

Correspondence – Audit Subcommittee – August 23, 2011
Received as of Friday, August 19th – 3:00 PM

To: PHUUD Audit Committee.
Re: August 23-Audit Committee Meeting

7-29-2011

Dear Mayor Barbieri, Vice Mayor Chiang & Judge Kawaichi,

It appears that the audit committee is forging-ahead to craft a final document on the PHUUD debacle before the "key cause" is resolved. I believe, the 1-1/2 year long-unresolved legal dispute with Harris & Assc supports my conclusion. That Administrator Geoffery Grote had the primary responsibility and decision to identify any irregular bidders and properly award the PHUUD construction contract to the "lowest responsible bidder".

As a result of your inquiry of the two million dollar taxpayer bailout of the Piedmont Hills Underground Utility District (PHUUD), the critical issue remains unresolved. Either City Administrator Geoff Grote or City Engineer/Harris & Assc failed to abide by the Cal-Trans bidding guidelines, California Public Bidding Laws and section 25.0 (Rejection of Bids) of the PHUUD bidding documents. Valley Utility's irregular line 38 bid unit price of \$ 2190.00 per cubic yard for the removal of rock went unnoticed and unaddressed by both Administrator Geoff Grote and Harris Assc. This blatant collapse of basic (boilerplate/Cal Trans) public bid analysis resulted in the mis-award of the PHUUD construction contract to Valley Utility by Administrator Grote. This significant executive error is in violation of the Piedmont City Charter section 4.11, California Business & Professional code section 20415 and California Public Contract code sections (20161 & 20162), etc. There are over 100 more competitive bidding statues in California. All these statues are laws that are intended to protect the public and bidders by eliminating favoritism, fraud and corruption in the awarding of public construction contracts.

Both judicial case law and existing statues mandate that all public work projects must be awarded to the "lowest responsible bidder". Valley Utility's unit bid (line 38 rock) was glaringly irregular, thus their bid was non-responsive, based on State public bidding laws. Valley Utility's lower base bid amount was irrelevant and subordinate in relationship, to a "lower responsible bidder". Tennyson Electric was the "lowest responsible bidder" at the \$425.00 per cubic yard unit (line 38) for the rock removal and \$ 1,830,000.00 on their base bid element.

At the July 8th Audit Committee meeting Administrator Grote agreed. He stated that nobody on his senior staff, including himself had knowledge of any irregular unit numbers.

Mr. Grote's statement makes no sense! A blind person could see the irregular numbers.

We are told that it was Harris Assc, that failed to recognize the irregular bid submitted by Valley Utility and it was Harris Assc contractual analysis that cloaked Mr. Grote's judgment.

I believe, based on Mr. Grote's 22 year pattern of awarding public contracts and Harris Assc March 3 email to Larry Rosenberg, that it was "clearly" Administrator Geoffery Grote's sole administrative duty to screen-out/disqualify any bidders proposals with irregular or unbalanced unit numbers and to validate the contract award to the legitimate bidder. The seven analyzed items specified (spelled out) in Harris Assc Mar. 3rd email, do not include screening for irregular unit bid items.

The City of Piedmont and Harris & Assc are currently in litigation to resolve the violations that occurred. If Mr. Grote's claims are correct, then Harris Assc will be found culpable for failing to identify the irregular/non-responsive bid unit rock prices of Valley Utility and Piedmonters will be made-whole, with a financial settlement from Harris & Assc in the amount of 1.3 million dollars.

If not?

The PHUUD Audit Committee and Piedmont City Council Members fiduciary duty is to all the Citizenry of Piedmont to hold those responsible, accountable for their actions.

Neil Teixeira

Garrett

I found the entire process of the so called "audit committee" so distasteful that I couldn't allow myself to participate. This was no real audit committee, but merely a committee to pacify the citizens of Piedmont, who were rightly upset by the activities of our staff and council. Just a couple of thoughts:

1. How can it take over 1.5 years from the events for a committee to issue a final report and then have that report qualified on so many levels and be totally non-definitive and wishy washy?
2. How can the City not hold its chief executive directly responsible for his staff and for overruns of this magnitude? I personally like Geoff, but if he worked for any business as CEO and the business incurred such overruns, he would have been terminated for cause on the spot. In discussions with John Chang, he admitted that actions such as this would have been grounds for termination at his bank, regardless of intent on the part of the employee.
3. The establishment of the "audit" committee was almost a joke. Mr. Barbieri was the signatory to the contracts in question and Mr. Chang was a member of Council during the process. How could they be the people involved in auditing themselves? The audit committee should have been formed from citizens, not bound by the Brown act, so that they could have interacted and actually accomplished something beneficial. This committee lacked any semblance of independence (except for Judge Kawaichi) either actual or perceived.
4. How could Geoff Grote have been the staff person to the committee when he was or should have been one of the individuals investigated for incompetence?

The entire process was flawed from start to finish, possibly because of the City's strong standing position that encourages undergrounding at virtually any cost. Even to date, the audit committee doesn't

acknowledge that the city's actual costs for PHUD were greater than the 2+ million for rock, etc.

Ie: The city costs should include the sewer repair work of over \$200,000 on Crest, which seems to have been swept under the table (or roadway of Crest).

This would never have been incurred or necessary but for the undergrounding project.

Incompetence at so many levels which is not being owned up to is indicative of the way our city is being run. In one of Mr. Wieler's recent Post articles he talked about how good the City was and how fiscally responsible and sound Piedmont is. In the same issue, the municipal tax review committee was saying that we are headed toward disaster if we don't reform our spending.

Best Regards
Joe Hurwich

Maybe I'm missing something, but it seems that the Committee has missed the forest for the trees. The only questions I'm interested in hearing an answer to is whether anyone on the council asked "What happens if there is a cost overrun?" and, if there is, "Who is going to pay for it?"

The Council should never have approved a project for private benefit if there was a risk of the public having to pay for it or pay for any significant part of it? Did no one ask? Where was our City Attorney? Wasn't it his job to warn the council of the potential consequences?

Sanford H. ("Sandy") Margolin

August 18, 2011

Audit Committee Report Comments

LITIGATION

That this matter is under litigation appears to have prevented the Committee from any meaningful examination of the role of Staff. I request that the City's litigation Complaint against Harris & Ass. and Robert Gray & Ass., and the defendant's respective Answers be published on the City website. Were these matters being litigated in Alameda county the Court website would give ready access to the documents. The matter is being litigated in Contra Costa and that Court site does not have on-line access. These documents are not shielded by attorney/client or work product privilege.

I request that once the litigation is concluded all depositions and court transcriptions be made available to the public.

IGNORING DOCUMENTATION

Geoff Grote has stated publicly no one on staff was involved in the bid process. An email from Russ Moore of Harris Ass. to Larry Rosenberg confirms

Larry is involved in discarding the MCH bid, a defective bid. What was Larry Rosenberg's involvement in discarding the MCH bid? (See my Oct 26, 2010 letter to this Committee.)

RUNNING ON EMPTY

By Sep.1 2009 the change work orders total \$970,593. This is \$423,066 *more* than the \$547,527 project contingency. By Oct. 12, 2009 the invoices from Valley Utility total \$2,206,089. This is \$144,047 *more* than the total \$2,062,822 available from the Valley bid of \$1,515,295 and the \$547,527 project contingency.

CREST ROAD TAXPAYER REPAIR

On Oct. 13-14 the Crest road utility trench washed out and collapsed. But for the special benefit undergrounding, there would have been no Crest road washout. The Audit Committee does not comment on public funds being used for private benefit in repairing the Crest road washout.

At the Muni Tax Comm Meeting Aug. 3, 2011 Geoff Grote defended staff's actions in using the sewer fund to repair the Crest Rd. washout. Mr. Grote's defense of the use of taxpayer funds for this special benefit two years after the incident is disturbing and indicative of a staff culture of shifting special benefit costs to general taxpayer expense.

Valley had 24 hours notice a major storm event was forecast. There is no comment from staff or this Committee about Valley's possible professional negligence in the Crest road washout.

STAFF CANDOR

The report states (p21) Geoff Grote informed Mayor Friedman "in October 2009." Why is the exact date omitted? If informed after the trench collapse, the disturbing implication is that even at this late date when all funds are exhausted only the collapse of the trench forced staff to reveal the debacle.

GEORGE PEYTON

City Attorney Peyton reviewed the contracts for "form and content" that transferred unlimited liability to Piedmont taxpayers. I asked both this Committee and City Council why City Attorney Peyton's role in this has not been examined, and why the city has not attempted to collect from Mr. Peyton's insurance. There has been silence concerning George Peyton's responsibility.

UNBALANCED VALLEY BID

The Valley Utility bid for the open ended line 38 bedrock item exceeded other bidders by minimally 219%. Compared to the Tennyson Electric, the next lowest overall bid, Valley's line 38 was 1,460% higher. The Valley bid is unbalanced.

REPORT CONCLUSION

The cost over-runs are not \$2M as the report indicates (page 1); the actual sum is about \$3M. The taxpayer funded Crest Rd repair was \$296K. Massive amounts of staff time were spent on this. The counter suits brought by the City against the Kurtins proved to be frivolous at best and cost taxpayers minimally \$450k.


INDEPENDENT AUDIT

The Report is not substantive to the basic issues of staff involvement and other related issues. Two City Council members that voted for the public funds giveaway have now examined themselves. An independent audit is needed.

Rick Schiller

Memo

To: Geoffrey L. Grote, City Administrator
John Tulloch, Interim City Clerk

From: Larry Rosenberg, Director of Public Works (retired) 

Date: August 17, 2011

Re: Clarification to Draft Audit Subcommittee Report
dated July 14, 2011

In anticipation of the August 23, 2011 meeting of the Audit Subcommittee, please include the following clarification in the record.

Reference to Page 18, Item 2.b. Timeline of expenditures including the development of "rock issue" paragraph 1 which reads (underlining added):

"As previously discussed, a completed timeline and analysis of the expenditures and payments through change order #025, by reviewing the billings and description of the work done (see attached Exhibit A). As noted earlier, rock was first discovered during the last half of July 2009 with the installation of splice boxes. Valley brought this to the attention of the Public Works Director and both parties agreed to use the In-Force Account provision of the construction contract, rather than the \$2,190 per cubic yard pricing provided in the accepted bid, which would have been far more expensive, plus offering a credit as an offset for the work that otherwise would have been done under the base bid (for non-rock trenching)."

The underlined sentence is inaccurate as it indicates that the Public Works Director and Valley Utility unilaterally agreed to use the in-force account provision of the construction contract. Rather, the decision to use the in-force account provision was a decision of the Steering Committee. The Steering Committee consisted of Ann Swift, City Clerk; Larry Rosenberg, Director of Public Works; John Wanger, City Engineer (Coastland Engineers); Russ Harlan, Project Manager (Coastland Engineers); Larry Fisher, Field Inspector (Robert Gray Associates); and Patrick Benedict (Valley Utility).