

AT AN EMERGENCY MEETING OF THE BOARD OF
COUNTY COMMISSIONERS HELD IN AND FOR
GADSDEN COUNTY, FLORIDA ON DECEMBER 22, 2020
AT 6:00 P.M., THE FOLLOWING PROCEEDING WAS
HAD, VIZ:

Present: Brenda Holt, Chair, District 4
Dr. Anthony "Dr. V" Viegbesie, Vice Chair, District 2
Eric Hinson, District 1
Kimblin NeSmith, District 3
Ronterious "Ron" Green, District 5
Edward J. Dixon, County Administrator
Clayton Knowles, County Attorney
Marcella Blocker, Deputy Clerk

INVOCATION, PLEDGE OF ALLEGIANCE

Chair Holt welcomed everyone to the Special Meeting, asked for a moment of silence and then led in the Pledge of Allegiance to the U. S. Flag.

Amendments and Approval of Agenda

Chair Holt stated there was no awards or presentations and asked for approval of the agenda.

COMMISSIONER HINSON MADE A MOTION TO APPROVE AND COMMISSIONER NESMITH MADE THE SECOND. THE BOARD APPROVED BY VOICE VOTE 5-0.

Awards, Presentations and Appearances

Consent

Items Pulled for Discussion

CITIZENS REQUESTING TO BE HEARD (3-Minute Limit)

Due to COVID-19 and the efforts of the Gadsden County Board of County Commissioners to continue the practice of social distancing, Commissioners want to continue to hear from citizens under the Citizens Requesting to be Heard section of the agenda.

If citizens have any questions, comments, or concerns, please email

CitizensToBeHeard@gadsdencountyfl.gov and anticipate receiving a response within 48 hours.

The Board of County Commissioners would like to thank everyone for their patience and flexibility during this time.

Chair Holt read aloud the COVID-19 statement and there were no emails.

Public Hearings

GENERAL BUSINESS

1. Broadband Services Agreement

Mr. Dixon said the meeting was called to review the contract of FCI Broadband Program.

Mr. Knowles gave a brief background of the procedural history. He said the broadband services contract was advertised on September 23, 2020 in both newspapers for one week and the public bid opening occurred on October 3rd. FCI was the only vendor to submit a response and the Board directed the County Attorney and County Administrator to address the concerns raised by Commissioners and negotiate a contract with FCI. On Wednesday, October 21st, the County Attorney made first contact with FCI and requested they provide a proposed contract for legal review. On October 23rd at 3:48 p.m., County received the first proposed contract from FCI's chief operating officer, Germain Bebe. The contract was five pages long and needed significant revisions. On Friday, October 23rd at 4:58 p.m., the County Attorney responded to Mr. Bebe and requested the contract in Word and informed him the contract would be heard at the next regularly scheduled Board Meeting on November 17th. The due date for the deliverables of this contract was December 30, 2020. On Tuesday, November 9th at 6:27 a.m., County Attorney sent an amended contract to FCI. On Tuesday, November 17th, in advance of the meeting at 9:48 a.m., the County Attorney received an email from Joycelyn Brown, General Counsel for FCI, with the revised contract for Board review. The due date for deliverables with this contract was still December 30, 2020. On Tuesday, November 17th the Board met for its regular meeting and requested to review the revised contract. On November 20, 2020 at 5:19 p.m., the County received an email with the first amended Contract from FCI General Counsel. On Monday, November 23, 2020 at 8:11 a.m., the County received another email from FCI with another amended contract which altered the surety bond. On Tuesday, November 24th at 4:41 p.m., Interim County Administrator sent an email to Mr. Bebe regarding the changes to the contract the Board requested. Board had requested that FCI make those changes and on Wednesday, November 25th at 12:13 p.m., FCI General Counsel emailed a third revised contract to Dr. Grant with language that changed the date for the hotspot delivery to the County from December 30, 2020 to December 30, 2021. No mention was made of this alteration in Ms. Brown's email or the red-line contract and the red-line contract was not sent to the County Attorney. Finally, on December 3rd at the direction of the Chair, County Attorney sent an email to Ms. Brown and Mr. Bebe regarding renegotiating the contract in the manner similar to what they were with today to eliminate the December 30, 2020 deadline and remove all references to CARES Act in this contract. FCI recused this request and requested the Chair sign the contract as presented. This contract reflected a deliverable receipt deadline of December 30, 2021 effectively providing FCI with an additional year to deliver the hotspot devices. In light of this unannounced change, the County Attorney added additional protections to ensure payments to FCI in a timely manner and to protect the County in case the need for a refund arose. The proposed contract sent to FCI also added language that limited attorney's fees for both parties, clearly spelled out refund language and provided other safeguards to the County. Now, FCI proposed to provide the County with approximately 25,000 wireless hotspots at a cost of \$38.60 per month for the actual hotspot device and \$32.00 for the associated broadband service. The options he requested were:

- 1) Approve agreement between the County and FCI with added fiscal protections and other safeguards for the County;
- 2) Approve Agreement between the County and FCI without added fiscal protections and other safeguards for the County; and
- 3) Board Direction.

He recommended Option 1.

Mr. Dixon said in light of what has happened, he sat down with staff. As issues have continued to arise, they were faced with how to get the product out. He said he compiled what was a basic understanding of how he felt they could get through whatever decision. He passed out an informational packet to all the Commissioners. He said the December 30th deadline they were referring to was no longer in effect and they were no longer talking about CARES Act money anymore; they were talking about the drawdown dollars from the CARES Act money and the deadline was no longer in effect. He said he has spoken with Integrity about this. He said the Broadband program does not fall under purview of the U. S. Treasury Department CARES Act guidelines. However, BOCC actions must still be maintained in order for the program to be effective, efficient and beneficial to the citizens, it was strongly encouraged and recommended that the BOCC broadband program be amended and the delivery date of hotspots be moved until January 15, 2021. He said the reality was citizens still need internet service and still do not have it.

Commissioner NeSmith asked with the other two commissioners not being able to see this document, could it be emailed to them.

Chair Holt asked if they also had copies of the two contracts that the Attorney had. He said the first started on page 4 and the one they returned started on page 20 of the packet. First contract County provided to them; second one is what they provided to County.

Commissioner NeSmith asked if the contract starting on page 4 was the attorney's recommendation and Mr. Knowles responded yes.

Chair Holt said she requested they have representation on Zoom and they were present.

Chair Holt asked what issues the Attorney had with the contract they sent and the reason for the strikeout on page 21.

Mr. Knowles said there was previously a W-9 requirement (for the resident) and that was taken out. She asked about other strike-outs and Mr. Knowles responded he did not believe there was any problem with it on the part of the vendor. The ownership of the devices was discussed later in the contract (Section 4-Ownership and Return of Devices) and that paragraph was not needed. He also stated it was taken out because there was not sufficient time using the December 30th deadline for the residents to get them and the thinking was issue FCI the W-9 and as the qualified residents received the devices, they would then fill out the W-9 upon receipt and sign it. She then asked about the Invoicing procedure (Section 5.2 of contract). Mr. Knowles said pursuant to the notice the Clerk sent, sixty days was in the contract, the Board agreed on 30 days and the change reflected that. She asked about the change in Section 5.3 Surety Bond and he said that was one of the main concerns he had and was not pleased with the change in date adding an extra year to it but was told it was a typo. Based on what the Board had specified based on how the funds were to be disbursed, from CARES Act money and not from General Revenue and also what Mr. Bebe had said during the meeting regarding the refund, he wanted to clarify that language so if they did not actually procure 25,000 devices, they would be in a better position to recoup those funds from FCI. He said going after a surety was not legally the best way to do things. Chair Holt asked, in the contract where it read "received by Qualified Residents and determined and confirmed by both Parties" ... He said the concern was a) who from the County

was going to confirm it, the did not have a designated person. Chair Holt said FCI had to be responsible for that; when they turn that in then they could do the checks and balances. Mr. Knowles pointed out the way it was worded, the County was responsible. Chair Holt said what he was saying, the County would not be the one and the paragraph was not written by him. He stated some of it was. He explained the blue changes were not his changes; the red changes were his changes.

Commissioner NeSmith said he had a chance to meet with the County attorney to review the contract and asked who was responsible for marketing the devices to the public and keeping a count as well as an attestation and collecting the information, distribute the items, keep a count and record of who was getting the devices.

Mr. Dixon said he was trying to get those answers for himself. He said he tried to address them in the document he passed out.

Mr. Knowles said in the contract, FCI was responsible for the distribution and attestation.

Chair Holt said also it was not payment by the citizens to FCI when they were three months over. She added when you provide a service, no matter what, you have to market the services. She said they were not responsible for the distribution of the devices nor after the three months were up, but wanted them to be able to make a decision. They had the hotspots, were in a place where could not get internet service. If they wish to keep it, they could keep it. The County was responsible for the purchase of the hotspots and paying FCI. FCI was responsible for the distribution and the documentation that included any forms needed for the documentation, attestations, W-9, etc. She said they have two organizations; the Health Council and the Economic Development Council and that was two groups the Commission could use. They need to decide on what they were going to do.

Commissioner NeSmith said where FCI was responsible for distributing, was the County responsible for marketing the program?

Chair Holt said they were not responsible in the contract but should be. She added “you always market what you pay for with taxpayer dollars”.

Commissioner NeSmith asked if there was a plan to market. Chair Holt stated they had not.

Mr. Dixon explained his timeline list.

- December 22, 2020 was the start date.
- January 1, 2021-The County and Vendor collectively begin a marketing campaign to encourage citizens to use the service. Citizens who are in need of the service, i.e., will be identified and signed up for the program. A PR campaign will be launched.
- January 15, 2021- Gadsden County signs off on deliverables they have. BOCC never takes physical possession of hotspots. FCI is due their first payment. If BOCC drawdown has not occurred yet, as soon as the drawdown occurs, the Clerk is directed to make payment.
- February 1, 2021-the Broadband program kicks off and the program would run for 90 days from the time the service begins for each citizen. As each household signs up, the

vendor will prepare a W-9 and a spreadsheet listing name, address, etc. whatever the contract called for and present to the Clerk monthly (bi-weekly) for payment.

Mr. Knowles asked on the January 15th date, the first payment would be due and how much. He continued by saying if they had not distributed any devices, why pay.

Chair Holt said if he was talking about distributing to the individuals and Mr. Knowles stated correct. She directed Mr. Dixon to go ahead and finish explaining, because they had “done changed the idea...:

Mr. Knowles stated if they were extending the contract legally, what payment was due on the 15th and have not received any devices, why pay.

Chair Holt stated “You gonna receive them.”

Commissioner NeSmith asked “We haven’t received any devices?”

Mr. Dixon said maybe he was reading wrong and was trying to understand if they were to go device by device or is County going to accept the hotspots as the deliverable and then allow the vendor to continue to pass them out.

Chair Holt said yes, that was what they had already determined.

Mr. Knowles said was that because they had the December 30th date?

Chair Holt said no, it was not because of the date, it was because of the product. The County was purchasing the product; they will have the product here and invoice the County for that part. They will start distribution as soon as they become available to the County.

Commissioner Green asked when the product would be made available.

Chair Holt said the company was ready to bring them as soon as possible. Since the draw-down money does not affect CARES Act, they had to go back and look at the contract because they were addressing a source of payment they could no longer have now. If they were saying CARES Act, that money would no longer be available after December 30th. She added that was why there was a problem with this; on the second contract that the Attorney wrote up, he put in CARES Act money and if they draw-down the money; which they have already started doing, you could not have CARES Act because you would not get CARES Act money. They will get money from the Department of Revenue that will go into the General Fund.

Commissioner Viegbesie said he was still very concerned with the hastiness with the attempt to particulate to FCI’s desire for the County to spend this money. Everyone knows the citizens need broadband. But the rate they were rushing into this, and even in listening to the conversation they were having, it was confusion that nobody knew what, they were trying to put answers where no-one knows where answers are. He commended the County Administrator for the creative financing of this project that circumvented CARES Act limitations. He said if they had that creativity, why were they in such a hurry now that they could effectively and thoroughly prepare plans so they could provide the services more effectively and efficiently. He added that

\$38.00 was an exorbitant rate for this device. He further stated the hastiness for which they were capitulating to the vendor, he had no problem with the vendor, he has a problem with the process and has stated that from day one. He further added it looked like there were ulterior motives with trying to rush this through with all the confusion going on. He said they were workshopping the contract now and what they should be doing, not coming to an emergency meeting to begin to workshop a contract or document that needed to be approved. He stated he thought \$38.00 was way too much for the device. He said they have time now and did not need to rush this in anyway. He added he would not support the contract but just one of four and they could do what they wanted.

Chair Holt said they will continue to do what was required to do when they took oath and was not a problem. She said the concern was they were offering the company a deadline of December 30th but that no longer applied. She said if they looked at the history of the item, they would see there has been enough time to negotiate it but this Board did not decide to do that and they now have the December 30th deadline and under the attorney's advice, she signed it and the FCI attorney signed it. Since that time, the attorney met with the Clerk and the Clerk felt there were other things that should be in it. She said "We are not the Clerk, we are the BOCC. That agreement would have been and may still be between Gadsden County BOCC and the vendor, FCI. There are two signatures on that document. Now, if there's anything that need to be cleared up, they need to clear it up so we can move on. It's not that it's a rush, it's just that you have a signed document. If we need to clean it up, we clean it up. If the citizens decide they do not want this service, then they don't have to keep it, OK? But even with the CARES Act, they decided, people working here, that it would be better off if the citizens had the internet so (inaudible). People can't go to library, they are closed, OK? So, it's not that it was just that easy to go and apply and get notification. Some couldn't get notification because they didn't have internet. Back to this contract because we have to go, we have to do what we need to do, as I said, you already have two signatures. Now, whether that's a final agreement, that for the attorneys to decide. What we're trying to do is get it where we need it to be so it is beneficial to the County, cause we are working for the citizens."

Commissioner Hinson wanted to clarify a few things first. He thanked the Board for trying to move forward with this. He said there was a sense of urgency and wished they had that when they started this in July. If not mistaken, the Attorney stated in his statement they bid this, and added they not only bid once, it was bid twice; and wondered why there was no sense of urgency then. He added this was not an urgent matter but they needed to have a sense of urgency and there was a difference between the two. He was glad they were putting a timeline on this. He said the citizens were struggling and was hoping they could end this tonight and do what was right for the citizens.

Chair Holt said when she was looking at the first contract and wanted to know from the FCI attorney, she was looking at the last document (FCI contract). She said there were strike-outs on page 20 of 34, there were strike-outs in Section 2.1 and 2.2. "~~No payment shall be made until such time as the County receives a verified attestation and fully completed W-9 from a qualified resident~~". She said that was taken off because that initial payment does not depend on the citizens receiving it, it would be the County receiving the devices and Ms. Brown stated that was correct.

Mr. Knowles said that was what Integrity said and he was fine with it under the previous schematic, but since there was not a current schematic, he could not say...

Chair Holt asked what he meant by “current schematic.”

Mr. Knowles said this brought him to his question, for the January 15th deadline, they were no longer under the time constraint of December, why were they not procuring the devices on an as-needed basis...

Chair Holt said the County would not be distributing.

Mr. Knowles said the County would be procuring them, purchasing them and Chair Holt said “right”. He asked why they were purchasing them all up-front.

Chair Holt said if the Board decided to purchase them all up front, that was the way it will be; if the Board decides not to purchase them all at once, that was the way it will be. She said the logic behind it was for him to do the contract the way the Board decided. She said when they built the tower as they did with Motorola, they don’t pay according to the antenna that was put on; they moved the \$2.? for Motorola to get the towers up. They started moving the money and they started building the towers. Mr. Knowles said they could agree that the towers were different from broadband. Chair Holt said they could agree to a lot of things, they pay for things as they receive it. Mr. Knowles agreed with her. Holt said if the Board wanted to buy them, that was what the Board was going to do. Mr. Knowles asked if they were going to do that, why would they not want strong refund language within the contract. Chair Holt said that was what you would want, she did not say not to have it there. Mr. Knowles said he wanted to procure them on an as needed basis so they did not have that problem and did not have to go through litigation at the end of the day since the contract was his responsibility. He said he did not want to be there in 6 months or at the end of next year and not have sufficient funds and have to go after funds and either procure from FCI or surety bond. He said he understood that the Board has discretion to do whatever it wanted to do. He added, if they had the opportunity from the onset to make it easier on the Board, to protect the Board and be fiscally responsible to have a balanced budget, why were they putting themselves in a contractual situation that would not behoove them.

Chair Holt said she was not debating that, but, as she said, it was still up to the Board.

Mr. Dixon said he thought deliverables was tied to the first payment. Chair Holt said it was.

Mr. Knowles stated because of the December 30th date.

Mr. Dixon said the “thought process that has gone into laying out this program, for his staff to get it up and running and how we’re gonna make this happen for the Board. I’m trying to get to how, it’s been my understanding that the first payment was tied to the first deliverables, tied to us taking receipt of the hotspots.”

Chair Holt said yes, that was it.

Mr. Dixon said he thought every additional payment was tied to someone coming onto the system.

Chair Holt said he was correct, that was what was discussed in previous meetings, was exactly what they had in writing. When asked about it, asked if everything was ok, we all decided pretty much it was ok. So, if it was ok then, and as the attorney stated, was tied to a December date, does that mean it could be tied to January 15th date and do same thing? What does the Board want to do? There is a 2021 date change in there and already 2 signatures from the County and FCI.

Mr. Knowles stated on two separate documents.

Chair Holt asked the Administrator if he had a copy of the document. Mr. Dixon stated yes and Mrs. Bradley was retrieving the document.

Chair Holt said she did not want to get into the back-and-forth emails, but wanted to have something amicable for both groups if they were going to continue to do what the Board said they were going to do going into negotiations.

Commissioner NeSmith said there were a lot of moving parts to this. With so much information and questions he had, he recommended and asked Mr. Knowles if, at this moment, they had an executed contract.

Mr. Knowles said he would state no.

Commissioner NeSmith said if they had an executed contract, he has not seen it and the two contracts before him has strikethrough and underlines with no signatures on it. He said given that the attorney has informed him there is no executed contract AND given the fact that the County Administrator just informed them of a different process and avenue to approach the contract; given they do not have the December 30th deadline any longer, felt they should allow the attorney get together with the County Administrator, correspond with FCI attorney, to work out a document and they have the ability to set their own guidelines now. He asked the attorney if that was accurate and Mr. Knowles stated that was what he had been told, yes sir. He asked the Chair, said now that they have drawn down the resources, they could create their own document with their own terms and guidelines.

Chair Holt said he was pretty much correct.

Commissioner Nesmith continued and said they were now not under the December 30th deadline, the County Administrator has provided them with a document with a schedule.

Chair Holt stated she had already discussed this with him.

Commissioner NeSmith continued and stated he did not know if the County Attorney had an opportunity to meet with the County Administrator and Mr. Knowles stated not yet.

Commissioner NeSmith said how they could integrate that into a contract and the County attorney and County administrator get together and consult with FCI's attorney and get one document that would come back to Board.

Chair Holt stated that was why they were on the line now because they wanted to hear all of this too.

Commissioner NeSmith said obviously they could not merge all the documents together in this workshop. If the County Attorney and Administrator could get together, voice their concerns, come up with a document, communicate that with the vendor's attorney, County Attorney then come back to the Administrator with any additional feedback and get one document that would come to them.

Chair Holt said that was the thought process for the meeting today, because of the back and forth. She also stated that Ms. Hamilton told the Board at a previous meeting that the drawdown money would not be CARES Act money.

Commissioner NeSmith said he thought it was in-line with Commissioner Viegbesie's concerns.

Chair Holt said he would speak for himself.

Commissioner Viegbesie said that was his concern. He stated he has expressed his concerns and everyone knew he has filed a complaint of violation of CARES Act money with the Department of Treasury. Now that they were coming up with a creative way of circumventing violation of those procurements, why be in a hurry. He said the citizens needed it, yes and they could provide more for a lot less. He said the hurry was making him very concerned and the whole discussion was convoluted. He further stated he had no problem reading the document that the Administrator provided, no problem going through the contract as it was if they wanted to schedule a workshop, do so. This was an emergency meeting and what they were doing now was not a meeting, it was a workshop on the contract. He noted they now knew what FCI's requests were. He added they were not here to serve FCI, they were here to serve the citizens of Gadsden County and to serve them with the most effective and efficient way of providing the services that was paramount to the assistance of the citizens; one of which was internet connectivity through broadband. He further stated, if one listened to the conversation, they were cutting and pasting and cutting and pasting contracts into various answers.

Chair Holt asked the Administrator if he had the signed contract. Commissioner Hinson started to speak and Chair Holt asked him to hold on; she felt a fight coming on because she did not agree with quite a bit of what Commissioner Viegbesie. Chair Holt stated Commissioner Viegbesie had the right to file whatever he wanted. She said she has filed quite a bit herself over years. She said she would like to say they were not in a hurry; they were in a situation where they have signatures and that was what she was talking about. She said if they wanted to know what was in the contract, you do that early and when you needed to get it done. She said it was not a fight or a workshop; they told the company December 30th and things have changed and was why it became an emergency meeting because the County's word was worth something. The reason they needed to look at this was because you should look at all forms of contracts, when something was going on this long, you should become leery of your in-house as well as theirs. If there was something in the contract they did not agree with as a Board, whether you give the

attorney the ability to negotiate, they did that. They gave FCI's attorney the opportunity to negotiate at the first meeting of the new commissioners. There were questions about the negotiations at that time. Commissioner Green asked for some documentation and was what the Board had to look at. Whatever was in the contract, they were held by the contract as a Board and was why you look at the contract. The Board told FCI December 30th and was why they were rushing trying to do December 30th and they no longer have to do that and the Board owed them that, because they were a government; not someone that says 'I don't feel like it, I don't want to do it or I don't think it's right'.

Commissioner Hinson said the million-dollar question was, what happened to what Commissioner Green asked. It seemed they were yet, as of today, to see what he asked. He asked a simple question where was the correspondence and they have yet to see any.

Mr. Knowles said he emailed them today. Chair Holt told him no comment and for Commissioner Hinson to continue.

Commissioner Hinson said in September or August, he would find where the attorney said broadband was not that important. He said he would find the date and time when the attorney said broadband not that important and did not want to see where anyone was discredited. To him, it was a biased way of thinking. He said to the attorney, he had to trust the Board's judgement, they attorney's job was to do the legal part, not what (inaudible) in the middle of a crisis right now, in a pandemic. He said he emailed Dr. Grant because people from Concord, Jamison same thing; people were working from home and was an urgent matter. He added what might not be a problem to Commissioner Viegbesie and Commissioner NeSmith but to a lady that just wanted to get medicine and was afraid to go to the doctor because of the pandemic and if they had internet, could do telemedicine. The kids can't do assignments at home, it was urgent. What about farmers that can't order supplies and have to go to Tallahassee, it was urgent. They have been talking about this since June or July

Commissioner Green said he was baffled why they were still here at this point in reference that both sides have attorneys. They have entrusted the attorneys to negotiate in good faith. They voted 4-1 and at this point they really needed to move this forward. He said there may not have 25,000 that need the device, but people need the device.

Chair Holt asked if he had seen the list of items that the Administrator sent to them? He responded yes. Chair Holt asked if that list could be sent to FCI's attorney as well. She asked Mr. Knowles in looking at the items, could they be included. Mr. Knowles stated he felt they would need more clarity.

Mr. Knowles said, for the sake of argument, to assume they were able to magically get the contract executed and ready to go to the mutual consent of all parties; January 1st Marketing portion begins; January 15th, first payment of \$882,500 due or at such time in which receive the County receives the CARES Act draw down. Chair Holt said not to say CARES Act. Mr. Knowles pointed out the draw-down was from CARES Act. Chair Holt said they would not receive it so they could not discuss that with them because they would not get that. Mr. Knowles said he understood, was just saying it would be coming out of General Revenue after the CARES Act disbursement draw-down has been made and Chair Holt said correct. Once that money comes in, the Clerk makes payment. That was where he had a question and the reason was, not that he did

not think it was important, but he thought the contract was important, to assume for the sake of argument the Clerk refuses to make payment of the \$882,500, what happens then.

Chair Holt said two or three things they had to look at. One, the Clerk was not the County Commission; second, he has to have legal reasons not to, he's bound by State Statutes and State Constitution, as are the Commissioners and that was where the problem would come in and when the attorneys would get started.

Mr. Knowles asked if FCI would then be entitled to a late fee.

Chair Holt said they may be. If they were not paid according to a contract that was due, you would pay a late fee.

Mr. Dixon said they had to come to a conclusion on this situation, first of all, there was no reason to believe the Clerk would not pay, given a direct agreement from the Board, that was like assuming the State would not give them money after they said they would; second, this was not intended to come part of a legal document, this is the framework that he and staff would use to roll out a program that the Board has voted for and was not intended to be part of a legal document but for them to be able to "think our way through getting this out to people".

Chair Holt said she was looking at the date, not necessarily that this involved anything else. She said they could not go by the December 30th deadline but they had to go by some date.

Mr. Dixon said the December 30th deadline was dead as well, but in the Contract is the December 30th deadline and asked if they were entitled to a late fee because the Clerk sat in the meeting recently and said they could not pay. Chair Holt stated that was true. Mr. Dixon said they needed to think about the vendor as well, the vendor has some obligations as well. Everything had to be worked out but they had to be more amicable and get it done if they were going to roll the program out.

Mr. Bebe with FCI appeared remotely. He said with concern to the contract that was signed, he sent that out after the last meeting where everyone spoke and had a number of concerns that they wanted addressed within the contract. He said they immediately sent that out and thought it met all the requirements. The initial response from Mr. Knowles was he was fine with it, although he did find there was a grammatical error with the date. He said his concern was the current contract they were sent. He was under the impression it would be passed around, reviewed, and later signed unless there were major issues. Now the newest version of the contract has a lot of language that not discussed prior. He said they have become a "sausage factory" to get this deadline done. He said they were prepared, if need be, to get the product here by the end of the month, they have stopped producing everything to produce these devices. They have spent their money to get this paid for the surety bond, which was a jumbo surety bond, almost \$2 Million. He said to the Board, if there was anything they needed to do, they were paying to have these devices housed in a secure location, if anything else they could do to get through this tonight to get this signed, they were willing to get this done. He said, with exception of what they needed to get out for the holidays, they have done everything possible, spend a great deal of time and money and did not understand the language that was put in as if to say it was a possibility, the contract presented seems to give them the inclination that there was an intention by the County to not pay and do not understand. He added he wanted to see if

they could get through this tonight because they were ready to provide the service and providing the service for three (3) months to the County where it would amount to \$7/month and was not making a profit from the service. He further stated they have been working under the premise that they essentially have less than 10 days to deliver the devices and were prepared to. In response to Commissioner Green's comments, they have gone back and forth with this so much and now were at the 11th-12th hour and not sure what else the County may want from them. IF there was anything else, asked they state so today so they could get to a point to complete this.

Commissioner Viegbesie said the question he had, one was for the attorney and the other was with reference made to the Clerk. He asked Mr. Knowles how many versions of the contract have they received at this point and how many have come before the Board for approval and signature by the Chair.

Mr. Knowles said there was the original contract they received from FCI, the revised contract that he sent back to FCI on November 10th; there was the second revised contract that was sent from FCI on November 17th, got a response the same day and sent a timeline this morning at 11:38 a.m. to the Commissioners with screenshots of the emails and correspondence back and forth between him and FCI. There was another contract that was sent on December 3rd and that dealt with what they were trying to do today and was where he asked FCI to re-negotiate the contract, trying to take out the CARES Act language; and followed up on that December 4th. He received a response to the email dated December 3rd, received another contract that was sent to Dr. Grant on November 24th; there was another contract received on December 17th from FCI and then received another contract on December 20th that further revised the surety bond language yet again from FCI on that date. He said that was 8 contracts and only 2 came from him.

Commissioner Viegbesie said they have been going back and forth for a while and at this moment there was not a contract that had been actually signed and they did not have a contract and was what they were working on now. He said the contract signed was not the one that was approved, the one signed was a 2021 date and the Board approved a contract dated 2020. He said the contract that was signed was not one approved by the Board and was one of his concerns. He added he did not think the Chair had unilateral power to sign a contract. He said there were some situations, but what was approved by the Board, with regard to service provisions, that contract was what the Chair could sign, not with crossed out and revised contract. (Mr. Bebe started to speak and Commissioner Viegbesie said "Just a minute Sir" and Chair Holt interjected and stated "Commissioner Viegbesie, please, I am Chairman. Go ahead and finish please.") When he heard that a contract had been signed with a different date, he called Administrator and asked why they were signing a contract that was not the contract approved by the Board, by crossing out the 2021 and putting in 2020 when the contract that was signed was sent back was 2021. He said there had been actually 8-9 different versions of the contract and one the one that has been signed is not actually a contract because it has strikeouts.

He then stated the other was the conversation that referred to the Clerk with regard to payment. They were working on a draw-down of the CARES Act in order to be able to fund this project. According to this timeline, on January 15th, Gadsden County signs off on deliverables but never takes physical possession of the hotspots. What if the Governor's Office has not released the \$882,500, where would the payment/money come from, General Revenue? What would happen if the Governor's Office refused to release, there was no guarantee that the money would be released. What if that becomes the case. Because it was 25%, then 25% and finally we are

drawing down on the remaining 55%. He said some counties were not yet drawing down because they have not provided the information. His question was, what if that money never comes from the State or it comes like FEMA and any government reimbursements, which flows like molasses, 2-3 years from now before they get the money. So where would the payment for this service really come from and was something they needed to discuss with regards to the Clerk's possible concern as to how payments made and what it would do to their reserve.

Chair Holt said she was glad he brought it up about the typographical error and was why she asked the attorney if that was OK and why staff caught it. She said the instructions were that they could either mark out or re-type and was not something the Chair just decided to do.

She asked Mr. Bebe if he heard the concerns from Commissioner Viegbesie. She said they do this contract, he brings the hotspots, he turns in his invoice and the County has to wait on the CARES Act money that was now being converted into General Revenue. She asked him what he thought about that scenario.

Mr. Bebe said if that was the will of the Board and what works with the County in order to complete the process of payment and where the funds were coming from, they were fine with it. His main comment in relation to Commissioner Viegbesie response, they sent over the contract, it was reviewed by the attorney, basically was told it was ok, when the typographical error was found, he did not understand, if they find a typographical error, the response to him should have been to send a new one and it would be resigned. Instead, there was an entirely new contract drafted up with language that was never discussed over the phone or in writing. He said they were now back to square one because of that. They negotiated in good faith and produced a contract in accordance with the will of the Board, they have been at every meeting and followed Board's direction. He said he did not understand with one-digit error, they were back to an entirely new contract.

Chair Holt said Commissioner Viegbesie's concern, if they did not get that money in in time and he turned in their invoice in, that was where there may be some concern. They all knew they had to wait on CARES Act money and knew they would draw down in phases. How would he address this concern?

Mr. Bebe said if they had to, if the County wanted the devices on the 30th, they may need to be a situation in the contract where if that money was not drawn down in time, perhaps they would be open to change the time in order to give them more time to pay.

Chair Holt said that was why she said if they delivery date was changed to the 15th, that would give the County time for the draw down.

Mr. Bebe said if she was changing the due date to the 15th, they could do that.

She said that was a suggestion.

Mr. Knowles said he could say why this was not discussed over the phone, because he did not feel it was a mistake or a typo. If it had been discussed in the email that was received from FCI's general counsel where it was laid out, there would not have been a problem. He added that his sole goal of changing the contract was the sole protection of the County. When he saw that

change, his personal belief was he needed to add extra protections to protect his clients. He thought it would only be fair if that material change, what he viewed as a material change was made was why he felt there needed to be more robust protection to ensure what was going on and was why he sent Ms. Brown the email on Saturday morning asking what parts of the contract could be agreed on, what parts did they believe needed tweaking and never received a response from Ms. Brown.

Mr. Bebe said that was his opinion. Mr. Knowles said he never received a response and if there needed to be on-going dialogue, things FCI felt untenable, they could have negotiated those things over the weekend and tried to make them more palpable to FCI's side. He added he was not trying to be an obstructionist on the contract and was why when Commissioner Hinson said there had not been contact, there had. He wanted on the record that he had tried his level best to do this but, in any situation, if this was a non-governmental client and he had a client that received a contract from a vendor that changed the material term, he would be livid about it. He said the fact that no-one else was livid was concerning. He wanted to make sure his client was protected; if they did not procure the proper number of devices and did not get 25,000, they received a refund; he wanted to make sure that if they did go into litigation and the County won, FCI wasn't sacked with a lot of legal fees. He wanted to make sure that, pursuant to the Board's direction, it was in the minutes he sent to Ms. Brown the Chair and the Board, the Board specifically said this money would come from CARES Act and would not come from General Revenue. He continued by saying he wanted to make sure it was laid out. He said if the Board was directing him to not look out for them, he was ok, but he had to make sure that he did that on the front end to protect the client up front like Ms. Brown wants to protect her client. That way, if they get to a scenario where it becomes a problem, they have a document that reflects that. He added this was totally his opinion as to what it was, a mistake or not, but he was stating that was his opinion and not accusing.

Commissioner Green said he had to excuse himself as he had another obligation at 7:30 p.m.

Mr. Bebe said in response to Mr. Knowles statement, that was his opinion, and was a highly offensive opinion. Ms. Brown comes with the highest rating and has an impeccable record for integrity, if she said this was a mistake, it was a mistake. They have exchanged nearly a dozen contracts back and forth. They have also protected the County by paying 5 figures on a premium insurance in putting up hard assets to back it up. They do not have time for games, including the fact they were being held to a December 30th deadline that was fast running out. They were fronting money and had no reason to try to be tricky. He said he found the comments to be highly offensive and there was no proof to back it up because have exchanged nearly a dozen contracts with no issues.

Commissioner NeSmith said currently they have not drawn down the dollars to meet the obligation if they had an executed contract.

Chair Holt said they did not have the CARES Act dollars because did not draw down.

Commissioner NeSmith said they started the process but...

Chair Holt said they did not receive them and they knew that they did not because "we" told them.

Commissioner NeSmith said at this point the County was not sure when they would get those funds.

Chair Holt said at this point, they did not have a definite date.

Commissioner NeSmith asked should we wait to receive those funds to execute this contract?

Chair Holt said either that or they would have to delay on receiving the funds, because they could not give the money until the draw-down.

Commissioner NeSmith said his concern was, if they enter a contract and for whatever reason, the funds were delayed, they would still be in breach of the contract.

Chair Holt said they were going to get CARES Act funds anyway. Now, exactly when, they did not know.

Commissioner NeSmith asked again, should the County wait until they received the funds?

Mr. Dixon said one thing that had to happen tonight if they were to move forward, was 1) push the date down and 2) ask FCI to remove the breach of contract language knowing the County did not have the money.

Mr. Bebe said they were willing to delay the payment.

Mr. Dixon said 3) recognize they could start the program if FCI was willing to remove the breach and also direct also that the contract be done and ready by the first meeting in January so they could solidify those dates. Mr. Dixon said they were receiving money every day, getting approvals every day saying what had been approved, it just was not in big chunks like before. If they decide to move the date down, readdress it on the 5th, he thought both parties would be happy.

Mr. Knowles asked for clear direction from the Board. With that being said, there was a contract; the late fee of 1.5% was gone.

Mr. Bebe said his suggestion would be to write the contract “when those funds are drawn down upon, the County would have 30 days to remit payment” if that was acceptable and made the most sense.

Chair Holt stated that would be when the funds were received.

Mr. Bebe stated yes, to put in the contract “once funds are received, 30 days from that date, you would be required to make a payment to FCI”.

Mr. Knowles asked if they would need to amend the budget to reflect the income of the CARES Act money and change the line item within the budget to direct payment.

Chair Holt said they would have to do that.

Mr. Knowles said on January 5th to vote on the contract; schedule another meeting; pass the budget amendment, advertise, etc., would they be able to pay it within 30 days?

Mr. Dixon said they do have to have a budget amendment in order to direct those funds, if they could come up with language to acknowledge that, in good faith, while there was no reason to not pay them, but there was a process that had to be gone through.

Chair Holt said they have to have a budget amendment to draw the funds down; have to have advertising time in papers, and did not want FCI to beat the County up with a late fee until they could get that done.

Mr. Bebe said they would remove the late fee.

Mr. Knowles then asked, the project will start January 15th to receive the hotspots and FCI would receive payment after the County received draw down and passed the budget amendment, etc. Mr. Knowles asked Mr. Bebe when the County would receive the devices.

Mr. Bebe said they would have to work that out with the County Manager.

Mr. Knowles asked if they would receive the devices prior to or after the first payment.

Chair Holt stated prior.

Mr. Bebe said whatever deadline was set, they would have them at the location ready for distribution and would not start distribution until the payment had been initiated. They have a secured location already.

Mr. Knowles said they will receive \$882,500 or asked how the Board wanted to work that.

Chair Holt said he received that when the money drawdown was done, the devices were here.

Mr. Knowles asked if they would pay the full \$1.765 Million upon receipt.

Chair Holt said NO; doing two sessions like they said before.

Mr. Bebe said for them to remember, FCI was doing all the distribution, everything, it was more than the devices that were in the contract, they were required to advertise, distribute, collect all data, they were doing everything.

Mr. Knowles said he was asking the date of payment.

Mr. Bebe said once the County has received the funds, they had 30 days to make the initial payment. Mr. Knowles asked when the second payment was due.

Mr. Bebe said when they finish with the distribution and all verification for the devices was turned in.

Gadsden County Board of County Commissioners
December 22, 2020 – Emergency Special Meeting

Commissioner Viegbesie said at 8:00 p.m. his time, have scheduled family time via Zoom with his family in Nigeria and would be excusing himself.

Mr. Knowles said they would lose the quorum.

Commissioner NeSmith said he would like to defer back to the County Attorney because they needed a schedule 1) not sure when the balance of the funds would arrive to make payment; and 2) after payment was received, would need more than 30 days to advertise, do the budget amendment, etc. and could take the Administrator more than 30 days to do.

Mr. Dixon said it shouldn't but it might.

Mr. Dixon said they would try to lay all that out in the plan that will be presented, if they agreed to push the date and bring it back on the 5th.

Mr. Bebe pointed out they agreed to nullify the late fee.

Chair Holt stated if she decided to get a hotspot on February 1st, she would have service for three months, if someone else decided to get a hotspot on February 15th, they would have service for three months. If they were willing to wait until they got everyone distributed, once all the devices were distributed and everyone had three months of free service, then they would get paid. She said it was not as if they had to have everyone out at the same time.

Commissioner NeSmith asked how long they were going to run the program.

Chair Holt said the contract ends at the end of distribution.

Mr. Dixon said there was no "hard rules" about the end date and they may want to build one in just to end the program because they believed enough people have partaken of the service.

Mr. Bebe stated he believed a year would work.

Commissioner Viegbesie left the meeting at 7:47 p.m.

Chair Holt said they lost a commissioner and no longer had a quorum. They will have to get him, the Administrator and the attorney together.

Ms. Steele informed them they had a quorum because they still had a commissioner on the phone.

Chair Holt stated because Commissioner Viegbesie left the meeting, they no longer had a quorum in the room.

Commissioner Holt said it was best to bring this up at the January 5th meeting.

Gadsden County Board of County Commissioners
December 22, 2020 – Emergency Special Meeting

MOTION TO ADJOURN

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, CHAIR HOLT DECLARED THE MEETING ADJOURNED AT 7:47 P.M.

GADSDEN COUNTY, FLORIDA

**BRENDA A. HOLT, Chair
Board of County Commissioners**

ATTEST:

NICHOLAS THOMAS, Clerk