

**MINUTES**  
**City of New Berlin**  
**Special Utility Committee Meeting**  
**Tuesday March 8, 2005**

Members Present: Alderman Gallagher, Alderman Harenda, Alderman Ament, Commissioner Bob Dude, Jim Morrisey

Others Present: Mayor Wysocki, Ray Grzys (Director of Utilities & Streets), City Attorney Mark Blum, Larry Wilms (Division Engineer), Peter Nilles (S.E.H.), Kirk Morris (Insituform), and Suzette Hanley (Office Coordinator Utilities & Streets)

Alderman Gallagher called the meeting to order at 6:16 pm and declared a quorum with all members present.

**ITEM 02-05 Sanitary Sewer Relining Project K-366 Rejection of all bids**

Alderman Gallagher read the requested action for the sanitary sewer re-lining project K-366 to reject all bids.

Motion by Commissioner Dude to recommend to Common Council to reject all bids received for the proposed Project K-366 on February 23, 2005 due to addendums not received by all bidders and to re-bid the project on March 16, 2005. Seconded by Alderman Harenda.

Director Grzys stated that the Utility is asking the Committee to reject all bids. He stated that Peter Nilles of S.E.H. was there to answer any questions. Director Grzys read the rationale:

Bid opening for the project K-366 was held on Wednesday February 23, 2005. One of the requirements was for the bidder to include their bid acknowledgement of the two addendums. Two of the three bidders acknowledged the addendums, Insituform did not acknowledge either of the addendums. Failure to receive the addendum disqualified the contractor from bidding and the second low bid was to be accepted. However, after further review, it was determined that Insituform never received the addendums. In checking with the City Attorney, it was determined that all bids should be rejected as part of the City's right to reject and to re-bid the project.

Alderman Harenda asked Mr. Nilles why Insituform did not receive the addendums? Mr. Nilles answered that their contractor A.E. Graphics, a plan distribution group, informed them after bid opening that Insituform was not on their list to send addendums to and they admitted the error. Insituform had purchased the plans several weeks prior to the addendums being issued, and A.E. Graphics was in charge of supplying the addendums, but Insituform was not on their list to send them to.

Alderman Gallagher asked if they were worried about the other bidders? Mr. Nilles responded that yes, according to the City Attorney there would be less problems if we re-bid the project.

Director Grzys stated that the City has the right to reject all bids. By doing this, he added, we are hoping that some additional vendors will respond or we will receive even better bids. He also stated that the City Attorney recommended that the project be re-bid.

Commissioner Dude noted the revised schedule and asked if there would be another meeting to award the bid on April 12th? Director Grzys said yes.

Alderman Harenda asked the City Attorney if there would be more problems if we don't re-bid and if it was safer if we reject all bids?

City Attorney Mark Blum said that the City has received calls from both the low bidder and 2<sup>nd</sup> lowest bidder, and further explained the situation of not supplying all of the information to all bidders. He said that Michaels, the 2<sup>nd</sup> lowest bidder will say that we aren't following the rules if we award the contract to Insituform. He suggested that the City start from scratch and put everyone on equal footing, although

there is no guarantee that everyone will put in a bid again. Attorney Blum said the lawyer from Insituform contacted him and stated that they may not bid again and can use the argument that there was no fault by the lowest bidder that they were not able to comply.

Alderman Ament expressed his concern and opinion as a businessman who does bid projects that there may be hesitation from companies bidding in the future. He added that in the long term, if this becomes a pattern, you may lose contractors, but he said that he didn't know if we had any choice.

Kirk Morris from Insituform stated that they had talked about not bidding again because their bid amount is out there. He added that one of the addendums reduced the feet of pipe installed, which would have lowered the amount, and the other addendum would not have mattered since they follow that procedure anyway. Mr. Morris said that the City would pay based on how many feet are installed, and other bidders only needed to look at their unit price to re-bid an amount. Mr. Morris asked for awarding of the job, stating that their company did not put any of the other bidders disadvantage, only Insituform.

Alderman Gallagher asked if we could have a challenge from the 2<sup>nd</sup> lowest bidder? City Attorney Mark Blum answered yes.

Jim Morrissey asked how addendum #1 affected the bid? Director Grzys stated that it requested additional information on the pipe thickness and design. He added that if we didn't have information on the 1<sup>st</sup> addendum, we could receive an inferior design. Pete Nilles said that Insituform said it was their standard pipe, but it is hard to know for sure.

Commissioner Dude asked about the 71 linear feet involved and what the amount would be? Peter Nilles said it was about \$14,000 on a \$1.1 million project.

Jim Morrissey stated that if we re-bid the project, we would guarantee we would be comparing apples to apples.

Commissioner Dude said that citizens deserve the low bidder, and if the low bidder didn't get the addendums, but it would not affect the bid, why not award it?

City Attorney Mark Blum said the issue was the acknowledgement of the addendums and the fact that was not provided. He added the reason they did not respond was because we didn't provided the addendums, but there is language in the contract to provide for inconsistencies.

After further discussed a vote was taken and the motion failed 3 votes to 2 with Alderman Gallagher, Commissioner Dude and Alderman Ament voting nay.

Motion to adjourn at 6:51p.m. by Alderman Harenda. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

*Respectfully submitted,*

*Suzette Hanley*  
*Office Coordinator, Utilities and Streets*