

Meeting Minutes

Special City Council Meeting

January 3, 2008, 5:00 p.m.

City Conference Room, 1515 Strongs Ave.

Mayor Andrew Halverson, presiding

Roll Call: Alderpersons Myers, Hanson, Wiza, Heart, Trzebiatowski, Molski, Stroik, Brooks.

Excused: Alderperson Walther, Slowinski, Moore.

Also Present: City Clerk Moe; City Attorney Molepske; Comptroller/Treasurer Schlice; Engineer Alex Saunders; David Oberbeck (Becher-Hoppe Assoc.); Eric Carlson (Ellis Stone Construction); Jason Zencka (Stevens Point Journal).

2. Approval of minutes and actions taken at the Special Board of Public Works meeting of January 3, 2008 relating to the remodeling/reconstruction of Fire Station No. 2 and the awarding of bid.

Ald. Trzebiatowski, expressed concern about lag-time if there is a power outage at the station and the impact it would have on the stations communication capability.

Chief Barnes said that the U.P.S. is used on the computers while the dispatch of emergency events comes over radio waves. The backup system is two phone lines which, along with the other systems, could be looked at.

Ald. Hanson asked what is the life expectancy of the system.

Mr. Oberbeck said that the system's life is over 20 years with a payback of 10 years. He then explained the different types of heating systems they looked into. The least expensive system was designed into the building with the solar component which was the most cost effective.

Ald. Stroik asked about the number of bids received and if they had the energy concept or did they have to come back with revised proposals.

Mr. Oberbeck said that the original bids were for the repairs and alterations within the existing building. After looking at the Department's needs over the next 20 years we moved back to option F. At the redesign it was determined that the project could be a "green architecture." We then determined which viable alternative we had for the system and went back to design solar into it. It was then put out for bids and that brings us to today.

Ald. Trzebiatowski moved, Ald. Molski seconded, to approve the additional funding of \$312,638.00 and to approve the total project expenditure up to \$1,213,917.00.

Ald. Wiza asked if approved today, when the project would get started.

Mr. Oberbeck stated that he believed that as soon as we issue the notice of award we are underway.

Ald. Molski stated that she hopes there is a penalty clause if they go past the deadline.

Mr. Oberbeck stated that it did not get into the addendum and that was his problem. The statement is that there is an absolute need on June 13th and that will be a point of negotiations with the contractors which he would have to work in. He feels comfortable with the way the contract is written and that a penalty clause would not be an absolute necessity to have in the contract with a local contractor.

Ald. Wiza asked why June 13th and not June 1st.

Mr. Oberbeck stated that analyses showed that we need until June 13th for everything to be finished.

Ald. Wiza stated that he has great concern that there is no recourse if the project is not done on time.

Ald. Wiza moved to amend the motion to include a penalty clause for an amount determined by the City Attorney.

Mr. Oberbeck noted that the City has the ability at 50 percent completion of the project to say that we are now retaining up to 10 percent because of the fact that progress is not proceeding satisfactorily.

Ald. Wiza felt that withholding is not a deterrent. The project must be done by the June 13th deadline.

Mayor Halverson asked the City Attorney what the City can legally do as far as penalties.

City Attorney Molepske stated that normally he reviews these documents and approves them. That was not done here as far as he is concerned. The City has a problem, we bid "X" and now we want "X plus one". What we are doing is modifying the terms of an agreement. Normally a penalty clause would be in there as a matter of course. He said the Council has two choices: 1) we can say we will award the bid if they agree to the condition that this (penalty cause) is included or 2) we can open it up for bids again.

Mr. Carlson said that the monetary penalty that the Council is seeking, from his understanding, is that the City actually has to show monetary loss in order to deduct the actual penalty which can be difficult. This a remodeling project. There are going to be issues that come up and any delay caused by the City or the architect will extend the completion date. He said that his biggest concern is that if this project isn't done on time the front page of the paper is going to read, "Ellis Construction is Late" and that to me is the biggest driving force. If one client sees that, his company would be out a lot more than \$500. To him that is the reason he does not see the need for that provision.

Chief Barnes asked Mr. Carlson if he said that if the company did not meet the deadline than they don't met the contract. Even though we do not have a dollar specific penalty, there are legal options available.

City Attorney Molepske stated that one is actual damages and the other is punitive.

Ald. Stroik noted that the worse case scenario would be that the Department would have to operate out of one building for a time as it has done in the past.

Ald. Wiza stated that with Ellis Stone not wanting the penalty clause, it raises a concern that they may doubt that the project can be completed on time.

Mr. Carlson replied that they have no doubts that the project will be completed on time; he just does not like modifying contracts.

Ald. Stroik noted that in the contract they have committed to the June 13th deadline date.

Mr. Oberbeck brought up the point that there is also what is called a performance and labor/material bond. If the contractor does not perform the City can call in that bond and hire another contractor to do the job per the contract. That is standard practice.

City Attorney Molepske said that it doesn't work that easy.

Ald. Heart asked if the Treasurer and City Attorney had a chance to review this contract.

Comptroller/Treasurer Schlice said that typically he does not sign-off until after the contract is approved.

City Attorney Molepske said that he is to look at the contact to start off with and Schlice signs-off afterward. He asked Mr. Carlson if they would allow an addendum.

Mr. Carlson said that he would have to discuss it with his partner.

Ald. Hanson asked if the City can indicate that we are going to hold back ten percent automatically until the project is completed.

Mr. Oberbeck said that there was a ruling that five percent is the limit, but if things are not progressing than you can move it to ten percent.

Ald. Hanson asked if that figure was based on the whole project or their bid.

Mr. Oberbeck said a couple of things will happen. The number will go down because of direct purchase items that will save the City sales tax. These costs along with the sales tax will be omitted from the final contract he writes for the Department of Revenue. Direct purchase orders will then be organized by the contractor and submitted to the City. The contractor is responsible for all the administration costs of those items.

Mayor Halverson stated the review of the fifty percent completion would be left to Becher-Hoppe as the overall project manager. As project manager, you would decide where they are on a particular day and if the project was fifty percent complete. If it was not you then would give Ellis Stone notice that we are going to withhold the percentages mentioned. The question is whether that is enough for the Council's comfort. If it is not we probably cannot act now, which will delay us even more.

Ald. Wiza asked if the City Attorney saw this before it went out for bids or not.

City Attorney Molepske said that he did not.

Ald. Wiza asked why that did not happen.

City Attorney said he did not know.

Mr. Oberbeck said that the documents were review through a process with all the parties. The members included the Department of Public Works and the Fire Chief. The process for the solar was a membership of the solar people, City Alderpersons and the Mayor.

Mayor Halverson asked Engineer Saunders, if normal protocol was not used, the question is why. Director Euclide should have known that, he should have gone through the guidelines. Why that did not happen is unclear to him.

Engineer Saunders said he would have to ask Director Euclide.

Mayor Halverson stated that at this point he is uncomfortable with the situation. He asked the Council members vote down the motion to approve and that a subsequent motion be made and adopted to table this and send it back the standing committees. He asked Mr. Carlson in the meantime to speak with his partner about whether or not they are willing to accept a penalty provision.

City Attorney Molepske said that he is not going to look at the specs. Assuming that a standard AIA contract is being used, the only things that he is going to look at is whether there is a bond, if any variations were made and which forms they checked. It would not take very long to review.

Ald. Wiza asked what would be a fair penalty.

City Attorney Molepske replied that \$500 a day would probably be a fair penalty.

Ald. Hanson asked if the building isn't completed by June 13th what the City's expense is per day.

Mayor Halverson said the costs that will be incurred are those that you can't necessarily put a price tag on like increased response time and the City's ability to provide an appropriate ambulance contract to the county.

Ald. Hanson said then maybe \$500 a day isn't enough of an incentive and that perhaps it should be \$1000 or \$1500 a day.

Mayor Halverson said the City Attorney will put the wording into the document. He would like to allow him to make that determination along with input from the Comptroller/Treasurer.

Ald. Heart stated that she was irritated by the fact that three people who should have reviewed the contract came to the meeting not having seen it, and didn't inform the Council that they had not see it.

Mayor Halverson replied that he has to rely on the department heads whom he assumed were competent.

City Attorney Molepske said that he assumed that it was going to have a liquidated damages provision.

Mr. Oberbeck said the contract will not be written until all the documents are received from Ellis Stone. This is his draft to start the process because he has to write the contract tomorrow. There is never a contract until the Council awards the contract to the contractor then it is reviewed.

Mayor Halverson replied that is in contradiction to what the City Attorney said a few minutes ago. He asked where the City was in the process and if it was inappropriate to move forward now. He also asked if the alderpersons wanted to review the document before the Council would approve it or if they were comfortable approving the document now after the contract is awarded.

Mr. Carlson said the Council needs to award the bid to keep the process moving especially with the tight timeframe. Second, the Council needs to make contract adjustments to make it palatable. Third, they will negotiate with the City to find a resolution that won't cost weeks of construction delay.

Mayor Halverson asked the City Attorney if he was comfortable with the Council awarding this as it is stated or if he wanted them not to act and give it to him to review.

City Attorney Molepske said he doesn't have a problem awarding the project and looking at the contract after the fact. Normally, he sees a sample contract so that he knows what the City is going to be signing. In this case, we don't have one and we will have to put one together.

Mayor Halverson asked why the penalty clause did not make it into the document.

Mr. Oberbeck said that it was in the last phase of the project where there was a lot to do in a short amount of time and for some reason it was not put in. He takes responsibility for that. He said the bid is set and the bid sets the basis for the contract. The City and the contractor have to approve the contract. The next step is a notice of award to Ellis Stone and then write a contract.

Mayor Halverson left it up to the Alderpersons on how they wanted to proceed.

Ald. Stroik suggested attaching an amendment to the motion that has the City Attorney negotiate an additional late penalty for each day past the June 13th completion date.

Ald. Wiza said he is concerned because the City is renegotiating after the bids are in and that we may be paying extra if this clause is included.

City Attorney Molepske replied no, the bid is set. The City is asking for the penalty provision notwithstanding the bid. We are not going to increase this bid.

Ald. Myers asked when Ellis Stone was informed that the penalty provision was not included.

Mr. Oberbeck said he notified Ellis Stone this morning.

Ald. Myers replied that he did not notify the City.

Mr. Oberbeck said that he needed to make sure that it was not in there first and he knew that if it was not in he was going to bring it up at the meeting.

Ald. Trzebiatowski felt that his original motion was in error.

Mayor Halverson stated the corrected motion by Ald. Trzebiatowski and seconded by Ald. Molski: motion to approve the actions of the Public Works and place the minutes on file of the special meeting of January 3, 2008.

Ald. Wiza moved, Ald. Hanson seconded to amend the motion to include language that the City Attorney shall negotiate a penalty clause as part of the contract if approved.

Ald. Brooks asked what happens if the company says no and what the timeline is to get this negotiated.

Mayor Halverson said the consensus would be to get it done as soon as possible.

City Attorney Molepske said that if a penalty provision is not included in the contract then the contract cannot be awarded.

Ald. Wiza restated the amendment: Ald. Wiza moves, Ald. Hanson seconded, to amend the motion to authorize the City Attorney to negotiate with Ellis Stone to put a penalty clause in the contract if work is not completed to our satisfaction by June 13, 2008, and that the contract does not get awarded unless that negotiation meets the approval of the City Attorney.

Roll Call on the Amendment:

Ayes: Myers, Hanson, Wiza, Trzebiatowski, Molski, Brooks

Noes: Heart, Stroik

Amendment Adopted.

Ald. Heart said she wants this project completed but she believes it is important to do this correctly. She believes this is a mess and the City can do better.

Ald. Myers agreed with Ald. Heart and said that this is the City's mistake along with Becher- Hoppe. It should have gone through these channels before it got this far and the City has to make sure that this does not happen again.

Mayor Halverson assured him that it would not.

Roll Call on the Amended Motion:

Ayes: Brooks, Stroik, Molski, Trzebiatowski, Wiza, Hanson, Myers
Noes: Heart
Motion Adopted.

Adjourned 6:01 P.M.

The meeting minutes reproduced on this website are derived from the computer files used to produce the official minutes for the City of Stevens Point, but are unofficial. The minutes on this web site cannot be certified under s. 889.08, Wis. Stats., and cannot be considered prima facie evidence under s. 889.04, Wis. Stats. Certain tables, maps, and other documents that are a part of the official minutes are not included in the files reproduced on this website. Please consult the printed minutes, available in the City Clerk's Office, for the official text. The decisions made by City of Stevens Point boards, committees, and commissions (other than the Police & Fire Commission) are advisory only and are not binding on the City until affirmed at a meeting of the Common Council. Some of the minutes on this web site might not be approved by the Common Council as of today.

Bottom of Form