mains in the areas not serviced now such as Greenfield Avenue (NEC). Alderman Gallagher said that he was satisfied with the explanation in the letter.

ITEM 02-05 Sanitary Sewer Relining Project K-366 Waive irregularities in bids

Alderman Ament made a motion to wave the irregularities in the bid of Insituform Technologies, Inc. for the proposed project K-366 Sanitary Interceptor Sewer Re-Lining project. Specifically, it is recommended that the Common Council waive the requirement that the bidder acknowledge the terms of the addenda in their bid as provided in Section 15 of the general requirements to bidders as well as the addenda themselves. Seconded by Commissioner Dude and a lengthy discussion began.

Alderman Gallagher stated that he had read the letter forwarded to the Committee and Council from Michels protesting the Committee's decision to not re-bid the project. Alderman Harenda asked the City Attorney if Michels did contest the decision, could they delay the project? Attorney Blum said that Michels could indeed contest it and may receive a request for injunctive relief which is an order from the court in preventing the City from proceeding with the project until the court made its decision. Attorney Blum said his recommendation still stands to rebid the project. Alderman Harenda asked if the project was rebid, how much of a delay would this cause? Director Grzys responded 4 to 6 weeks.

Alderman Ament said that his opinion stands that we should waive the irregularities and go with the low bidder since the letter from Michels uses the word "may" several times. He continued that the owner (City) reserves the unqualified right to refuse any bids or to waive irregularities in any bid. Alderman Ament stated that he is in favor of waiving the irregularities and accepting the bid from Insituform, the low bidder, still serves the best interests of the City and is in our rights.

Commissioner Dude added that one of the change orders or addendums indicated a reduction of 71 feet of pipe, which would reduce the bid from Insituform by \$17,000. He added that if we don't believe in paragraph 9 of the contract to have the right to accept or reject a bid, we should remove it from the contract.

Mr. Morrissey said the difference in the bids is also a result by the quantity of resin that is in the quotes and that he did some research on this. Mr. Nilles from S.E.H. said that the design criteria that calls for the change in the resin quantity is specified in the 1st addendum which Insituform did not receive. He indicated that their design is good, but the concern is the thickness of the resin. Mr. Morrissey said that the letter that Insituform sent the City said that they will abide by addendums, but how binding is this? Attorney Blum said that this is negotiating and modifying the arrangement after the fact. Attorney Blum stated that the addendum is part of the project, and even though they indicated verbally that they will abide by the addendums, it is not part of their bid. Alderman Ament asked if item #15 is binding, even if Insituform did not receive the addendums? Attorney Blum said that the City (through their agent) did not supply them with the information.

Commissioner Dude said that Insituform said that they will comply with the addendums and is treating the City more like a customer than Michels who is threatening legal action, and in the private sector, we wouldn't put up with that. Attorney Blum responded that both contractors said that they would raise legal actions, and that the Michel's letter takes the position that acknowledgement of the addendums is a requirement of the contract. He added that Michels complied with the terms, and Insituform said they couldn't comply with the addendums since they had not received them.

Alderman Gallagher said that either way, it may be a legal challenge and he will abide by the City Attorney's opinion to re-bid the project.

Motion was defeated 2 votes to 3 with Alderman Gallagher, Alderman Harenda & Mr. Morrissey voting no.

Motion to adjourn at 5:41p.m. by Alderman Harenda. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Respectfully submitted,
Suzette Hanley - Office Coordinator, Utilities & Streets