

FEBRUARY 16, 2010, CITY COUNCIL MINUTES

SPECIAL MEETING

The City Council of the City of Clinton, North Carolina, met in a special meeting at 5:30 PM on February 16, 2010 in the City Hall Auditorium. Mayor Starling presided. Councilmembers Becton, Turlington, Stefanovich, Strickland and Mayor Pro Tem Harris were present. Also present were City Manager Connet, Assistant City Manager Purvis, City Clerk Elaine F. Hunt, City Attorney Dale Johnson, and Public Works Director Chris Doherty.

Also present was Fred Mills, of Mills Construction Company of SC Inc., Raleigh, North Carolina.

BIDS —SAMPSON SQUARE APARTMENTS – COLLEGE STREET

City Manager Connet stated that this meeting is a continuation of the February 2, 2010 city council meeting. He stated that on January 21, 2010, the City opened bids for a \$240,000 CDBG project to install water and sewer infrastructure for Sampson Square Apartments on College Street.

City Manager Connet stated that three (3) bids were received. The bidders were: Mills Construction Company of SC Inc., of Raleigh, NC; Burgess Construction Group, of Clinton, NC; and Ellington Contractors, of Wake Forest, NC. He stated that Mills Construction Company of SC Inc., was the low bidder with a bid of \$299,506.75. He informed City Council that this lowest bid exceeded the grant funding by more than \$59,000.

City Manager Connet proceeded to inform City Council that a few days after the bid opening, Vince Burgess, of Burgess Construction Group, visited him in the office protesting Mills Construction's bid due to the fact that they did not submit the Minority Business Enterprise (MBE) good faith effort documentation along with their bid. City Manager Connet further stated that Mr. Burgess felt there was a conflict of interest because of Mills Construction Company's relationship with Sampson Square LLC.

City Attorney Johnson, Trip Coyne, of Williams Mullen Law Firm, and City Manager Connet have reviewed this matter in-depth. Connet stated that their determination is that there is no clear rule regarding what Minority Business Enterprise documentation is required with the formal bid documents. He stated that our grant consultant told two of the bidders that the MBE documentation forms were not required as part of their bid submittal.

City Manager Connet stated that the City has followed the mandated bid procedures and there is no conflict of interest associated with the bidding process. He stated that because of what has occurred, the City has three options:

- Reject all bids, due to the bids exceeding the budgeted amount, and modify the bid specifications and immediately rebid the project. However, he stated a risk would be that no one may rebid; or,
- Reject all bids and negotiate with Sampson Square, LLC to install all of the infrastructure, utilizing G. S. 160A-320 and 160A-309; or,
- Reject all bids due to the fact that they did not submit MBE requirements and negotiate with Burgess Construction Group Inc.

City Manager Connet recommended to City Council to:

- Reject all bids received on January 21, 2010, for exceeding the funding that was allowed for the project; and
- Direct staff to change the bid specifications to clearly state what MBE information is required with the bid submittal; and
- Rebid this project and set the bid opening for Monday, March 1, 2010 at 1:00 PM in the Clinton City Hall Auditorium.

Mayor Starling stated that Vince Burgess contacted him regarding this matter. He further stated that William Mullen Law Firm has reviewed this matter and it seems the only alternative the City has is to reject all bids.

Councilmembers Turlington and Stefanovich voiced their opinions to rebid. Upon a motion by Councilmember Stefanovich, seconded by Councilmember Strickland, it passed unanimously to accept our attorneys' recommendation to:

- Reject all bids received on January 21, 2010, for exceeding the funding that was allowed for the project; and
- Direct staff to change the bid specifications to clearly state what MBE information is required with the bid submittal; and
- Rebid this project and set the bid opening for Monday, March 1, 2010 at 1:00 PM in the Clinton City Hall Auditorium.

Before adjourning, City Manager Connet stated that a memorandum had been placed at City Council's desk regarding an exchange of property related to the Russell Street CDBG project.

Upon a motion made by Councilmember Stefanovich, seconded by Councilmember Becton, and unanimously passed, the meeting adjourned at 5:41 PM.

Elaine F. Hunt, City Clerk

Lew Starling, Mayor