

SPECIAL MEETING
CITY COUNCIL

August 23, 2021

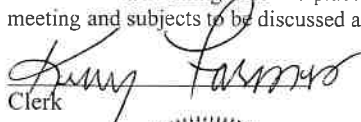
The Mayor and City Council of the City of Syracuse, Nebraska met at City Hall Council Chambers located at 495 Midland Street Syracuse, Nebraska at 6:00 P.M. on August 23, 2021 for a special meeting. Notice of meeting was given by posting in five places. Mayor Dettmer requested roll call; present were Mayor Dettmer and Council members Orv Gigstad, Wesley Halvorsen, Jerry Werner, and Laramie Werner. A copy of the posting notice and acknowledgement of notice to the Council is attached to these minutes. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the public.

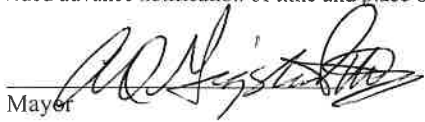
Mayor Dettmer led the discussion and resolution to approve change order #1 from Van Kirk Bros. Construction for the Water Improvement Project; Dane Simonsen of JEO present. City Attorney Jerry Stilmock asked if there is any discussion after the question and answer session at this meeting, it go through Jessica Meyer and/or Jerry Stilmock. Dane Simonsen explained the change order reflects items concerning how materials should be taxed as well as any price changes from what was originally bid. Simonsen has spoke with reps from Diamond Plastics; they said the orders they currently have is going to take them the rest of the year to fill. This does not include any future orders that should come in. They cannot foresee when they can get fully caught up. Stilmock confirmed based on what Dane's statement is the City's project is not even in line yet for the order to be done. Council Member Halvorsen asked if we're not in their orders yet how are they going to meet the turnaround they've quoted? Simonsen explained instead of a first come/first serve basis they change out what kind of pipe they're making. The manufacturers are picking out the orders to make a particular size of pipe to fill orders. Mayor Dettmer asked why if they had our order before why does the City need to get back in line now? Simonsen cannot answer at this time why our order was placed where it was; he thinks maybe it's possible they weren't making that size of pipe at the time our order was received but that is only speculation. Stilmock confirmed the City wants to know when our order was placed and if it wasn't placed, then why. Simonsen included getting an actual quote is part of the problem. He currently has the quote that is in the change order which is the quote from August 17th; he believes there was also a July quote. The July quote arrived on the 9th or 10th and did not include enough information for a change order. He confirmed between the time period of April and May he did not see any quotes, he included that doesn't mean there wasn't one but he did not see one. Simonsen has documentation from Winn Water stating the manufacturer cancelled every order Winn Water had placed with them. Regarding the bids, Van Kirk submitted their bid on December 2nd, the City conducted the bid opening on December 3rd, it was in the next couple of weeks the polar vortex weather event happened affecting the pipe manufacturing. What Van Kirk submitted in their bid was pricing from before the unanticipated weather event. A performance bond says the contractor is going to back up their bid; the amount goes up and down with any change orders. Stilmock asked if Van Kirk is going to cover any of the costs; Van Kirk feels they are being more than fair by asking for the general cost increase. Van Kirk has stated they are incurring additional costs due to this price increase they could pass onto the City but they are not. Simonsen included they received force majeure on a number of projects all really around the same time. Halvorsen commented on the 21st of January they received a force majeure letter from Ductile stating they were going to have increased prices on their February 15th bid sheet, those orders were filled. He asked about if we signed the contract in April and quoted Article 8, Section E regarding if there was outstanding information that the contractor didn't let us know about. He stated Van Kirk knew that there was outstanding information when the City signed the contract in April; Van Kirk had signed the contract in February. Halvorsen referenced a case involving force majeure stating the contractor would still move forward with the project, obtaining the materials and not pass that additional cost therefore the contractor would take on any additional cost. Stilmock explained Halvorsen's reference to Section E is relevant. Mayor Dettmer instructed Jerry Stilmock to seek outside legal council to assist in this matter. Council Member Gigstad asked if there is a delay does that affect the SRF loan. Simonsen explained he has spoken with Steve McNulty of SRF and in a usual situation it would typically have an effect, but with the unanticipated events if the project would go further than the 3-year timeline the loan would not be affected. Mayor Dettmer asked if this affects anything having to do with the easements. Stilmock noted he doesn't know the timeframe when it comes to the temporary easements. Stilmock asked Simonsen to explain the difference between HDPE and PVC. Simonsen explained the difference has to do with the uses; Council Member Jerry Werner added to this explanation. Mayor Dettmer comments it still seems they don't know what the prices are going to do so how do we know this isn't going to stop? If weather becomes a factor for Van Kirk during actual construction an extension could be requested if it's beyond typical Nebraska weather. The change in taxing water goes into effect October 1st, 2021; how will this affect this project? The League of Nebraska Municipalities is currently working on how municipalities are to move forward this. Discussion was had on when the contract was fully signed. Halvorsen referenced a document regarding when force majeure results in cancellation of a contract; Stilmock added labor availability is relevant versus product availability. Mayor Dettmer suggested the item of the change order be tabled for the time being. Simonsen stated if no action is taken at this meeting, the City will be looking at options previously discussed during a Special Council meeting. JEO will continue to ask for quotes from the contractor as time goes on including revising the change order as needed. The contractor may start including other items such as additional expenses they're accruing. Mayor Dettmer asked if the price goes down, can the City request the change order. Simonsen stated if they would go along with it, yes. The quote for the smaller amount of pipe needed expires the day after this meeting; this is \$170,000.00 in the change order. The remaining, larger amount of pipe needed

expires on August 31st. Simonsen stated SRF cannot reimburse for materials retained for this Water Improvement Project but not actually used for this project. Audience member Patty Buchholz asked if there is an idea of what litigation could cost. With this amount being unknown it is realized the cost of litigation and any additional costs from this process could be just as much as what the current price increase is. No action was taken on the change order; the City will seek legal counsel and anticipate any price quote changes from Simonsen.

Council Member Laramie Werner moved to adjourn the meeting at 7:05 P.M., Wesley Halvorsen seconded. Roll Call: Yeas: Jerry Werner, Orv Gigstad, Wesley Halvorsen, Laramie Werner. Nays: none.

I the undersigned Clerk hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the Mayor and Council; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting; kept continually and available for inspection at the office of the City Clerk; that such subjects were contained in the said agenda for at least twenty-four hours prior to the said meeting; that at least one copy of the reproducible material discussed at the meeting was available at the meeting for the examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days or prior to the next convened meeting of the body; that all news media requesting notification concerning time and place of said body were provided advance notification of time and place of said meeting and subjects to be discussed at said meeting.


Clerk


Mayor

