



**Special City Commission Meeting**  
**City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive**  
**January 27, 2015**

Mayor Philip Levine  
Vice-Mayor Joy Malakoff  
Commissioner Michael Grieco  
Commissioner Micky Steinberg  
Commissioner Edward L. Tobin  
Commissioner Deede Weithorn  
Commissioner Jonah Wolfson - Absent  
City Manager Jimmy L. Morales  
City Attorney Raul J. Aguila  
City Clerk Rafael E. Granado

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*In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to an alternate meeting date. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.*

**SUPPLEMENTAL MATERIAL:**

R2A Memorandum

Meeting called to order at 4:08:14 p.m.

The Pledge of Allegiance was led by Frank Del Vecchio.

**REGULAR AGENDA****R2 - Competitive Bid Reports****4:09:40 p.m.****SUPPLEMENTAL MATERIAL: Memorandum from Mayor Levine**

R2A Request For Approval To Issue Request For Proposals (RFP) No. 2015-103-ME, For The Development Of A Convention Headquarter Hotel Adjacent To The Miami Beach Convention Center.

(Office of the City Manager)

**ACTION:** Request approved. See motions below. **Maria Hernandez, Alex Denis and Rafael Paz to handle.**

**MOTION 1:**

Motion made by Commissioner Tobin; seconded by Vice-Mayor Malakoff to request approval to issue the Convention Headquarter Hotel RFP; Voice-vote: 6-0; Absent: Commissioner Wolfson.

**MOTION 2:**

Motion made by Commissioner Weithorn; seconded by Commissioner Tobin to request approval for the City Manager to the draft a "Development and Ground Lease Agreement" as an addendum to the RFP, based on the material terms contained in the RFP. Voice vote: 6-0; Absent: Commissioner Wolfson.

Rafael E. Granado, City Clerk, read the title into the record.

Jeff Sachs, Strategic Advisory Group and City's advisor, presented a PowerPoint presentation. Click [here](#) to view the presentation.

Mr. Sachs stated that the requested actions are: 1) Approve the draft of the Convention Center Hotel RFP, and 2) Approve for the City Manager to issue a form of the "Development and Ground Lease Agreement" as an addendum to the RFP, based on the terms that are outlined in the RFP.

Mr. Sachs covered the following topics in his presentation:

**Area Site Plan**

- The parking lot behind The Fillmore Theater has been designated for the 800-room hotel site. The Theater will stay active throughout the construction process and thereafter. The RFP was developed in participation with Alex Denis and Maria Estevez of the Procurement Department; Rafael Paz and Raul J. Aguila of the Office of the City Attorney; and with Jimmy Morales and Maria Hernandez of the Office of the City Manager. Meetings were also held individually with the Mayor and each City Commissioner.

**Hotel Site**

- The hotel site is an 800-room full-service hotel. The developer will also fund and build the sky bridge connector and is responsible for demolition and construction costs.

### Key Terms

- Key terms include no public participation, no public subsidies or public financing, and prohibit any kind of gambling business on the site. In addition, language was added, as suggested by Mayor Levine, which Mr. Sachs and the Administration are in support of, further restricting the ownership by gaming businesses of the site.

### Minimum Qualifications

- The proposer has to have developed two privately financed hotels of at least 500 rooms in the last 20 years.
- The design team has to have designed at least one hotel of 500 rooms or more in the last 15 years.

### Room Block Requirement

- Mr. Sachs explained that one of the essential elements of this relationship is for the hotel to work cooperatively with the Convention Center. This is done through a room block agreement, samples of which have been presented in the past to the City Commission, City staff, GMCVB and Global. In general, the hotel has to cooperate with Citywide events, and provide 80% of the rooms for any event booking occurring 30 months or more into the future for up to 14 event days per month. Mr. Sachs added that the hotel also has to cooperate during the Super Bowl and Orange Bowl.

### Submission Requirements

- Mr. Sachs explained the submission requirements include minimum qualifications, organizational plan, which details organizational structure, key personnel, resumes and aspirational goals requested by Commissioner Steinberg for City and County employment. Also included in the requirements are the proposer's experience and qualifications, and the design team experience and qualifications. The proposers must also provide detail explanation of the number of rooms, suites, and what hotel brands they are considering. The proposers will provide conceptual designs and preliminary development budget and schedule. The other piece is the financial plan and financial capabilities. The lease will have a fixed based rent payment and a percentage of gross revenues payment, roughly \$6 million a year, which adds up to a net present value of roughly \$100 million. The finance plan is a very important piece for the Administration to understand what money the proposers are putting in, versus what they are going to raise. Mr. Sachs asked the City Commission to allow the Administration to put all the RFP terms in the form of a ground lease for the proposal.

### Evaluation Criteria

- The evaluation point proposal is 30 points for the finance plan, 25 points for proposed financial and development and ground lease terms, 20 points for hotel program design, 10 points for the developer's experience and design team's experience, and 5 points for the organizational plan. There is an additional 5-point award for a proposer who is a State certified service-disabled veteran business enterprise.

### RFP Schedule

- The Administration expects to issue the RFP after today's Special Commission meeting, with an issuance of the addendum with a draft of the Development and Ground Lease Agreement on February 18. The Administration will have a pre-submittal meeting before the end of the month. The Administration anticipates having the selection in May. The language needed in the referendum must be approved and submitted to the County Elections Department no later than the first couple of days in September. The Commission recesses in August, and the Administration is targeting to get all this done for the City Commission to decide at the July Commission meeting.

Commissioner Steinberg thanked City Manager Jimmy Morales and his staff; City Attorney Raul J. Aguila and his staff, and Maria Hernandez and Jeff Sachs for their hard work. She also thanked them for adding the local hire language into the RFP. It is important to her to give the community and residents the first opportunity for jobs, and thereby improving the quality of life. Commissioner Steinberg received an email from County Commissioner Jose "Pepe" Diaz, and she read one line: "Specifically the City agreed that it supports and encourages the application of local workforce hiring and responsible wages for the Convention Center project and ancillary project." She asked her colleagues for a policy direction and wanted to know what her colleagues think about adopting the County's responsible wage ordinance, as it applies to this project.

Commissioner Tobin stated that County Commissioner Diaz's request is like having a union shop for the hotel, and he does not want to do that at this point. Commissioner Tobin does not think the City should put itself at a competitive disadvantage with whoever is going to bid on the project.

Discussion held.

Jeff Sachs, Strategic Advisory Group, stated that the proposal being discussed by Commissioner Steinberg is an aspirational goal for the effective minimum wage for the construction site of the project, and Mr. Sachs does not think it relates to the operational site of the project. Mr. Sachs added that he does not think it relates to unions, but is more of a minimum wage provision.

Commissioner Grieco is concerned about the minimum wage proposal, and thinks it is premature.

Commissioner Weithorn thinks they should support County Commissioner Diaz's requests to the extent that it may deal with employment and poverty in our community. However, she does not want to change the RFP at this point. The committee will evaluate the proposals, and she hopes that the proposers will get points for including provisions to hire locals in order to support the community. Commissioner Weithorn finds it unfair that for the Convention Center proposal such a provision was aspirational, but for the hotel they wish to make the minimum wage provision a requirement.

Vice-Mayor Malakoff agrees with the aspirational goals to try to hire locals from Miami Beach and Miami-Dade County.

Mayor Levine believes in aspirational goals, but disagrees with encouraging unionization of this hotel; the Mayor agrees with Commissioner Tobin.

Commissioner Steinberg clarified that this proposal is not union related.

Discussion held.

Commissioner Grieco in addressing the issue of room blocks commented that the goal of changing the Convention Center's booking policy is to encourage larger conventions to book in Miami Beach. He hopes that such larger conventions consist of more than 800 people. Commissioner Grieco asked if the City is proposing to build an 800-room hotel, what type of coordination the City will have with other large hotels in the City to meet the needs for additional hotel rooms when conventions attract more than 800 participants.

Mr. Sachs explained that the goal is to make sure that the Convention Center Hotel has room commitment requirements, with for example companies such as GMCVB and Global Spectrum, via the lease. The next step is to figure out how to best market the facility, and coordinate with other hotels.

Commissioner Weithorn wants to add language to the Convention Headquarter Hotel RFP that clearly prohibits someone that is in the gambling business from participating, without penalizing others. She is concerned in creating a situation where the prohibition is so strict that it is impossible to comply.

Mayor Levine explained that the clear objective is that this City Commission is against the expansion of gaming. The City Commission does not want a casino in Miami Beach. The Commission does not want to be partners with those companies or groups that potentially have gaming in Miami-Dade County. The purpose of this requirement is to make sure that any proposer that would eventually win this hotel RFP cannot be a gaming operator in Miami-Dade County. Mayor Levine believes that this language has to have teeth, and has to be written in a way that future Commission would not be able to overturn it easily. He wants the City Commission to make sure that it will take a 6/7 vote of the Commission, in addition to voter referendum, to overturn such a requirement. Mayor Levine stated that the proposed language, as written in the RFP, is clear.

Commissioner Weithorn clarified that a total prohibition could be problematic and they could end up in court forever.

Vice-Mayor Malakoff campaigned against gambling in the 80s and her feelings have not changed. Vice-Mayor Malakoff added that gambling is not good for the residents of the City Miami Beach or the residents of Miami-Dade County, and she thoroughly supports the restriction prohibiting gambling on the hotel site.

Commissioner Tobin suggested putting the referendum requirement to overturn the prohibition of gambling on the hotel site in the required November 2015 Hotel referendum. Commissioner Tobin asked that whenever the Office of the City Attorney starts drafting the language for the hotel referendum to consider adding the language requiring a second voter referendum before any prohibition on gambling on the hotel site is lifted. **Office of the City Attorney to handle.**

Raul J. Aguila, City Attorney, explained that in addition to safeguarding the gambling prohibition via the ground lease and the operative agreement the City Commission may also consider memorializing it as a Charter amendment.

Commissioner Weithorn asked what would happen 20 or 30 years down the line, if a future hotel developer decided that gambling is more important to them in Miami-Dade County than their connection to the Convention Center.

Mayor Levine answered that when the developer makes that decision: 1) the rent would triple, 2) the developer would get an opportunity to cure and 3) if unable to cure, either the developer hands the City the key to the hotel or the developer sells the hotel to someone else.

Discussion continued.

Raul J. Aguila, City Attorney, stated that the way it is laid out is simple; it is just like any other term or condition of the agreement that the hotel developer is required to comply with. The reason they are doing it in the RFP is that it gives notice to those proposing on the hotel not to spend money submitting a proposal if they cannot abide by this condition. If a developer submits a proposal, then it is agreeing to be bound by this condition as a ground lease term. If this condition is breached, then it is like any other event of default. If 10 or 20 years from now the climate is different in the City and the proposer wants to do gambling, first of all, there is always the provision in the lease that it is a default unless the City Commission decides to amend the

agreement, which would require a 6/7 vote of the City Commission and a Citywide referendum. As the Mayor said, it will ultimately be left to the voters to decide whether gambling is something that they want.

Discussion continued.

Mayor Levine suggested that the Office of the City Attorney draft strong language prohibiting gambling on the hotel site and an owner restriction as discussed. **Office of the City Attorney to handle.**

**MOTION 1:**

Motion made by Commissioner Tobin; seconded by Vice-Mayor Malakoff to request approval to issue the Convention Headquarter Hotel RFP; Voice-vote: 6-0; Absent: Commissioner Wolfson.

**MOTION 2:**

Motion made by Commissioner Weithorn; seconded by Commissioner Tobin to request approval for the City Manager to the draft a "Development and Ground Lease Agreement" as an addendum to the RFP, based on the material terms contained in the RFP. Voice vote: 6-0; Absent: Commissioner Wolfson.

Handouts and Reference Materials:

1. The Miami Herald Ad 982 and Ad 990
2. Email to City Commission from Frank Del Vecchio [fdelvecchio@atlanticbb.net](mailto:fdelvecchio@atlanticbb.net) dated January 25, 2015, 11:14 p.m., RE: Prohibit Casino Gambling or Consortium Participation for Convention Center Hotel.
3. Email to Jimmy Morales from Frank Del Vecchio [fdelvecchio@atlanticbb.net](mailto:fdelvecchio@atlanticbb.net) dated January 26, 2015, 7:26 a.m., RE: Prohibit Casino Gambling or Consortium Participation for Convention Center Hotel.
4. Letter to Mayor and City Commission dated January 26, 2015 from Seymour Gelber and Dan Gelber RE: Gambling prohibition in Convention Center Hotel RFP.
5. PowerPoint presentation titled Miami Beach Convention Center Headquarter Hotel RFP.

## R7 - Resolutions

**4:42:13 p.m.**

R7A A Resolution Approving Addendum No. 4 To Request For Proposals No. 2014-294-ME, For Design/Builder Services For The Miami Beach Convention Center Renovation And Expansion Project (Project).

(Office of the City Manager)

**ACTION: Resolution 2015-28907 adopted.** Motion made by Vice-Mayor Malakoff to approve the proposed resolution; seconded by Commissioner Weithorn. Voice-vote: 6-0; Absent: Commissioner Wolfson. **Maria Hernandez, Alex Denis and Rafael Paz to handle.**

**Direction:**

The Motion further provided that staff:

- Give Clark the opportunity to give the City their cost and schedule.
- Have additional public pre-bid meetings.
- Explore Plan B.
- Have flexibility to negotiate possible alternatives.

**Maria Hernandez, Alex Denis and Rafael Paz to handle.**

Rafael E. Granado, City Clerk, read the title.

Jimmy L. Morales, City Manager, explained the process to date. Mr. Morales stated that the Administration issued an RFP to design/build the Convention Center. The City had four international teams that came forward and submitted proposals during Phase I, which was the quality based portion of the proposal. A committee of six individuals evaluated those four proposers. The committee rendered their results at a very public process and meeting. Clark Construction was ranked No. 1 by all six committee members; Hunt was ranked No. 2 by five out of the six committee members; Hensel Phelps was ranked No. 3; and Tutor Perini was ranked No. 4. The Administration came to the City Commission to shortlist the top three. However, Hensel Phelps decided to drop out as they felt they did not have a good chance based on the ranking. The Administration approached Tutor Perini and asked if they wanted to participate, but as they came in fourth place, they also felt that they did not want to move forward with the process. The Commission shortlisted, based on the Administration's recommendation, the two companies that had come first and second. The Commission approved last month an Addendum to the RFP that focused it on the price and schedule, which clarified that irrespective of their rank, the companies had to present projects that were within budget and within schedule, including breaking ground after this year's Art Basel and opening all four halls for the 2016 and 2017 Art Basel events. Unfortunately, on January 21 2015, a disappointing letter from the Hunt was received dated January 9, 2015 (the date after the pre-bid meeting) pulling out of the process. City Manager Jimmy Morales expressed that this was disappointing, and that in 20 years of public service he had not seen something like this. Especially from a company ranked second and very much still in the hunt. City Manager Morales stated that the firm that was ranked No. 1 across the board is still in the process. The City Manager's recommendation is to move forward with the one bidder. As indicated in [LTC-2015-026](#), proposals are due February 27, 2015, at which point the Administration will evaluate. Understandably, no one likes the situation where there is a competition of one. The item that is before the City Commission as Addendum No. 4 is to address the fact that in light of this, how the City is to evaluate the one proposer must be modified. There is no longer a need for an evaluation committee; the role is now more for a technical review committee. The City Manager knows that there are some concerns from the Commission, but the Administration stands by the integrity and transparency of the process to date, but the Administration cannot control who wants to compete in the process. City Manager Morales added that the City has a very good company left in the process, but the City has either to finish the process or do something else. Always understanding that they must stay within budget and schedule.

Mayor Levine stated that it is very disappointing after all the work that has taken place to have one company at this point, although it is a fine company. There is no way in the world that the City wants to be over budget by a nickel or timing, and by having one company at this point it is very challenging. However, it must be remembered that the City is in a great position; the City has the money, the land, the community's support and a design that is completed up to 30%. The Mayor reiterated that he will never allow the City to be taken advantage of in any shape or form, including term and price. At the same time, the City needs to make sure that it keeps its accelerated schedule. Mayor Levine instructed staff to look at other options, come back with recommendations in February and maybe call a Special City Commission meeting to discuss new ideas to accomplish this. The Mayor wants to ensure that the project remains on budget and on schedule. There is no way that the City will do this if it will be leveraged in any way by one single vendor.

Commissioner Grieco asked Mr. Sachs what is "Plan B."

Jeff Sachs, Strategic Advisory Group, explained that Plan B is a construction manager at risk. Under that proposal, the City would continue with the design criteria package team led by the Fentress Architects and engage them to finish the design.

Commissioner Grieco added that at this point Fentress has been engaged to design the project up to 30%. The RFP is a design build, for the remaining 70% it is design plus the construction. Therefore, Commissioner Grieco stated that what is being suggested as Plan B is allowing Fentress Architects, the firm that did the 30% design to complete the design to 100%.

Mr. Sachs continued that under Plan B, while the design is occurring the City would retain the construction manager, and under that forum, the City would agree on their fees, profits, and all their expenses in the project. The construction manager would work with the design team and bid the project to the individual subcontractors, and then they would take those bids, add them up, add on to their pre-negotiated fee and then guarantee the delivery of the project for that fixed priced. Further, with Plan B, the City would still meet all deadlines in the present calendar and stay on schedule. However, Mr. Sachs stated that the City is hopeful that Plan A gets accomplished.

Commissioner Grieco explained that in a perfect world the City stays on schedule, comes to term with the remaining bidder, with the understanding that the remaining bidder comes with clean hands, good intentions and willingness to negotiate in good faith. Commissioner Grieco grants Mr. Sachs full discretion when negotiating these deals, that if Mr. Sachs thinks the City is being taken advantage of in any way, to walk away from the table. Commissioner Grieco believes this is the directive from his colleagues as well. Commissioner Grieco added that the City has had two cost-estimating firms look at these numbers, and these two firms came to almost the same dollar amount.

Mr. Sachs reported that Fentress retained a cost estimator, and independently the City hired a separate cost estimator. The two estimators did not communicate with one another until they provided the City with their cost estimates. The two companies then did a two-week reconciliation process and they are only \$2 million dollars apart on a \$400 million construction cost estimate. Therefore, City is conformable that the project that has been designed can be built for the budget.

Commissioner Weithorn stated that the City already had the benefit of competition. If at any time the Administration finds that Clark is putting change orders and putting on pressure, she agrees with Commissioner Grieco to pull away. However, at this point, she does not see a reason not to at least try to negotiate to see if the City can get the safeguards of Plan A. However, the City has done cost plus contracts in the past, which is what we are talking about for Plan B. Commissioner Weithorn wants to continue to explore Plan B as a plausible alternative.

Discussion continued.

Mr. Sachs suggested approving the City Manager's recommendation to spend the time and let the Clark team give their bid. The Administration will meet as often as they can with Clark at public pre-bid meetings between now and the due date, to ensure that Clark understands the Fentress design and thereby Clark can give the City its best bid. If the bid is over budget and beyond contingencies then the City can go to Plan B.

Discussion continued held regarding going with Clark or with Plan B.

Mayor Levine explained that Plan B gets the City to the same place just as fast.

Commissioner Tobin inquired if Plan B gets the City to the same place within budget and on schedule, and puts competition into the process, why would the City not put Plan B into place right now.

Mr. Sachs responded that the City had two cost estimators independently "bidding the project." Therefore, the City does not think that the final bids will be under what was presented by the estimators. Mr. Sachs explained the least risk to the City is the design build construction contract, because in the design build construction contract there is no finger pointing between the designer and the builder whose problem it is and the City is not in the middle of that. If the City is successful in negotiating with Clark TBS, they limit the City's risk because the City has taken the designer and builder and put it into one contract. If they have to go to Plan B, they introduce more risk to the City because the City hires the architect, there will be a separate contractor and there will be change orders. Contractually the City wants to do design build, if Clark can deliver the project for the budget. If not, the City will go to Plan B.

Discussion continued regarding competition.

Mayor Levine stated that this Commission is not comfortable finalizing the deal with one firm, unless the City is assured that it will get this project on time and on budget. If that is not the case, the City will go with Plan B, and Fentress can continue to design to the end.

Jimmy L. Morales, City Manager, recommended: 1) Giving Clark the opportunity to give the City their best number and schedule, and 2) Direct the Administration to get ready for Plan B. The Manager explained that in order to activate Plan B, the Administration would have to come back to the City Commission.

Mayor Levine requested the Administration to work on Plan B in the meantime, and schedule a Special Commission Meeting if needed. Mayor Levine added that the City would proceed on dual tracks. **Maria Hernandez and Jeff Sachs to handle.**

Mr. Sachs stated that by February 28, 2015 Clark would have the prices. On March 1, 2015, the City will open up Clark's proposal. The City and Clark will continue to meet between now and February 28, to ensure both is on the same page as to design. If the proposal received is materially over what the two independent estimators projected, the Administration will propose going to Plan B on March 2, 2015.

Mayor Levine clarified that Fentress, at this time, is contracted to design up to 30%. The bid is based on the 30% design. If Clark receives the award, it is to complete the drawings to 100%. In the event the City adopts Plan B, it would entail having Fentress do the full design up to 100%, and the City would use that 100% plan to bid with all the subcontractors.

Discussion continued.

Motion made by Vice-Mayor Malakoff to continue negotiations with Clark, the No. 1 bidder, and if they come in within budget and agree to the schedule as is in the RFP, then the City goes with them; if not, then go to Plan B, and instruct staff to be prepared for Plan B.

Discussion held.

Commissioner Weithorn suggested amending the motion to authorize to sit down with Clark, negotiate and put all options on the table, since Clark may offer a hybrid solution to the City, knowing that the Commission is not comfortable, and said hybrid may be brought back to the City

Commission.

Jimmy L. Morales, City Manager, added that Maria Hernandez would have another public pre-bid meeting with an open discussion answering questions and doing whatever the City can. City Manager Morales asked that in order to move forward, they need to approve the Addendum, which addresses the fact that now the City does not have a second competitor. The Addendum needs to be adopted as part of the process.

Commissioner Grieco proposed a friendly amendment to Vice-Mayor Malakoff's motion to include the adoption of the proposed resolution.

Mayor Levine added that the motion should also include adopting Addendum 4, holding additional pre-bid public meeting and granting the Administration flexibility in negotiations.

Seconded by Commissioner Weithorn.

Commissioner Tobin asked if Clark will provide the City with an evaluation where it believes it may be at risk of going over budget when it provides the City with its final cost.

Mr. Sachs explained that the contract has been provided to Clark. Clark would have to deliver on all the specifications as listed in said contract. There are no risks to the City.

Jimmy L. Morales, City Manager, stated that this is an important point. The way the RFP was structured provided a list of items to which the proposer can offer alternatives or other approaches. There are shared savings.

Handouts and Reference Materials:

1. The Miami Herald Ad 982 and Ad 990

**End of Regular Agenda**

Meeting adjourned at 5:02:39 p.m.