

**CITY OF ELKO**  
**REDEVELOPMENT AGENCY**  
**REGULAR MEETING MINUTES**  
**4:00 P.M., P.D.S.T., TUESDAY, MAY 15, 2018**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

The meeting was called to order by Chris Johnson, Chairman of the City of Elko Redevelopment Agency (RDA).

**ROLL CALL**

**Present:**       **Councilman Robert Schmidlein**  
                  **Councilwoman Mandy Simons**  
                  **Mayor Chris Johnson**

**Absent:**         **Councilman John Rice**  
                  **Councilman Reece Keener.**

**City Staff:**    **Scott Wilkinson, Assistant City Manager**  
                  **Cathy Laughlin, City Planner**  
                  **Shelley Petersen, Administrative Assistant**  
                  **Bob Thibault, Civil Engineer**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

*There were no public comments at this time.*

**I. NEW BUSINESS**

- A. Review, consideration, and possible award of the bid for the Centennial Park Expansion Project, and matters related thereto. **FOR POSSIBLE ACTION**

At the April 10, 2018 meeting, the RDA took action to authorize staff to solicit bids for the Centennial Park Expansion Project. Bids were received until 3:00 p.m. on May 4, 2018. A bid tabulation is included in your packet.

Bob Thibault, Civil Engineer, explained that four bids were received for this project. The lowest was from Element Construction in the amount of \$171,751. He had a few things he wanted to discuss that were within the bid. He thought they could work through all of them and award the bid to Element Construction. First, the bid bond was submitted, but the seal didn't show up very well because a copy of the bond was submitted. The Power of Attorney Form did not have the red border as required on the form, because it was a copy. Legal Counsel instructed Mr. Thibault to obtain confirmation that the bid bond was enforceable at the time it was submitted. Mr.

Thibault informed the Council that he did that. He also had a letter from Higgins and Rutlage Insurance, Inc. regarding BNIP, LLC, DBA Element Construction. He then read the letter into the record. He had also received the original bid bond, which wasn't included in the submittal. The second item that came to attention was that there were two 5% lists included in the packet. They had some numbers on them differing by just one percent. Mr. Thibault did the math, looking at the total bid and adding up each item that the subcontractor would be doing from the bid tabulation form. One of them was correct. The one that was correct said that Ruby Rose was doing 27% of the work, Staker Parsons was doing 15% of the work, and Element Construction was doing 58% of the work, which is key because the 1% list that was submitted also said that Element Construction was doing 58% of the work.

Councilman Robert Schmidlein said that was just an arithmetic error, and as long as they listed them as a 5%.

Mr. Thibault said he asked the City Attorney, Dave Stanton, to be here to explain this. In an email from Mr. Stanton, it was advised that that could be found as an error that was slight, obvious, and inconsequential. Mr. Thibault thought they could work through that.

Dave Stanton wanted to give a couple thoughts. He thought this was stuff the Council already knew. These type of errors, these irregularities, can be waived if the waiver is found to not create a competitive advantage, or create some sort of an unfairness in the competitive bidding process. If it's just a minor technical irregularity that this Board finds to be inconsequential, it can be waived. Mr. Stanton thought they could be waived. The issue of the red border on the Power of Attorney is similar to a California case that Mr. Stanton found that also had an error in a bid bond in a Public Works project. The Court said, in that case, that as long as the City Council had proof that the bid bond was valid and enforceable at the time the bid was submitted, they could get additional information after the fact in order to verify that. You can't supplement a bid once it has been submitted, you can't add things to it, but you can look at additional information in order to interpret the bid and to see whether a bid is enforceable. In that case, the City Council asked for the surety to provide proof, or a statement, stating that the bid was enforceable. In that case, a page was missing, in our case a red border didn't appear because it was a black and white copy. That was why Mr. Stanton suggested Mr. Thibault get ahold of the surety and get a letter. The letter, in Mr. Stanton's mind, puts the Board in the same position as the City in the other case. Now you have some sort of assurance that the bid was enforceable at the time the bid was submitted, which is key. In terms on the two 5% lists, one of them is correct, and one of them is off by a percent. In that case, the reason Mr. Stanton thought they could waive the defect was because the correct percentages in the list are easy to calculate, mathematically, from the information contained in the bid. He didn't think that created a competitive advantage. He thought it was a technical defect and that it was inconsequential. If this Board is going to waive these two defects that it make these findings, that it makes separate findings, one for each of the defects. The findings would be by waiving the defect this does not place the winning bidder at a competitive disadvantage over the other bidders, does not create unfairness in the competitive bidding process, and that it is a minor technical irregularity that is inconsequential. Those would be the findings to make with each one of the defects.

Mayor Chris Johnson said he liked it, as a contractor, because to fill out the forms exact are tough. If we had a competitor in the room saying, it wasn't done right. They've seen it before where minor things had been thrown out. As long as they are prepared for the next one that

wasn't exactly right, and there were competitors in the room. As a contractor, he liked this method, because it didn't give a competitive advantage. He asked if all the other bidders knew of the issue with the low bid.

Mr. Stanton thought every time a public body waived an irregularity in competitive bidding there was a risk of a bid protest.

Mayor Johnson thought it was fair. He thought they took a risk that the taxpayer didn't receive the best buy. They have to weigh it as elected officials.

Mr. Wilkinson didn't think it was standard practice for staff to evaluate bids, and if any issues are found, to convey that out to all the other bidders. Typically, bidders are looking at everyone else's paperwork. There was a comment from one of the bidders about the 5 and 1% list. Staff had to clarify that there was also a numerical value associated with that listing. The bidders are looking at the other bids that are received.

Mr. Thibault clarified that that bidder's concern was with the 1% list, it was not a concern with the two copies of the 5% list that Mr. Thibault mentioned. The thought was that the subcontractors were not listed on the 1% for each of the two lowest bidders, but if you look, and calculate, the amount that the subcontractors are doing it is less than \$50,000. The 1% list says to list all the subcontractors doing 1%, or \$50,000, whichever is greater. If they're doing less than \$50,000 worth of work, they do not need to be listed on the 1% list.

Mayor Johnson explained that listing of subcontractors was not for the general contractor. The listing of subcontractors was to protect the subcontractor, so that it binds the contractor.

Councilman Schmidtlein wanted to go back to the bid bond. He asked Mr. Thibault if when they opened the bids if they said their bid had an attached bid bond. Usually when there is a bid opening, you'll say ok they have schedules A through Z, its accompanied by a bid bond or cashier's check. He asked if that was announced during the opening of the bids.

Mr. Thibault explained that during the opening they read the numbers of the base bid, and stated that Element was the apparent low bidder. At that point, the room emptied, and Ms. Petersen and Mr. Thibault continued to go through Element's and Acha's bids. They noticed the irregularity, but there was no one in the room to announce it to. He then went to legal counsel and worked through the issues.

Councilman Schmidtlein asked if all the contractors left when they read the numbers.

Mr. Thibault said yes.

Mr. Wilkinson said that it was a key point that they let everyone know that they would review their submittals in entirety to determine whether they were responsive or not.

Mr. Thibault explained that he made it clear that they were doing that immediately following.

Councilman Schmittlein wished people would complete bid packages 100% correctly. It seemed like in the past five years it was going further in the other direction. They shouldn't have to sit here and rely on an attorney to make a decision.

Mayor Johnson said the bidding process was becoming more complicated.

**\*\*\* A motion was made by Councilwoman Mandy Simons, seconded by Councilman Robert Schmittlein to award the bid for the Centennial Park Expansion Project to Element Construction in the amount of \$171,751, noting three minor technical irregularities, one being a non-raised seal on a copy, one being the exclusion of a red border on a copy, and one being slightly different 5% lists. None of the irregularities creates a competitive advantage.**

*\*Motion passed unanimously. (3-0)*

## **II. REPORTS**

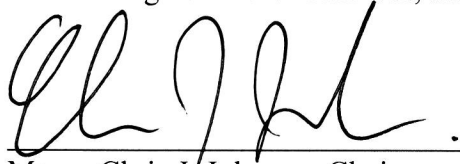
- A. Budget
- B. Other

## **COMMENTS BY THE GENERAL PUBLIC**

*There were no public comments at this time.*

## **ADJOURNMENT**

There being no further business, the meeting was adjourned.



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Mayor Chris J. Johnson, Chairman  
Redevelopment Agency