



FINANCE DEPARTMENT  
MEMO 16-140

Date: August 17, 2016  
To: Mayor and City Commissioners  
From: Suzette Sibble, Finance Director  
Via: Dennis Beach, City Manager

A handwritten signature in blue ink, appearing to be "SS", is written over the "From:" line of the memo.

**Re: Tabled Agenda Item#5 from July 26, 2016 Commission Meeting**

At the July 26, 2016 Commission Meeting, the City Commission requested that Agenda Item #5 (Approve ranking order for RFP L-50-16 Independent Auditing Services, and authorize staff to negotiate a contract with the highest ranked firm RSM US LLP) be tabled, pending review of the City Commission minutes from the July 2011 City Commission meetings. These minutes were requested because the City Commission at that time would have discussed the ranking and award of a contract for independent audit services 5 years prior. Please note that the City Clerk's Office has provided the transcripts for the July 12, 2011 and July 26, 2016 City Commission meetings, herein attached as **Attachment 1**. It is my understanding that the purpose of the requested review was to ascertain if during those meetings the City Commission agreed or made a motion to require an auditor rotation policy that would have precluded the incumbent audit firm from being able to bid on the next Request For Proposal for these services, as well as to determine if the approval of the audit contract to then incumbent firm (McGladrey & Pullen (now RSM) was contingent on them being precluded from bidding on the next audit services contract and that they agreed to such during the July 2011 Commission meetings. Please note that I have reviewed the 2011 minutes and did not note any formal action on the part of the City Commission to (1) mandate a formal auditor rotation policy or (2) preclude the incumbent audit firm from bidding on the next audit contract. The transcripts also did not indicate that McGladrey & Pullen (RSM) agreed to not submit a proposal in response to the next formal solicitation for audit services.

## Excerpt from the July 12, 2011 Commission Meeting

P.H. 2011-86; ORD. NO. 2011-: TAPE 1 – 3,330 ITEM 16

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT FOR INDEPENDENT AUDITING SERVICES BETWEEN THE CITY OF POMPANO BEACH AND MCGLADREY & PULLEN, LLP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

The Ordinance was read by title only.

**MOTION:** To approve the Ordinance upon first reading, as amended.

### ROLL CALL

Burrie	x	x
Dockswell		x
Hardin	x	x
Poitier		x
Brummer		x
Fisher		x

Suzette Sibble, Finance Director, stated that Florida Statutes mandates that the City perform an annual audit on its financial records. Therefore, passage of the proposed ordinance would engage a firm of independent certified public accountants to perform the service on behalf of the City.

Mayor Fisher stated that there has been some discussion concerning comparative contracts with cities, such as Miramar, for \$90,000. Additionally, it was felt that there should be easier and less work for the proposed firm of McGladrey & Pullen, since they already have experience with this City.

Mrs. Sibble stated that she sat on the Audit Selection Committee for the City of Miramar, and therefore, has some insight on this matter. Naturally, having just come out of the City of Pompano Beach's process of deciding on an audit firm, she recognized that the proposed audit fee from McGladrey & Pullen was \$119,000. However, when she received the firm's proposal for the City of Miramar, she noticed a comparative difference in the figures; in that, their audit fee was approximately \$98,000.

Subsequently, she performed a research as well as contacted McGladrey & Pullen, LLP, to inquire why there was a difference comparatively with another city. The findings were that, even on the surface, the City of Miramar and the City of Pompano Beach were comparative in terms of population; but from an audit perspective, the audit firm considers certain items when submitting proposals for the different cities.

From that standpoint, the City of Pompano Beach was considered a more complex city in terms of its accounting structure and operations in the way its records are set up. Although, this was not done on purpose, there are certain calculations mandated by the auditing regulations, which the auditors consider based on the size of the City's General Fund, Utility Fund, and Northwest/East CRA Districts, which in turn increased the scope of the audit.

Finally, Mrs. Sibble stated four of the firms that submitted proposals for the City of Pompano Beach also proposed for the City of Miramar. In fact, each of these firms consistently bided 20% less in audit fees overall. Therefore, she felt a sense of comfort with the proposed fee from McGladrey & Pullen. Beyond this, when a firm has been the incumbent auditor for years, it is customary to see some efficiencies gained over those years, ultimately resulting in savings to the City. So, from that standpoint, the proposed company did bid 12% less in audit fees and provided the difference in dollars.

Comr. Burrie stated that since this particular company has been the City's auditing firm for six (6) years, they should know the city and should charge less not more, which Mrs. Sibble clarified. Therefore, she questioned whether it is good practice to enter into a lengthy contract with an auditing firm or continue to have the same one. She also questioned whether this was beneficial or not to the City.

For the record, Mrs. Sibble replied that she was not a voting member on the selection committee for this firm. Additionally, she noted that the Finance Department conducted a research with the assistance of the Internal Auditor, Barbara DeLeon. However, as the RFP process was conducted, they sought guidance regarding audit rotation and whether a mandatory policy should be in place. Consequently, it was discovered that there are no statutory requirements to have an audit rotation.

So, since the City does not have a policy in place, they looked to other avenues for guidance; such as the Guidelines for the Auditor General, as well as the Government Finance Officers Association, which publishes some best practices. She also reviewed studies performed at the US Government Accountability Office. However, they could not validate, in any of their studies, that there was any impact on audit independence or quality, by not having a mandatory audit rotation policy.

In fact, they found that it is actually counter productive to have a mandatory rotation policy, due to the few audit firms that specialize in government auditing. The study also revealed that there was actual impact on the cost to the entity being audited by mandating such a policy, as well as some loss in institution knowledge by having such a policy.

Nevertheless, they recommended that the City, as an entity, should reach out to as many firms as possible when issuing an RFP to ensure that a sufficient pool of firms participate in the bid. Then, the selection evaluation committee could go through the exercise of vetting the most technical qualified firm. To that end, the procurement director issued the RFP to approximately 40 audit firms. Of that number, only eight (8) proposals were submitted.

Finally, Mrs. Sibble suggested that in lieu of mandating rotation of the firm(s), the City requires the audit staff on the engagement itself to be rotated. Lastly, she said that even though McGladrey & Pullen has been the City's auditors for six years, the audit supervisor and the auditor in charge has only been assigned to the City for two years.

Comr. Burrie stated that earlier, she discussed this with the City Manager as well as the selection evaluation committee with the view of changing or tweaking the process. She then explained how the current process awards points.

Vice Mayor Brummer agreed with Comr. Burrie that this company has been the City's auditor for six years and the proposed contract will be for another five years, which is too long for one firm to perform an auditing function. In fact, it should not be more than three to five years before a firm is changed, as the comfort level could be too comforting.

Moreover, the fact that different faces come in to do the actual auditing, does not matter so much. Even though, there may be additional cost to bring in another auditing firm, it is essential to give the City Commission a comfort level. Therefore, he agreed to renew the firm's contract for one year, rather than five years.

Finally, Vice Mayor Brummer stated that to continue to rely on the same firm to look at the City's books with a fresh look each year is acceptable, but certainly, not for five years.

Mayor Fisher questioned whether the contract could be amended to one year, without having to go back to the vendor.

Gordon B. Linn, City Attorney, replied it is an agreement; therefore, if this is urgent and the City Commission tables this item, staff can determine whether the vendor will agree with the changes.

Donovan McGinley, McGladrey & Pullen, LLP, requested clarification of the proposed options.

Mayor Fisher stated that the option is to table the item to determine if the firm would agree to a one-year contract, rather than entering into a five-year contract.

Mr. McGinley stated that with regard to Vice Mayor Brummer's concerns regarding complacency, there are some issues imbedded in terms of procedures and quality; such as, requiring that the firm be audited as well. So, what they do is subjected to review. He also confirmed that McGladrey & Pullen rotates the people who conduct their audits. In fact, every two to three years, they infuse a fresh view, and have a fresh perspective of the "nuts and bolts" of the work that is done for the city.

Finally, Mr. McGinley stated that there is no predisposition of their staff in terms of the work done. Additionally, over the last years, they have reported the facts and have not been influenced by anything, as it relates to issues or points, that they have encountered during the audit. Moreover, it is common for firms to have contracts extending beyond five even up to ten years. In fact, they have clients with extended auditing relationship.

Mayor Fisher asked Mr. McGinley if he would like additional time to consider the proposed amendment of the contract for one year.

Mr. McGinley said that they would honor anything the Commission chooses to do.

Vice Mayor Brummer explained that this decision does not have any reflection on the prevailing firm. However, some people have complained about corruption, although, he is yet to see any. Nevertheless, it is very easy to claim that the City Commission as well as the auditors are corrupt and unfortunately, the public is of the frame of mind to believe this. Therefore, the Commission has to find ways to minimize that, if not to eradicate it.

Comr. Burrie concurred with Vice Mayor Brummer that this decision does not have anything to do with the prevailing firm. Actually, she was pleased to hear that the same people do not conduct the audit every year. Nevertheless, she is willing to enter a one-year contract, rather than a five-year contract. Lastly, she said that nobody could say that this company could not get the contract repeatedly.

Comr. Hardin questioned whether the City Commission was saying that in the future, they would not take the highest ranked firm. Additionally, if this is changing for changing sake, it might not be advantageous for the City or the residents. Nevertheless, he does not have a problem with the one-year contract.

Mrs. Sibble questioned whether the Commission would prefer that staff bring forward an audit rotation policy. So that, the Commission could preclude this firm from bidding again, after this one-year contract is complete.

Comr. Burrie stated that although, the City would contract on a yearly basis, it would not preclude the company from bidding. Moreover, this discussion was good, as she was educated on external auditing procedures.

Comr. Poitier stated that he does not want this company to be excluded from bidding again, as they cannot help it if they are good. Nonetheless, he would support a one-year contract.

**MOTION:** To amend Section 8 of the contract to provide for a one-year term.

<u>ROLL CALL</u>		
Burrie	x	x
Dockswell		x
Hardin		x
Poitier		x
Brummer	x	x
Fisher		x

## Excerpt from July 26, 2011 Commission Meeting

P.H. 2011-86; ORD. NO. 2011-65: TAPE 1 – 4,736 ITEM 26

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT FOR INDEPENDENT AUDITING SERVICES BETWEEN THE CITY OF POMPANO BEACH AND MCGLADREY & PULLEN, LLP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

The Ordinance was read by title only.

**MOTION:** To adopt Ordinance No. 2011-65 upon second and final reading, as amended.

### ROLL CALL

Burrie	x	x
Dockswell		x
Hardin	x	x
Poitier		<i>ABSENT</i>
Brummer		x
Fisher		x

Suzette Sibble, Finance Director, stated that the City Commission approved the amended contract term from a five to a one-year agreement. Therefore, staff pursued the course of action as the contractor, McGladrey & Pullen had expressed that they were willing to accept a one-year contract term. However, they are no longer willing to accept a one-year contract. So, unless the City and McGladrey & Pullen can mutually agree to a contract term at this point, the City does not have the option to commence negotiations with the second ranked firm. Incidentally, the only legal option for the City is to throw out all the initial bids received and restart the bidding process.

Additionally, Ms. Sibble expressed her "heart burn" at the thought of rebidding this contract, because of the work and timelines involved. Noting that, the makeup of the selection committee was 75% external, to include financial directors and controllers from other cities. And because this is everyone's busiest time of the year, staff might encounter some difficulty in acquiring external members. She then briefly described the reason they utilize these members.

Furthermore, Ms. Sibble expressed that another audit firm would not be able to come on board until November, and explained the accounting process and its timelines.



Neil M. Schiller, Esquire, Becker & Poliakoff, P.A., 3111 Sterling Road, Fort Lauderdale, FL 33312-6525, stated that Bob Feldman and Donovan McGinley of McGladrey & Pullen, LLP, were available for any questions. In addition, Mr. Schiller argued that the City of Pompano Beach advertised an RFP for a five-year agreement as illustrated in "Exhibit J" of the back-up material. Noting that, the RFP did not include a zero mandatory rotation policy and that the previous auditing contract was a five-year agreement.

Moreover, Mr. Schiller maintained that the City allowed the incumbent, McGladrey & Pullen, to bid because there was no exclusion as to who would be allowed to bid. Additionally, he noted that eight (8) firms had submitted a bid with McGladrey & Pullen being ranked first, finishing with 368 points, whereas the second ranked firm had 331 points. Therefore, it was obvious that McGladrey & Pullen was, by far, the most qualified, and they continue to be the most qualified to serve the City of Pompano Beach.

In addition, Mr. Schiller stated that each member of the selection evaluation committee ranked McGladrey & Pullen the highest. Then, on June 28, 2011, the City Commission approved an item under Consent Agenda and directed staff to negotiate a five-year contract with McGladrey & Pullen, which staff complied.

In sum, Mr. Schiller noted the following:

1. In the act of fairness, the City advertised the RFP as a five-year contract, which appeared at least three times in the RFP. Therefore, everyone who had bid on the contract did so with the intent that it was a five-year contract.

Subsequently, McGladrey & Pullen won the bid, but because there are issues with the five-year contract, the City Commission is changing the terms of the RFP based on the person/firm that won. This not only violates the spirit of the law and competitive procurements in the State of Florida, but it also violates public policy.

Also, it is important to note that the RFP, on Page 6 states, "By submitting a proposal, the proposer agrees to abide by the terms of the audit engagement," as illustrated in Exhibit J, which specifies a five-year agreement. Therefore, the question becomes, "Why that requirement would not run both ways, and why the City would not abide by the terms of that agreement?"

2. As recent as two weeks ago, the mandatory rotation has become an issue, but his client is unaware of where this is coming from. Notwithstanding, McGladrey & Pullen is a fine firm and the most qualified, and they continue to be the most qualified. Additionally, McGladrey & Pullen have served the City of Pompano Beach for the last six years, and have done a fantastic job.

Moreover, they understood that at the last commission meeting, staff did a good job of explaining the pros and cons of that mandatory rotation policy. Therefore, he does not believe that the Commission's actions on July 12, 2011, instituted such a policy. However, because his client, McGladrey & Pullen, values their relationship with the City of Pompano Beach, they are willing to do the following:

- A. Mandatorily rotate their key personnel every two years under a new agreement for five years. This way there will be fresh eyes looking at the City's finances and documents every two years.
- B. If this Commission approves a mandatory rotation policy McGladrey would fully support this after they receive their five-year agreement, which they won.
- C. McGladrey understands that price was an issue. In fact, the price was brought up in comparison between City of Miramar and the City of Pompano Beach. Therefore, they are aware of the trying economic times, so they had already reduced the cost by \$3,000 that is from \$119,500 to \$116,500. In fact, they are willing to go much lower with their price to \$110,000, which marks a substantial decrease from the last five years that they served the City of Pompano Beach.
- D. The timing issue is of concern and especially to staff as was indicated earlier, to meet the statutory obligations in filing the CAFR.

In sum, Mr. Schiller stated that McGladrey submitted for the job based on the five-year agreement. Therefore, they bid on the job, they priced the job, they staffed the job, and they prepared for the job based on the five-year agreement. Notwithstanding, McGladrey would like to continue working with Pompano Beach and to be awarded the five-year contract.

Mr. Schiller reiterated that his client is willing to lower their price to \$110,000, and will rotate key personnel every two years to allow for fresh eyes looking at City documents. They are willing to support a mandatory rotation policy, if the City so choose to adopt one. Moreover, McGladrey has always dealt with the City in good faith and the utmost integrity. Therefore, they are requesting that the City allow them to continue in that service and under the terms of the original RFP.

In conclusion, Mr. Schiller stated that it is their hope all these issues could be resolved tonight and to move forward together.

Comr. Burrie stated that at the end of the last meeting the City did not go for a mandatory rotation. She sympathized with McGladrey being caught up in a "cadre of information" concerning the actual examining process. She thought the one-year term was kind of a "knee jerk reaction." Therefore, she asked, since the City advertised this for a five-year agreement, is the City in violation by switching it from five to one year.

Gordon B. Linn, City Attorney, replied that if McGladrey agreed to a one-year contract, there would be no violation. If the City and this firm cannot arrive at some agreement, he suggested that they withdraw the bid and the City goes out again for another bid.

Comr. Burrie asked if that would mean the commission should agree to go for the five-year contract that was originally advertised.

Mr. Linn replied that some agreement should be reached or the City needs to withdraw.

Comr. Burrie stated that someone else in the business brought the question of price to the Commission's attention. Therefore, she questioned how a company that has been with the City for so many years and are familiar with the business operations of that city could offer another new City a lesser cost. Incidentally, she clarified that the comparative City was not Miramar, but rather Pembroke Pines who, incidentally, had more problems than Pompano Beach.

Finally, Comr. Burrie stated that by no means, was she placing anything against McGladrey & Pullen. Therefore, she recommended that the City agrees to a five-year contract and accept McGladrey's offer for \$110,000, as opposed to \$116,500.

Comr. Hardin stated that this is a hard way to save \$30,000. Nevertheless, he would fully support Comr. Burrie's recommendation for a five-year term contract. Notwithstanding, this goes back to prior discussion at the last meeting, where the Commission tasked staff with doing certain things. Moreover, Ms. Sibble was not responsible for scoring this but outside people. The City went through the process, and set the process up. Therefore, the Commission has to allow staff to handle the matter.

Finally, Comr. Hardin stated that when you examine the numbers this firm was far superior in scoring and you are not just talking something close, there was a huge margin of victory for this firm. Notwithstanding, he wants the best for the City of Pompano Beach and this is what this process is all about. Moreover, he does not agree to a mandatory rotation.

Vice Mayor Brummer stated that he had no problem with the cost, as this was not his motive, however, he felt that five years on top of six years is too much with one firm. He opined that the City needs a "fresh face, a fresh approach and fresh people in order to keep things straight." Furthermore, he does not like to be held over a barrel with, "it is five years or else," this bothers him as he feels that maybe there is no willingness to concede anything.

In addition, Vice Mayor Brummer stated that he was willing to agree to a year because he has respect for the firm but at the same time, he believes that there has to be a change periodically. In fact, this has nothing to do with whatever phone calls the commission received.

Comr. Hardin, in defense of the process, stated that the firm that won should not have to concede anything because they won fair and square. If nothing else, government above all, should be fair in the way they deal with people. Therefore, to say if you could concede something then maybe you can have it is not fair.

Comr. Dockswell stated that personally, it is a close call and opined that ten years is way too long to have the same accounting firm auditing your books. Nevertheless, he appreciates that McGladery is shifting personnel in the company every two years, but he thinks it would be a natural tendency to be reluctant to find fault with anything members of the same company had done in previous years. Therefore, he does not think the internal rotation is as clean a rotation as changing companies after five years.

Additionally, Comr. Dockswell stated that processes are not perfect and the City Commission is supposed to be the policy setting body. Moreover, staff had no way of knowing that the commission might have a concern about this policy. Therefore, they put out an RFP in good faith and this company, as well as the other bidders responded in good faith. So, instead of throwing the entire thing out, at the last meeting, a decision was made to make it a one-year agreement. Therefore, he questioned whether categorically one year is unacceptable and the firm will walk away from the deal or not.

Mr. Schiller replied that his client did bid on the contract as a five-year contract and would not have bid had they known it would have been a one-year contract. Therefore, they are not interested in a one-year contract with the City.

Comr. Dockswell questioned whether McGladery would say go ahead and rebid, if the commission would say that this needed to be a one-year contract or the City will have to rebid.

Mr. Schiller, upon checking with his client, replied yes.

Comr. Dockswell stated that since McGladery rotate their personnel every two years and this is an awkward situation, he is willing to see the City go through with making this a two-year agreement. However, if this company will not accept this, then he would suggest that we throw out the RFP and start over again.

Mayor Fisher asked if firms such as McGladrey performing such services have to be on strict guidelines. In other words, do they have to abide by certain guidelines and restrictions?

Ms. Sibble replied that generally speaking, they are all mandated to follow auditing standards and certain guidelines, so, they are regulated and are subject to be randomly reviewed by their peers. In fact, this is something requested by the RFP process, but there have been instances where firms have bid and were found to have poor documentation and lack of supervision and lost points for this.

Mayor Fisher noted that the bid process has been completed and the firm was approved based on a five-year term. Therefore, he suggested that the commission amend the proposal to move back to the initial five years, to include rotation of key personnel every two years and a price reduction to \$110,000.

Comr. Burrie requested clarification, because one minute they are saying they do not want mandatory rotation, yet on the other hand, two commissioners do not want the same company. Therefore, she concurred with the motion to go ahead, and amend for a five-year contract with a price reduction to \$110,000 and let it play out for the five years.

Mayor Fisher stated that the mandatory rotation is not an issue for tonight as this is another policy and procedure that can be discussed later, but it does not have to be in this agreement.

### **REGULAR ITEMS – CONTINUED**

**MOTION:** To amend Section 8 of the contract to provide for a five-year term to include the price to be \$110,000.

### **ROLL CALL**

Burrie	x	x
Dockswell		x
Hardin	x	x
Poitier		<i>ABSENT</i>
Brummer		x
Fisher		x