

EAST PROVIDENCE SCHOOL DEPARTMENT

East Providence School Committee

East Providence City Hall

145 Taunton Avenue

School Department Conference Room, Third Floor

East Providence, Rhode Island 02914

July 12, 2013

Open Session

Mr. Monteiro, Chairman, called the meeting to order at 8:00 AM.

Members present: Members Present: Elizabeth Clupny, Timothy Conley, Anthony Ferreira, Joel Monteiro, Richard Pimentel. Also present: Kim Mercer, Superintendent of Schools and Andrew Thomas, Esq.

The Pledge of Allegiance to the Flag & Moment of Silence were observed.

Action Items

Approval of Bid for Continuation of Health, Safety Bond Work

Mr. Monteiro recused himself and turned over the Chair position to the Vice Chair, Timothy Conley. Because of a potential family conflict, the Chair chose to step away from that seat; two bids were

received: Barhy Construction and Irons Construction.

Attorney Thomas recommended that the bids not be approved by the School Committee at this time; this needs to be rebid or treated as a bid protest; there were two bidders: Barhy Company used a bid form with additional contract requirements; second bidder, Iron Construction did not.

On July 9, 2013 at 4:30PM after the bids were opened, Barhy Construction wrote to Jerry Leach, Purchasing Agent for the City of East Problem about a problem with the bid form; Mr. Thomas read from his letter about the “correct bid form” and Barhy respectfully protested any award to Mr. DePasquale of Iron Construction Group LLC, because of the problem with the bid form (as well as asbestos abatement plan). Mr. Thomas explained that of the two bids that were submitted, one was an original bid form with specs which were promulgated to parties by our architect on or about June 28th. The bid form and specs posted on the website were difficult to open up on website and caused some problems; the bid form on the website was different from the other; Irons submitted the bid form from the website. Barhy used the same form, but his form added the following language “as well as asbestos abatement plans by RI Analytical.” There were two different bid forms and lots of confusion; there should be only one source that information is channeled through and in this case, there were multiple sources. If the purchasing authority wants to do this as a bid protest; language reads, “any bid on

grounds.....notify Leach within 5 days who will render a written determination at least seven business days prior to an award.” If treated as a bid protest, Mr. Leach has the obligation and responsibility to make a determination and notify the parties within seven business days or we would have to rebid this job because of confusion; the opinion of counsel was that the bid cannot be awarded today. Mr. Thomas noted he followed the state purchasing law. Barhy protested any award to Iron Construction.

Mr. Conley said that he respected that opinion; there were two bid forms, but looking at this timeframe, we will have to pay overtime to get work done on time.

Ms. Clupny agreed the School Department would have to absorb the added expenses; two more weeks and we will fail the project; we will not get back \$3 million bonds due from RIDE in June 2014 if we do not spend the money by then; if the work not done now, it cannot be done during the school year; there are asbestos issues and other concerns.

Discussion: Numerous problems with doing this job late – cracks in floors, moisture issues, if we do not start right away we will be in trouble; so stretched out already and will have other numerous issues; if work does not start, we are in big trouble.

Purchasing Agent, Jerry Leach stated that if School Committee follows legal counsel’s opinion and treats this as a protest, we would

have to delay any award for at least seven days; assuming he can do written part today and we have apparent lower bidder present, Iron Construction, and Mr. DePasquale asked to address School Committee.

Mr. Thomas stated that Barhy submitted it in his email and respectfully protests any award to Irons Construction LLC; it is in writing.

Mr. Leach has not received anything except an email that this is the position he is taking – a bid protest should be officially in writing; he assumes he would follow up with a written bid protest; to be recognized has to be official in writing. Mr. Thomas believes it should be treated as a protest.

Mr. Catelli stated that the Department of Health wants air quality testing whether we do tile or not because of asbestos at the high school; it could come back positive and we would not be able to open the high school in September; there are lots of issues; this should have been given out in April, not now; we have issues with the State Fire Marshall if we do not update the fire alarms; liability from State and Fire Marshall by August; he swore he would have work done by August 31; considerable amount of money at stake with RIDE; this is not an easy decision.

School Committee agreed to allow one of the bidders (Irons) to

address the School Committee.

Mr. DePasquale said that he did the projects the first time and pulled off the impossible; he had a good project team; there was no interruption to services or classes; they did fire alarm and life safety project; they are right for the job. He said he has not seen a protest; there were numerous places in the document that state that the “owner has the right to accept or reject any bid in the best interest of the city” and in his opinion it would be in the best interest of the city to award the bid to Iron. Barhy used the wrong forms and the wrong address; it would be a waste of time to go to court. The School Committee can make a decision to do whatever they decide; he did everything correct; he will lose his subcontractors; some work has been done in order to start this job next week; the quickest way is not to go out again but to award the bid to Iron; he know CHIPS program and works with Mr. DaSilva at RIDE. This is a unique project and he can do the job; at some point, someone has to stop this; asbestos tile coming up, hardware, accessibility, it goes on and on and this job should be awarded in the best interest of city. He has a letter of intent from his bond company; the protest has no weight.

Discussion: School Committee concerned about if they wait on the bid, it would hurt the kids or could be sued over the asbestos, fire safety and alarms at the High School.

Mr. Ferreira felt the School Committee did not do their due diligence;

6-7 months nothing was done he had an issue with mid-morning and afternoon meeting; out of respect for the public, they should know what is going on; he believed this situation to be a disaster; happened before last year only this is worse. Problems are pushed under the carpet until time sensitive. All the School Committee hears about is kids, money, and time restrictions. It will be a problem if the job is stopped.

Mr. Conley said no one disputes that; he shares those concerns; a motion was made by Mr. Pimentel to award bid for life safety contract, there was no second, so the motion failed.

Mr. Leach said there were comments from Mr. Barhy; the bid form on the city and state website; he posted documents from the project manager which is what Irons used. Mr. Barhy used one from our architect which is not the official website; but everyone received information to go to city website to check out specifications there. Mr. Leach did not believe that aspect of his statement is sustainable; \$500,000; change not acceptable by any stretch of the imagination.

Mr. Conley noted that the mechanics and specifics of an RFP are up to facilities personnel and the School Committee is removed from that; Barhy bid bond does not match bidder; that is the protest; the attorney should check with the bonding company.

Irons said that Barhy did not follow the process; these things happen

on a fast track process;

Barhy said this is about emails, not a bid protest.

Mr. Conley said that the Committee has heard from a number of people; there are two options: treat as a bid protest or go to rebid process; he cannot make a motion as the Chair.

Mr. Leach follow his counsel to reply in writing to the protest; step 1 is to accept; 7 business days cannot award contract; step 2- go to round four bids; have to allow 7 bus days but prefer couple weeks.

Motion by Mr. Pimentel to treat this as a bid protest, seconded by Mr. Ferreira. Vote 5-0 to approve.

Mr. Monteiro noted that clarification needed regarding SMMA and Farrar; can't hide behind website issue; clear up nonsense; have to go by process; School Committee has to do best they can with the information they have.

Mr. Conley noted the background pieces; School Committee never told until two bids came in; cannot make informed decisions like this; time sensitive; supposed to make decisions; if good function, School Committee needs to be informed and relies on the experts we hire; this process is the fourth bid go around with one issue after another; no one is blameless.

Decision lies with the purchasing agent. Mr. Leach stated that a motion was made to treat this as bid protest; it will be up to Mr. Leach to reply whether to award the bid or rebid. Mr. Leach will convey his decision through the Superintendent who will inform the School Committee.

A motion was made by Ms. Clupny to adjourn, seconded by Mr. Pimentel. Vote 5-0

Respectfully submitted,

Patricia A. Iannelli, Administrative Assistant

Elizabeth Clupny, Clerk of the Committee