

APPROVED

**City of Fort Lauderdale
Visioning Committee
Special Meeting**

4:00 p.m., Monday, November 1, 2010

City Hall, 100 North Andrews Avenue, 8th Floor, Fort Lauderdale, FL

MEMBERS

| | Reg. Meetings | | Special Meetings | | |
|-----------------------------------|---------------|--------|------------------|--------|---|
| | Present | Absent | Present | Absent | |
| Tim Smith, Chair | P | 6 | 0 | 4 | 0 |
| Stanley Eichelbaum, Vice Chair | P | 6 | 0 | 4 | 0 |
| Peg Buchan | P | 6 | 0 | 4 | 0 |
| Alan L. Gabriel | A | 6 | 0 | 3 | 1 |
| Desorae Giles-Smith (arr. 4:05pm) | P | 5 | 1 | 2 | 2 |
| Gloria Katz | P | 5 | 1 | 3 | 1 |
| Charles B. Ladd | A | 5 | 1 | 3 | 1 |
| Dan Lindblade | A | 5 | 1 | 3 | 1 |
| Gary T. Sieger | P | 6 | 0 | 3 | 1 |
| Wiley D. Thompson, III | P | 5 | 1 | 3 | 1 |
| Randall Vitale | P | 6 | 0 | 3 | 1 |

Staff

Shannon Vezina, Staff Liaison
Gerry Burrini, Public Information Office
Kirk Buffington, Director, Procurement
Michael Walker, Procurement
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Call to Order / Roll Call

The meeting was called to order at 4:02 p.m. by Vice Chair Eichelbaum. (Note: Vice Chair Eichelbaum presided over the meeting, even though Chair Smith was present.) As of this date there were eleven appointed members to the Visioning Committee, which means six would constitute a quorum. Following a roll call it was determined that a quorum was present.

Old Business

- **RFP Evaluation Committee**

Vice Chair Eichelbaum recognized that there may be a lot of confusion about the process they are undertaking. He asked Ms. Vezina to bring the Committee up to date on all the following topics:

- The process timing of the Evaluation Committee

- What is permitted and limited of the Visioning Committee and the RFP Review Committee
- What interaction is ok or not with the submitters and between the two Committees
- How the recommendation goes from Proposal Committee to the City Commission and what outside input is possible
- Description of the “non-prejudicial statement” that all on the RFP Review Committee must sign and be bound by
- Issue of public access to the proposals and timing

Ms. Vezina introduced Michael Walker from the Purchasing Department to assist in answering questions.

Mr. Walker explained that the Visioning Committee members who are also on the Evaluation Committee cannot talk to each other unless it is under a Sunshine meeting such as this one. They can discuss things whenever there is a publicly advertised meeting such as when the Evaluation Committee meets. Individually, the Evaluation Committee members can talk to anyone, including members of the community and other members of the Visioning Committee. However, the members of the Visioning Committee who are also members of the Evaluation Committee cannot talk to the City employees who are on the Evaluation Committee outside of a Sunshine meeting where all of them are there to discuss the subject.

Mr. Vitale wondered specifically if it would violate the Visioning Committee’s Sunshine Law, and Mr. Walker replied from a Procurement standpoint that if the members of the Visioning Committee who are also members of the Evaluation Committee are talking to non-Evaluation Committee members of the Visioning Committee, that would be in violation of the Visioning Committee Sunshine, unless it was a Sunshine meeting. He continued that if you advertise a meeting and the meeting is advertised as a Visioning Committee and an Evaluation Committee meeting combined, then the three City employees combined with the five people on the Visioning Committee and the rest of the Visioning Committee together for discussion. He emphasized it would have to be advertised as a combined meeting in order to do that.

Vice Chair Eichelbaum was curious if the combined meeting could be held before a final decision had been reached, and Mr. Walker replied affirmatively. He added it would be up to the eight people on the Evaluation Committee to determine if they wanted to do that. In addition, the public could come in and give their input.

Vice Chair Eichelbaum brought up that he had heard that the Evaluation Committee can not talk to the public about the process they are going through. Mr. Walker said he would have to verify that particular point. However, he stated that normally when they do an RFP, the members of the Evaluation Committee cannot speak to the vendors that submitted the proposals. Mr. Walker explained that the eight people on the Evaluation

Committee cannot speak to the proposers unless it is under a Sunshine meeting, but he will have to check to see if they can talk to anybody else.

Chair Tim Smith clarified that Mr. Walker meant that members of the Visioning Committee can talk to anybody about Visioning Committee business. He said he wants to make certain that Evaluation Committee members can talk to outside people other than the proposers. Mr. Walker stated he would verify that before the conclusion of the meeting.

Vice Chair Eichelbaum commented that he had been under the impression that all business took place in the building, but now he understood that they could take the proposals home. Mr. Walker replied that Ms. Vezina had brought copies for them to take and if they have questions about the proposals, Committee members should call him or his agent, Richard Ewell.

Kirk Buffington, Director of Procurement, entered the meeting and was asked to clarify the question regarding who they can talk to about the proposals other than the 13 proposers and other than themselves. He explained that the Sunshine Law specifically prohibits discussion between two members that sit on a Committee, and internally there is a policy that prohibits Evaluation Committee members speaking to proposers as that could taint perception of the process. A one-on-one discussion with someone who is not involved in the decision-making or evaluation process is acceptable.

Mr. Sieger wondered if the five people on the Evaluation Committee could talk to the Visioning Committee in a public meeting. Mr. Buffington confirmed that Mr. Walker's previous answer to that was correct, that it is not allowed unless it is advertised as a public joint meeting between the two Committees.

Noting that the RFP asks for three different levels of submission, Vice Chair Eichelbaum was curious how the decision process is made and transferred to the City Commission. Mr. Buffington replied that is up to the Evaluation Committee. All three could be presented, or what is perceived to be in the best interests of the City. Eventually that is transmitted to the City Commission through an agenda item that goes through the City Manager's office. It would go through PIO, then himself, and then to the City Manager for signature and inclusion on the agenda.

Vice Chair Eichelbaum then brought up the question about public accessibility to the proposals. Mr. Buffington remarked that the proposals are all public record and anybody could call his office to make an appointment to come in and view them. If they want copies, that is subject to a charge for copying.

Chair Smith wondered if it was too difficult to put them online, and Mr. Buffington replied that it was not difficult per se, but it was time-consuming. He said he could have them online through his web page (accessed via Purchasing's home page) in a few days. Mr. Walker noted they just have to make sure there that the proposal was not copywrited.

In that case, viewing of the proposal would be limited to coming into the office in person.

Mr. Vitale asked if it would be possible to have a link on the Visioning Committee's website to the proposals, and Mr. Buffington said that can be done.

Mr. Sieger wondered since he is on the Visioning Committee, but not the Evaluation Committee, would he be able to talk to the vendors. Mr. Buffington said that was a finer point, and he hesitated to express an opinion on it, noting he would obtain legal counsel on it.

Chair Smith said he thought it was probably not a good idea, as it might give rise to someone saying they had an inside track or something like that. Mr. Buffington concurred, commenting that they try to maintain transparency. Since this is a high profile project, they want to be extra cautious.

Vice Chair Eichelbaum asked Mr. Buffington to review the timeline involved. He replied that generally once the Evaluation Committee is appointed, the packages go out to them. Members will start reading and reviewing. The Evaluation members will need at least two weeks before they are called together in the first meeting. Then they will go through a discussion process and a ranking process. At some point, there will be a "short list" of four or five. He commented that the ordinance requires at least three proposers on that list. Then the Evaluation Committee will hear presentations from the "short list" of proposers, and that would take another few weeks. Vice Chair Eichelbaum noted those would be open to the public.

Mr. Buffington cautioned Committee members about asking or answering questions in emails, emphasizing that emails are public record. Any inquiries they have about the process should be directed either to Mr. Buffington or Mr. Walker, and Ms. Vezina reminded the Committee members not to contact her about it as she is on the Evaluation Committee. Mr. Buffington emphasized that members of the Evaluation Committee cannot have communication with each other on the subject, and reminded everyone not to "reply all" with their emails. Mr. Buffington relayed he had just read of a Florida State Supreme Court case regarding city/county communications where there was a challenge on a violation of Sunshine Law based on board members doing "reply alls."

He continued that once the oral presentations have been made, the Evaluation Committee can make a recommendation. Mr. Buffington said it could come back to the Visioning Committee for review before going to the City Commission, but the Visioning Committee will not be able to influence the decision made by the Evaluation Committee. It is more of a courtesy review.

Ms. Buchan pointed out that the Visioning Committee can advise the City Commission that the Visioning Committee did or did not concur with the Evaluation Committee's decision as a matter of record.

Mr. Sieger wondered if the #1 ranked proposer could come to the Visioning Committee and give a presentation, but Mr. Buffington said that at that point the proposer is still a "recommendation" and there could be perception of favoritism, as the others on the short list are technically still in the running at that point. He added that those presentations should be at the direction of the City Commission.

Mr. Sieger asked if the proposer could make a presentation to the Visioning Committee after they were hired, and Mr. Buffington answered affirmatively, noting they may want to make that part of the scope of work. Ms. Buchan commented that it is already included in the RFP.

Mr. Sieger inquired about whether the Visioning Committee would be giving direction to the vendor, and Mr. Buffington said that would be through the staff. He explained that a Committee as a body could not give direction to a consultant hired by the City Commission. He added that the RFP becomes part of the contract, and that is what controls what the consultant does. Staff, most likely Ms. Vezina and someone from his office, will be responsible for ensuring that the consultant makes the deliverables, is present at meetings and so forth. Essentially the consultant works for the City Commission.

In response to a question by Vice Chair Eichelbaum, Ms. Vezina said to keep in mind that once the Commission takes action on a recommendation, it may take several weeks to officially get the contractor on board. The agreement itself has to go to the City Attorney's office.

Vice Chair Eichelbaum wanted to clarify that the ten-day period before it becomes public record had expired, and Mr. Buffington confirmed that.

Ms. Buchan brought up the fact that there is no money allocated yet for the project, so the hiring will not be instantaneous. Mr. Walker explained that generally when they go to the City Commission with a recommendation, a funding account number from a department has to be provided. With this proposal, they do not know how it will be handled.

Ms. Katz commented she was under the assumption that the City Commissioners could get a certain amount of money. Chair Smith remarked there is \$50M worth of contingency money in the City budget, and he felt that was the money that could be tapped. Ms. Katz said there have been worries of late that too much money has been taken from that fund.

Chair Smith declared that Commissioner Rodstrum has spoken publicly about taking money out of CDBG and other funds. Mr. Buffington confessed he does not get involved in the funding side of things, but he does know that CDBG comes with strings attached.

Chair Smith said the range of bids was from \$20,000 to \$1.2M. Mr. Buffington thought that was a good variety to choose from.

Vice Chair Eichelbaum announced at this point they would move on to select the fifth person to be on the Evaluation Committee. He said he was advised by the City to not pick an alternate (back-up) person, and the Committee would stand as selected if someone resigned.

Vice Chair Eichelbaum reminded the Committee of the individuals who opted out, and said that Ms. Katz and Mr. Sieger had both expressed interest in serving on the Evaluation Committee. Mr. Sieger noted he has no problem with Ms. Katz sitting on that Committee.

Motion by Ms. Giles-Smith, seconded by Ms. Buchan, to nominate Ms. Katz for the Evaluation Committee. In a voice vote, the motion passed unanimously.

Vice Chair Eichelbaum brought up when the next meeting would be. Chair Smith commented they have their standing date on the second Tuesday, which would be November 9, 2010. He suggested waiting for their next meeting until the Evaluation Committee has done some work, or perhaps their next meeting could be a joint meeting. He suggested they ask the Evaluation Committee if they want to have a joint meeting as their first or second meeting, as soon as it is appropriate.

Mr. Walker relayed his experience on an Evaluation Committee, and he suggested this Evaluation Committee will probably need two to three weeks for everybody to review the material and make informed decisions.

Vice Chair Eichelbaum reminded the Committee that he and Mr. Lindblade would not be able to make a meeting on December 14, and he suggested December 7. Mr. Buffington thought that would be a good time for the Evaluation Committee, as by then they should have decided on the best options and who the best firms are.

Mr. Walker distributed his phone number and Mr. Ewell's card to the members of the Evaluation Committee, and encouraged them to call him about their questions.

Ms. Buchan asked Ms. Vezina how the other two members of the Evaluation Committee were selected, and Ms. Vezina said they were selected by their Department head. They wanted someone from Engineering, as they thought that person could have input on future construction/development in the City, and the same reasoning applied to Planning/Zoning.

Mr. Sieger wanted to ensure he understood that nobody else on the Visioning Committee could talk to anyone involved in this process, and Mr. Buffington replied that he concurred with what Chair Smith said, that it would not present the right perception

to do so. Mr. Sieger continued that since it is a gray area, he wondered if they needed to have a formal agreement amongst themselves that they will not do that.

Mr. Buffington commented that it is good to have it in the record that they took the action that they were not going to discuss it, so if it does get challenged, there is something to refer to.

Motion by Mr. Sieger, seconded by Chair Smith, that members of the Visioning Committee, to respect the intent of the Sunshine Law, will not have communications with vendors about the RFP unless it is in a committee meeting that has been publicly noticed. In a voice vote, the motion passed unanimously.

Vice Chair Eichelbaum thought that the “no communication” agreement extended to any communication with the vendors, not just that in respect to the RFP. Mr. Buffington clarified that the Sunshine Law pertains to matters that are particular to that Committee. In fact, he said Visioning Committee members can talk to the vendors about other City business that has nothing to do with the RFP.

Motion by Vice Chair Eichelbaum, seconded by Mr. Vitale, to adjourn the meeting at 4:55 p.m. In a voice vote, the motion passed unanimously.

[Minutes prepared by J. Rubin, Prototype, Inc.]