

This letter is not intended in any manner to suggest inappropriate conduct on the part of any individual or group of individuals public or private. It IS a criticism of the general contractor selection process for the new City of Lakeway police station.

During the course of my investigation I met on occasion with City of Lakeway staff. They are pleasant to work with, knowledgeable, and professional police force. A new facility is certainly needed.

I have been in the commercial construction business in Austin as a mechanical subcontractor for over 40 years. I started and own my firm and I am a registered Texas professional engineer. I have extensive experience with construction contracts and I am not an attorney. I have not held public office and do not seek such. I am not affiliated with and do not support any political candidate. My firm does not do business with the City of Lakeway.

Our public bodies must not only avoid illegal action but equally important they must avoid the appearance of financial misconduct.

For over 50 years public (taxpayer funded) projects were awarded by the bonded, sealed bid process. The public body hired an architect to prepare detailed plans for the building. These were submitted to several bondable general contractors who prepared bids and purchased performance bonds. These bids and bonds were placed in sealed envelopes and ALL were opened and read aloud publicly at a specified time and date. The low bidder was awarded the contract. The burden of insuring performance was placed on the bonding company and architect, IMPORTANTLY THERE WAS NO OPPORTUNITY FOR INAPPROPRIATE INFLUENCE OR FAVORITISM TOWARD ANY BIDDER. This process is totally transparent and the tax payers are assured that fair market value was being paid for the project.

THIS WAS NOT THE METHOD USED FOR THE SELECTION OF SPAW GLASS AS THE GENERAL CONTRACTOR FOR THE POLICE STATION. The City of Lakeway charter specifies that city projects will be awarded according to the State of Texas procurement statutes. This statute (charter F, section 2269) allows a method designated as Construction Manager of Risk. This is a deceptive misnomer. There is no risk to the general contractor as I will show. **The Construction Manager at Risk (CMAR) gave the city a guaranteed maximum price (GMP) based on the plans and specifications drawn by the architect prior to bidding the project. The CMAR assumes the risk of bids coming in higher as he is contractually bound to deliver the project under or at the GMP. It is important that the city is able to rely on financial information early in the process (prior to bids being taken for construction) when bonds are used to fund the project.** This method has many twists and turns but as its root it is a version of the traditional “cost plus not to exceed” method. I submit that while this may be convenient for the governing body it does not adequately protect public funds.

**BRIEF HISTORY OF THE POLICE STATION CONTRACTOR SELECTION PROCESS**

At the October 17, 2016 city council meeting the Lakeway city manager stated that the architect and Spaw Glass will “come up with a cost” for the building. NEITHER OF THESE ENTITIES IS MOTVATED TO ARRIVE AT A CONSERVATIVE COST ESTIMATE. Both of their fees are a percentage of total cost. Additionally, neither wants to be responsible for cost overruns. This results in a high cost estimate. The cost estimates are based on the architectural plans. Additionally, the city hired a 3<sup>rd</sup> party architect to review the plans and cost estimates developed. This additional architect acted as a project manager on behalf of the city at the time to ensure the city was receiving accurate and uninflated information. This cost estimate becomes the “cost not to exceed” in the contract. THUS, THERE IS NO RISK TO THE GENERAL CONTRACTOR.

At this same council meeting MAYOR BAIN (SOLELY) WAS AUTHORIZED TO “NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE SELECTED ARCHITECT. ALSO MAYOR BAIN WAS AUTHORIZED TO “NEGOTIATE AND EXECUTE” AN AGREEMENT WITH SPAW GLASS CONSTRUCTORS.

Prior to this Council meeting a proposal process has taken place. Four general contractors presented proposals. However, at the October 17, 2016 city council meeting the city manager stated that only two were opened. Additionally, at the March 21, 2017 Citizens Bond forum Dave DeOme stated that “four proposals were paired down to two”. The state procurement statue (2269,253f) states that ALL proposals are to be opened and read aloud. Government Code Chapter 2269.253(e) states, “If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk’s proposed fee and prices for fulfilling the general conditions.” The city used the two step process for evaluating the CMAR. Request for Qualifications (RFQ) is Step 1, and Request for Proposals (RFP) is Step 2. The appointed building committee scored the RFQs first based solely on their qualifications. See attached scoring matrix. I submitted an Open Records request for the minutes of this public opening. I was told that minutes were not taken. Minutes are not taken at RFQ, RFP, and bid openings because no votes are recorded. City staff complied with the legal requirements to read aloud names of respondents in Step 1, then names and pricing in Step 2. Also, it was reported that no one attended the opening. No respondents attended the first public meeting for reading of the RFQ names (Step 1), but respondents attended the second public meeting where price was read aloud in response to the RFP (Step 2). Since it was a public opening involving \$23,000,000 it was seem reasonable that some record (minutes, video, etc.) would be made. This obvious question becomes EXACTLY WHY WAS SPAW GLASS CONSTRUCTION SELECTED OVER THE OTHERS? AND, SINCE MUCH EFFORT AND TIME IS REQUIRED TO PREPARE A PROPOSAL, WHY WERE TWO NOT OPENED? The individuals serving on the building committee read each RFQ and scored them based on the criteria requested in the RFQ (Step 1). Based on the scoring of the RFQs, two firms were not selected to move to the second step based solely on their qualifications. The two remaining firm’s proposals (which included price) were then opened and read aloud at a public meeting on 9/2/2016. Those two firms were then interviewed by the committee on 9/26/16. Based on the interviews and RFP response, the two firms were then rescored by each committee member. Please note that additional information is used in the second evaluation including price and pricing structure. Please see attached post-interview scoring sheets.

Section 2259,254A off the Texas Procurement Statute states that the city may select the proposal that offers the “best value”. On what basis is “best value” determined? See scoring matrix criteria used that was included in the RFQ (Step 1) and RFP (Step 2) submittals. And, more importantly, who makes this determination when one person is authorized to “negotiate” the agreement? The Mayor is the appropriate delegate of city council to sign the agreement on behalf of the city after the RFQ/RFP process has been completed. No changes were made to the contract after city council’s review. I submit that this is loose and unacceptable mismanagement of \$23,000,000 of taxpayer funds.

When these arguments were presented to city staff on November 1, 2017 we were told that the city would audit all construction costs and pay only cost plus a management fee of about \$1,300,000 to Spaw Glass. The traditional bid-spec sealed bid method (mentioned earlier) would not require this detailed and expensive audit process. City staff audits all contractual arrangements to ensure compliance whether projects are built according to design/build or CMAR methods. Also, this puts the auditor (city staff) in a defensive position against a large and experienced general contractor. City staff has experience managing large contracts and is professionally capable of managing the contractor relationship. Will the taxpayers ever see the results of the audit in detail? City staff will not pay any request by the contractor until fully examined. City staff may reject a pay application and ask the contractor to redo the request if there are any errors or omissions. The unpaid pay applications will not likely be made public but can be requested through the open records process should any citizen have a concern. And, by the remote possibility that they do, will anyone spend hours examining and questioning it?

I do not believe that any Lakeway homeowner would voluntarily give any entity a lien on their home. But, this lien has been taken and is in effect for the life of the bonds. The total costs with interest will be about \$42,000,000. Total cost with interest on the bonds is \$34,187,496. Initial interest costs were higher due to conservative interest rate projections and the city was able to issue 20 year bonds instead of 25 year bonds due to the favorable interest rate environment at the time of sale. It was an easy sell to the voters since we were told it would be only about \$10 per month. The voter will pay approximately \$9.60 per month for FY18 based on the average taxable value of a home.

This bond election passed by only 9 votes. Only about 18 percent of registered voters voted.

UNLESS THIS PROCUREMENT PROCESS IS CHANGED I ENCOURAGE ALL VOTERS  
TOO VOTE NO ON FUTURE BOND ELECTIONS.

Step 1 - CM@R - Police Facilities Scoring Matrix Summary									
Firm Name	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Evaluator 6	Evaluator 7	Average Score	Ranking
Lott Brothers Construction	80	52	42	67	74	85	80	68.6	3
White Construction	93	75	87	60	90	88	93.5	83.8	2
Braun & Butler Construction	54	58	56	53	53	59	82	59.3	4
SpawGlass	93	81	88	80	93	93	94.5	88.9	1

CM@R - Police Facilities Proposal and Interview Scoring Matrix - <u>Evaluator 6</u>			
Criteria	Possible Points	White Construction	Spawglass
3.13 Proposal Price	25	25	22
3.14 Proposal Price Structure	25	25	20
3.15 Qualifications/Experience of Team	25	20	25
3.16 Knowledge of Best Practices	10	5	10
3.17 Organizational fit with the City of Lakeway & Cohesiveness of the Team	10	7	10
3.18 Overall Presentation	5	4	5
<b>Total Points:</b>	100	86	92