



AGENDA

SPECIAL MEETING

LA PALMA CITY COUNCIL

THURSDAY, MARCH 20, 2025

Mark I. Waldman
Mayor

Nitesh P. Patel
Mayor Pro Tem

Debbie S. Baker
Council Member

Janet Keo Conklin
Council Member

Vikesh P. Patel
Council Member

8:00 AM Open Session
(Following Open Session) Closed Session
La Palma City Hall
Council Chambers
7822 Walker Street, La Palma

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ORAL COMMUNICATIONS (Time Limit: 5 Minutes Each)

Time has been reserved at this point in the Agenda for persons wishing to speak on any item that is not listed on the Agenda. By law, the City Council is prohibited from taking action on such oral comments. The matter will be automatically referred to staff for appropriate response or action or will be placed on the Agenda of a future meeting. Matters listed on the Agenda may be addressed either at this time or at the time they are before the City Council for discussion.

CLOSED SESSION

CS-1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2), (e)(2), (e)(3): (1 case – February 3, 2025 letter from Attorney Joseph McGowan, Jr. [attached])

CS-2. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code section 54957.6.

Agency Designated Representatives:	Conal McNamara, City Manager Ryan Hallett, Assistant City Manager
Employee Organizations:	La Palma General Employees Association La Palma Police Association La Palma Professional Employees Association
Unrepresented Employees:	Executive Management

CS-3. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957(B)(1)

Position Title: City Manager

ADJOURNMENT

NOTE: As a general rule, staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. Copies of these materials and other disclosable public records distributed to all or a majority of the members of the City Council in connection with an open session item on the agenda are on file and available for inspection with the Office of the City Clerk, City Hall, 7822 Walker Street, during regular business hours 7:30 A.M. to 6:30 P.M., Monday through Thursday. If such writings are distributed to members of the Council on the day of a City Council meeting, the writings will be available at the entrance to the City Council

Chambers. If you have any questions regarding any item of business on the agenda for this meeting, any of the staff reports, or other documentation relating to any agenda item, please contact the City Clerk at (714) 690-3334.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the City Clerk at (714) 690-3334. Notification 48 hours prior to the meeting will enable the City to make reasonable accommodations to ensure accessibility to this meeting.

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February 3, 2025

Via Email

mslentz@chwlaw.us

Matthew C. Slentz
Colantuono, Highsmith, Whatley, PC
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Irvine, CA 92618

RE: City of La Palma/Unispec Construction, Inc.

Dear Mr. Slentz:

As you know, Unispec Construction, Inc. (“Unispec”) entered into this contract on February 6, 2024 with the City of La Palma (the “City”) for the lump sum contract price of \$2,533,643.70. Significantly, this price was \$1,335,556.80 less than the second lowest bid by KASA Construction, Inc. of \$3,870,133.50. Unispec’s price was, therefore, less than two thirds of the price of the next lowest bidder.

Unispec was able to offer this amazingly low price based upon its reasonable understanding that Unispec would perform *the complete contract*. The General Provisions, Section 1, Intent provides, “(t)he intent of the Contract Documents is to include all work consistent therewith and reasonably inferable therefrom as being necessary *for completion of the contract and provide a functionally complete Project*.” (Emphasis added).

In particular, Unispec entered into the contract at the low price that it offered with the expectation that the contract would include the procurement and placement of boulders. Question 1 of the pre-bid questions for the project queried, “Are there any boulders on this project, please confirm and clarify?” In response the City wrote, “(t)here are boulders on the project, per Construction Legend, Note 7 of the construction sheets. All boulders shall be paid at the contract bid price and estimated quantity shown on the attached revised bid schedule.”

Based upon these assurances, Unispec bid the project with the expectation that it would be performing the boulder work, and its price for boulders included a considerable portion of its overhead, general conditions expenses and profit. The City wants to decrease the contract amount by \$202,800, an amount that would decrease Unispec’s profit and overhead recovery by \$147,471.37. This is essentially the majority of Unispec’s profit and overhead costs for the project.

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Unispec also believed that it would be required to place 24-inch box trees on Item No. 3 Mood Street-Crescent Ave to Houston Ave-Existing Medians, Item No. 16. Understanding from the project contract that it would provide a quantity of eight trees for this item, Unispec included profit and overhead in this line item. The City, opportunistically, seeks to deprive Unispec from this profit and overhead, by converting the 24-inch box trees to 15 Gallon Trees, at a savings of \$8,700 per tree.

The removal of all boulder work and the conversion of the aforementioned trees on Moody Street would result in a drastic change to the work of Unispec's contract.

A similar situation was addressed by a California court in *Hensler v. City of Los Angeles* (1954) 124 Cal.App.3d 71 ("Hensler"), a contract between the City of Los Angeles and a civil contractor. In *Hensler*, the court found that a deletion of a significant portion of the contract was a breach of contract. The *Hensler* court, interpreting a similar contract found that a changes provision "may not be invoked to allow deletions from a construction contract which were not made for the purpose of satisfactory completion of the project, but as an attempt by defendant to exculpate itself from its obligations of counter-performance." In *Hensler*, the court awarded damages based upon the difference between the unit price and the expected cost of the work.

Your October 22, 2024 letter addresses the "Greenbook," Standard Specifications for Public Works Construction published by BNi Publications, Inc. The Greenbook at section 3-2.2.1, third paragraph, provides,

If a change is ordered in an item of work covered by a Contract Unit Price, and such change does involve a substantial change in the character of the work from that shown on the Plans or specified in the Specifications, an adjustment in payment will be made per 3-2.4.

Greenbook section 3-2.4 provides for the parties to agree upon the prices. Clearly the deletion of boulders and the conversion of the trees Item No. 3 Mood Street-Crescent Ave to Houston Ave-Existing Medians constitutes a change in the character of the work.

Moreover, because this is a federally funded project, federal precedent also applies. California courts are "strongly persuaded by decisions relating to federal procurement bidding." *Pacific Architects Collaborative v. State of California*, 100 Cal. App. 3d 110, 125 (1979).

"When the Government deletes work from contract requirements, the Government is entitled to a downward adjustment in the contract price reflecting *the amount*

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that the contractor saved as a result of that deletion. (Citation). The agency bears the burden of proof to substantiate the amount of the deductive change for deleted work.” *Yates-Desbuild Joint Venture v. Department of State* (2017) 17-1 BCA P 35870, Emphasis added.

See also, Federal Transit Administration, Best Practices Procurement & Lessons Learned Manual, October 4 2016, section 5.2.5 Basic Pricing Formula, summarizing federal precedent as follows:

When repricing as a result of the change order, courts have limited the repricing to the changed work without altering the original profit or loss position of the contractor. This is known as the “leave them where you find them approach.”

Pricing the Deleted Work—Under the basic pricing formula, the amount of the adjustment for the deleted work is the cost the contractor would have incurred had the change not been issued; i.e. had the work been performed.

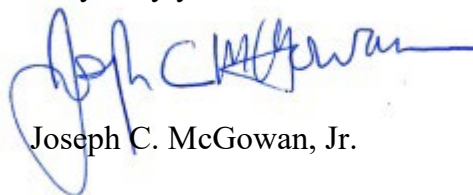
Being in the public works contracting business for 34 years, Unispec knew this project is federally funded and that any change orders, additive or deductive, would be with the consent of both parties, and not unilateral.

Another point relevant to this issue is the actual work performed by Unispec. Unispec installed 24-inch box trees in the locations specified for the cheaper 15-gallon trees, resulting in a clear betterment for the City.

Finally, Unispec has performed the contract in a timely manner to the complete satisfaction of the City. No doubt this performance, and the legal issues described above would shine the best light possible upon my client, should these issues be considered by a judge or jury.

For these reasons, I sincerely suggest that the City honor its contractual obligations by allowing Unispec complete the project that it bid.

Very truly yours,



Joseph C. McGowan, Jr.

/drl