

City Council Chamber, City Hall, Tuesday, November 26, 2002

A Special Meeting of the Houston City Council was held at 8:30 a.m. Tuesday, November 26, 2002, with Vice Mayor Pro Tem Keller presiding and with Mayor Pro Tem Gordon Quan, Council Members Bruce Tatro, Carol M. Galloway, Mark Goldberg, Addie Wiseman, Mark Ellis, Bert Keller, Carol Alvarado, Annise Parker, Shelly Sekula-Gibbs, M.D., Michael Berry and Carroll Robinson; Mr. Anthony Hall, City Attorney; Mr. Richard Lewis, Director, Information Technology Department; Ms. Martha Stein, Agenda Director present. Mayor Lee P. Brown absent. Council Members Ada Edwards and Gabriel Vasquez absent on personal business. Council Member Alvarado absent.

At 8:39 Vice Mayor Pro Tem Keller called to order the meeting of the City Council. Mayor Pro Tem Quan, Council Member Galloway absent.

Vice Mayor Pro Tem Keller requested the City Secretary to call the roll. Mayor Brown absent. Council Members Edwards and Vasquez absent on personal business. Mayor Pro Tem Quan, Council Member Galloway absent.

The City Secretary advised that the following was the posted purpose of the meeting:  
To discuss and/or take action relating to the postponement or cancellation of the Agreement for Software Licensing and Support between the City of Houston, Texas and Internet Technologies, Inc. (IAT), awarded pursuant to ORDINANCE No. 2002-0460, adopted June 5, 2002. In connection therewith, the City Council may discuss and/or consider one or more motions as required to effectuate the postponement or cancellation of the Agreement.

Council Member Tatro stated that he had distributed a written motion to terminate the agreement and read the following motion:

**"Motion to Terminate Agreement:**

Motion to approve and authorize the "Termination for Convenience by City" provision, (Section V.C.) of Agreement between the City of Houston and Internet Access Technologies (IAT) for Software Licensing and Support (now operating as SimDesk Technologies, Inc.) awarded to Ordinance No. 2002-0460.

The Mayor is hereby authorized and requested to take all actions necessary to effectuate the "Termination for Convenience by City" provision (Section V.C.) of the aforementioned agreement." Mayor Pro Tem Quan, Council Member Galloway absent.

Council Member Parker stated that she intended to tag the item, and Vice Mayor Pro Tem Keller stated that the item had been tagged. Mayor Pro Tem Quan, Council Member Galloway absent.

Council Member Parker stated that she would go ahead and tag the item now to make sure she got it in but wanted some discussion and asked Mr. Hall to give her his legal opinion on whether they could cancel the contract under the provision and what the impact would be. Mayor Pro Tem Quan, Council Member Galloway absent.

Mr. Hall stated that it was his opinion they could cancel the contract under the provision generally cited here, that as was discussed generally the sheet that was passed out with the motion on it was generally accurate, but was not certain that the conclusion captured with accuracy the ease with which they would negotiate a final reimbursement to the City, that was a matter that would be in some dispute because quantum meruit issues would obviously arise and they were going to be obligated to pay anything they directed them to do, they had to be compensated for it, but that was just an argument of how much, not whether or not they pay the City, that he hoped it answered the question that Council Member Parker raised. Mayor Pro Tem Quan, Council Member Galloway absent.

Council Member Parker asked Mr. Lewis that when they passed the City budget they had a built in savings in his department predicated on the continuation of the contract and asked how much was that and what would be the impact of canceling the contract in terms of the budget, and Mr. Lewis stated that the approved budget did include a \$1.6 million savings, a negative credit to expense included in his budget but the savings was to be realized from deploying the product onto about 7,000 desktops throughout the City, that in the last 30 days he had been in discussion with Dr. Scheps and Mr. Haines regarding spreading that cost based on the proportional number of desktops in each department, that he believed that it was contemplated by the F&A Director that cost savings would be spread to the departments, that if the contract was terminated they would not be able to realize the savings related directly to the project, they would have to make up that savings some place else, either some other reduction in expense or some other increase in revenue. Council Member Galloway absent.

Note: Vice Mayor Pro Tem Keller continued to preside after the arrival of Mayor Pro Tem Quan.

Council Member Goldberg asked Mr. Lewis in his best estimate or guess, and they would not hold him to those numbers, but they had already made a payment of \$2.5 million, now much of that money would they get back, and Mr. Lewis stated that the contract wording was a little bit complex with regard to what was called an advance payment, which was what the \$2.5 million was characterized in the contract, there were a number of ways to interpret that provision, one way would be to take the \$5.1 million, which was a three year cost for 3 million perpetual licenses for the product and divide that by 36 months, which was about \$141,000 a month and that would be one way of ascertaining the value of the contract on a monthly basis since the June 20, 2002 countersignature day, and Council Member Goldberg asked if the cost was the possible use of the 3 million or the actual use of the licenses, and Mr. Lewis stated that he suspected that was going to be a matter of discussion and interpretation, and Council Member Goldberg stated that he knew that part of the savings was realized because they were not going to be paying license fees to the sources that they usually had paid out to, that they were going to pay the license fees through the program, so those license fees were not budgeted in this years budget, and Mr. Lewis stated that the source of license fees had come from both operating departments, which were outside the General Fund, and a lot of the software license expenses had come out of the Equipment Acquisition Fund, so historically when they go back and look at it, it was coming from a number of sources and did not think there was a specific budgeted amount in the 2003 Budget for software licenses, and Council Member Goldberg stated that to take the library for example, where did the money come from to pay for the library use, and Mr. Lewis stated that he believed that most of the library licenses came from the Equipment Acquisition Fund or potentially even some grant funds, a lot of times when they buy personal computers they buy the licenses when they do that, and Council Member Goldberg stated that since the item had been tagged, that this information could be discussed next time, that basically if the licenses were not budgeted out of those departments and now they had to pay that, if that was the case, he needed to know that, and second if it was the case, where was the money coming from and that could be a topic when the item came back up. Council Member Galloway absent.

Mr. Lewis stated that it might be good for him to enumerate where the savings were to be realized, that software licenses was the one that the Council Member mentioned, that equipment replacement, using internet appliances as opposed to personal computers was the second one, and the third one was desktop and network support cost, which was basically staffing within the City's IT Unit, so all three of those were elements of the savings and the return on investment that was originally calculated in February of 2002, that they assumed that those savings would be realized over an 18 month period after full deployment of the product, the product had not been fully deployed on the City's desktops, they had only started that process. Council Member Galloway absent.

Mayor Pro Tem Quan stated that they had gone through Phase I testing and asked Mr.

Lewis what had been the results of that, and Mr. Lewis stated that he accepted the Phase I work on October 25, 2002 and there were 390 elements testing and all but one proved satisfactory, there were a couple of other recommended enhancements but the work was accepted, and Mayor Pro Tem Quan asked where they were on Phase II and Mr. Lewis stated that Phase II deployment had begun with the installation of the product on all of the desktops in his department and the first wave to the other departments was scheduled for December 16, 2002 and it was contemplated that the wave would be accomplished and they would evaluate the results of that with the second wave in Phase II currently scheduled for February 25, 2002 and his guess would be that there would be three to five waves in Phase II before the product was fully deployed on all of the desktops, and Mayor Pro Tem Quan asked when he talked about a wave was it about 1,000 desktops, how much was in a wave, and Mr. Lewis stated that when he used the range three to five waves, the first wave would be approximately 1,000, maybe a little less than 1,000, that it was his hope that if the first wave was successful that the second wave would be larger than that and the third wave would be larger than the second, but it was not yet determined what the second wave would be, and Mayor Pro Tem Quan asked Mr. Lewis if he had a chance to read over the Inspector General Report, and Mr. Lewis stated he had, and Mayor Pro Tem Quan stated that he was curious that the period of time granted to respond to the RFP, did Mr. Lewis think it was a fair time for this complicated process or system, that his records seemed to indicate that November 15, 2001 was when the RFP hit the street, with response no later than December 7, 2001, and Mr. Lewis stated that it was roughly a month from the advertised date to the submission date, the RFP was available, he believed, on the November 2, 2001, that was his reading of the report, that there was a pre proposal conference on November 15, 2001, and normally what they would do with a solicitation of that nature was that they put the solicitation document out and give about two weeks before the pre bid so that the document could be digested, one of the purposes of the pre submission conference was to solicit criticisms of the structure of the solicitation and there was language, particularly two provisions in the RFP that specifically asked potential vendors to state if they thought it had been slanted, if they had any concerns about the solicitation, that normally they start off with a relatively tight schedule, this was the 30 day schedule, and use the pre bid conference, as well as comments, to determine if it should be extended, that the OIG reported that there was no request for extension, and Mayor Pro Tem Quan stated that he thought IBM had stated that they did not think it was enough time, that they needed some more time, and Mr. Lewis stated that that he thought they made that comment after the submission date passed, they failed, that it was his view that the market failed to criticize the solicitation, ask for an extension and competitively respond to it, there was a failure, and Mayor Pro Tem Quan stated that in other words if there was something wrong with the RFP the market should have complained at that point and time and Mr. Lewis stated that having a very unique position, in regard to Mayor Pro Tem Quan's question, the answer was yes, that was his view, having experienced a process that had complaints with regard to it, that involved extensions, just recently, he believed that there was a failure, that he was talking about Voice Over IP, that they had numerous complaints, they extended the process on two occasions to accommodate the issues that were raised and that did not exist in this process. Council Members Galloway absent.

Council Member Sekula-Gibbs stated that when Mr. Lewis was up for nomination for his position right now, they had a conversation and she told him at that time that she was very concerned about the notion that this was a luxury purchase and she thought she even mentioned it to him then that she kind of lived her life by a rule that Thomas Jefferson stated, and he said "a purchase was only a good value if you really need it", and she felt that the City really did not need this, that it was a luxury item not a necessity and if they looked at \$9.5 million in cost to save \$1.6 million it still did not add up, notwithstanding the issue of the forced bid abrogation of illegal bid laws, notwithstanding any of that, she still thought that it was luxury and she told him that before and she thought to some degree that he might even agree with her on it, that it was not required, that the City could continue to operate in the way that it had without the purchase, and asked Mr. Lewis if she was right, and Mr. Lewis stated that to answer her question, that she made a couple of points, that first he thought the question of priorities was a legitimate question on the use of money, they had 62,000 people line up at the Houston Public Library during the Phase I work to

spend 30 minutes at a time in front of a computer to use the technology, they had stored over a quarter of a million documents during that period of time, a lot of which, according to anecdotal information from the Library Department, involved resumes and homework, so that was without any organized marketing or outreach effort whatsoever and light of extremely negative publicity on the project, that he thought that was significant, that those library terminals, heretofore, had only provided internet access and now they provided an office productivity tool that promotes knowledge, education and workforce development, which were significant items, that he might point out that two things with regard to the investment and the return on investment, that the \$9.6 million number was not an obligation of the City, their obligation today was limited to \$5.1 million, which was the cost of 3 million perpetual licenses over a three year period or \$1.7 million per year on average. Council Member Galloway absent.

Council Member Sekula-Gibbs stated that if they had 62,000 people who used it once, they did not know if they would use it again, but if they became accustomed to using it they would not like if the City dropped the program in three years, that it was becoming an office substitute for them so they were using the City's office rather than their own personal office and she considered that still a luxury, that it was a nice addition and a noble pursuit but it was not something that was required and it was certainly not something that she thought most people would consider City business, core City business, whether it was 62,000 or even the goal of 3 million, because at one time Mr. Lewis had stated that it was his goal to provide the service for 3 million people, that they did not even have that many people in the City, but that was the potential top number for the application to provide service for, so she would just stand on the fact, and she that it was a fact that it was a luxury purchase and not the right time for the City to invest in this sort of delicate use of funds whenever they did not have the money and she believed the last number they were looking at was that they were short anywhere from \$12 million to \$24 million on the budget, so how could they sit there and tell the citizens that they wanted to spend \$9.5 million when they did not have \$12 million to \$24 million to do basic services like Health Department, streets, clean water, storm drains, basic stuff, and that was the real challenge for her as a policy maker, she could not see justifying it, and that was one of the reasons that she had been present three times to try and rescind it and she wanted to thank Council Member Tatro for carrying the water on it because he had been very tenacious, that she hoped that they could put the bit to rest, maybe to resurrect it in a year or two when the economy of the City was in a better position, and asked Vice Mayor Pro Tem Keller what happened now that the tag had been placed by Council Member Parker and Vice Mayor Pro Tem Keller stated that it would be on the agenda next week for a full Council consideration. Council Member Galloway absent.

Council Member Robinson stated that he was present in light of the email information and what he had heard more than anything else was not so much disagreement with the product but a disagreement with the process, that he was involved in the Voice Over IP process and they went out and started it over and his position was if the administration believed in SimDesk just removed the taint and go back out and start the process over and solicit new RFP's, if they did not believe in it, fine, that he wanted to remove the taint because they were getting dragged down and were all getting tarred by the perceived taint, that Mr. Lewis raised the point that nobody complained, well in fact people did go around, they may not have visited with all of the Council Members or may not have talked to everybody but there were people from some vendors who complained, regardless of that there was a process, just because somebody did not complain did not mean that when they found out that something did not look as good as it should be that they should just keep moving down the road, they had a responsibility even if nobody complained to say there was something wrong and at least get rid of it and go forward and start the process over and the emails tipped the scale for him, that finally he wanted to say also, because he wanted to be balanced in it, the whole discussion about the money, he thought, was a disservice to the public, it was not General Fund money, if they were going to be serious about General Fund they should not have given, in his opinion, \$8 million to the Zoo, they were talking about commercial paper that was going to be debt and of the \$2.5 million, it was about \$200,000 to \$300,000 that was coming out of the General Fund this year, so voting it down was not going to fix any potholes or deliver any more General Fund services, so they ought to stop saying that to

the public because they were misrepresenting what was going on fiscally and they ought to understand the City budget or they were going to sit around the table and say they were dealing in financial matters, at best they were talking about \$300,000 and if they spent the entire \$9.5 million over the course of the original term of the contract they would be somewhere about \$1 million out of General Fund dollars, that \$1 million was a lot, but so was \$8 million and so was the \$1 million that they could have saved by doing some other things with the Miller Outdoor Theater, that there were some things that they could have cut in the budget, but if they were going to be serious about the fiscal side, then he wanted all of them who were present today to deal with this issue to also be serious about that and not stand around and make statements that just fiscally and financially did not cut the mustard, so when it came back up next week, if it was not tagged, he intended to vote to kill it and if the administration wanted to go out and start the process over they were free to do it and he would consider it if they came back with a recommendation at that time, but he thought they ought to go forward and start the process over and would hope that Mr. Lewis was willing to do that if the administration gave him the direction to do like they did with Voice Over IP. Council Member Galloway absent.

Vice Mayor Pro Tem Keller stated that it was after 9:00 a.m. and they had two more speakers for the second time and they would have to move to the regularly scheduled Council meeting.

Council Member Parker stated that unlike Council Member Robinson she certainly was not necessarily present to kill it today, but certainly believed in preserving the prerogatives of Council to question questionable projects and to have a full public discussion of the entire affair and thought it was important both for Council and for the citizens of Houston.

At 9:06 a.m. upon MOTION by Council Member Ellis, seconded by Council Member Tatro, the Special Meeting of the City Council was adjourned. All voting aye. Nays none. Council Members Edwards and Vasquez absent on personal business. Mayor Brown and Council Member Alvarado absent.

DETAILED INFORMATION ON FILE IN THE OFFICE OF THE CITY SECRETARY.

MINUTES READ AND APPROVED

---

Anna Russell, City Secretary