

MINUTES OF THE CHESHIRE TOWN COUNCIL SPECIAL MEETING HELD ON TUESDAY, DECEMBER 30, 2014, AT 7:30 P.M. IN ROOM 207, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Timothy Slocum, Chairman; David Schrumm, Vice Chairman; Patti Flynn-Harris. Liz Linehan, Sylvia Nichols, Robert Oris, Thomas Ruocco, James Sima, Peter Talbot. Staff: Town Manager Michael A. Milone; Town Attorney Michael Markowicz; PW Director George Noewatne.

Guests: PBC Pool Committee Members John Purtill, Art Crooker, Mark Nash, Matt Levine.

1. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

3. AUTHORIZATION TO GO TO BID ON THE CHESHIRE HIGH SCHOOL LOCKER ROOM PROJECT.

MOTION by Mr. Sima; seconded by Ms. Nichols.

BE IT RESOLVED, that the Town Council approves Resolution #123014-1

RESOLUTION #123014-1

BE IT RESOLVED, that the Town Council authorizes the Public Building Commission to go to bid for the Cheshire High School Locker Room Project.

Discussion

The Council was informed by Mr. Crooker that there were some minor changes to get the project out to bid. These changes included different locks on the doors, frame for tv installation in coach's office, moveable benches for student use; and the PBC vote was unanimous for the project. There was also a PBC recommendation to approve payment to BL Companies for \$17,8090 per the December 17, 2014 proposal.

Mr. Sima posed a question about the locks on the doors, insuring there will be no ADA compliance issues, and a door cannot become the primary entrance way when one way must be used for everyone.

Mr. Crooker advised that the locks changed were for the coach's office and storage room doors, with all keyed the same. Nothing was changed related to ADA requirements or egress.

Mr. Talbot commented on the Council not seeing the scope of the renovation work, and asked about what is being done...i.e. configuration including painting or full renovation to the locker room.

PBC Chairman Purtill stated the drawings were sent out a long time ago.

Ms. Flynn-Harris said it is not unusual for the Council to get reminded or refreshed information and this has not been received for a while on this project.

According to Mr. Crooker, the plans have not changed from the original plans. There was PBC discussion on little changes from the drawings and this is what the Council is being informed about tonight.

Some history of the locker room project was given by Mr. Nash, former chairman of the project subcommittee. He said the project budget started at \$550,000; BL Companies had done a complete drawings of the locker rooms; the issue of handicapped accessibility and ADA compliance came into play; the plans were revised to allow for an exterior handicapped ramp access to the locker rooms and exterior pathway from the old high school entrance to the locker room area. These were the two primary changes made. The project was sent back to the Town Council; \$150,000 funding was added to the project which became \$250,000; and this number went out to referendum. Mr. Nash said the project is the same with ADA compliance changes and additional funding. Everything is the same for the last 4 or 5 years; the plans are the same; nothing has changed on the interior other than a few locks; and primary changes were all exterior access.

Mr. Purtill reminded the Council they received a tour of the locker room facility and there was a BOE presentation on what was planned, with a look at the project on the ground. The PBC major reservations were about handicapped access and the budget, and both of these have been addressed.

It was pointed out by Mr. Sima that one area of change from many years ago was covering the ramp going in and out.

Mr. Oris asked about available funds through the referendum.

In reply, Mr. Nash cited the following funding facts. The original total was \$550,000; this was reduced by architectural fees to \$495,000; \$250,000 was added for a total of \$750,000, plus \$17,500 for BL Companies. There was also \$50,000 added from CNR. At this time the available funds total about \$730,000.

The Council was told by Mr. Purtill that there is enough money for the project, and Mr. Rioux (BL Companies) did a budget before the referendum. This number was the basis for the referendum.

Mr. Crooker reported that the start date will be April due to asbestos problems which must be addressed. The remainder of the project starts immediately when school is out.

With regard to losing the locker room for the fall, Mr. Nash stated that Chemscope did a preliminary asbestos survey, and the BOE wants the asbestos removed in April when school is out on spring break. The project would then start as soon as school closes, and it should be completed at the start of the next school year. When the revised budget was done, \$50,000 was added for temporary lockers if the project ran over into the fall season.

Town Manager Milone stated there is \$754,000 balance for the project, with one expenditure of \$45,900.

Mr. Schrumm sees no reason why this project cannot be completed when school starts if it begins on schedule.

Mr. Crooker noted the lockers etc. must be ordered so they are ready for installation when the project is ready for them.

If the Council approves the motion, Mr. Nash said it will be a three week turn around for the bidding process.

Ms. Flynn-Harris thanked the PBC committee for the background information and update on the project. She said she had concerns because of all the variations on the project, and appreciates the information.

VOTE In Favor -7; Opposed - 2; Flynn-Harris and Talbot.

MOTION by Mr. Sima; seconded by Ms. Nichols.

BE IT RESOLVED, that the Town Council approves Resolution #123014-1A

RESOLUTION #123014-1A

BE IT RESOLVED, that the Town Council authorizes the Public Building Commission to approve a procurement and construction administration agreement with BL Companies for \$17,800 per the proposal dated December 17, 2014.

VOTE In Favor -7; Opposed - 2; Flynn-Harris and Talbot.

4. APPROVAL OF CONTRACT WITH ARIZON FOR POOL CONSTRUCITON PROJECT.

MOTION by Mr. Sima; seconded by Ms. Nichols.

BE IT RESOLVED, that the Town Council approves Resolution #123014-2

RESOLUTION #123014-2

BE IT RESOLVED, that the Town Council approves the Design-Build Change Order Agreement with Arizon Structures Worldwide pursuant to Change Order No. 001 for additional construction work.

Discussion

Chairman Slocum stated the contract was distributed by the Town Attorney to the Council for a better understanding.

An issue was raised by Ms. Linehan regarding Exhibit G - Owner's Representative conducting a pre-construction survey to photograph the existing condition of the pool deck prior to the commencement of the additional construction work. With the reply from PW Director Noewatne, she said any problems with the condition of the pool deck which will be fixed, can come from other funding sources. Ms. Linehan said her question was about surveying the pool deck, and with Council approving the motion, the funding comes from the project budget.

Attorney Markowicz explained this agreement is a change order or addendum added to the existing design-build agreement with Arizon. That agreement provides that Arizon design, manufacturer and construct a tension membrane structure on the pool. The first paragraph excludes certain general contracting work from construction services (such as concrete work related to the foundation, HVAC, electrical work, fireproofing). This scope of work seeks to change the contract to include that work and provide for additional construction work, a newly revised schedule and newly revised price reflect that work.

When the draft of the scope of work was received there was a paragraph indicating...if the pool deck cracks because of unknown or unforeseeable conditions in the structure or ground underneath it, Arizon is not responsible. Mr. Markowicz said this gave him pause. The reason to amend the existing contract is because the contract provides the town with many rights, imposes many obligations on Arizon, and provides protection to the Town. If something goes wrong because of conditions that pre-existed or could not be foreseen, it is not Arizon's fault. This paragraph gave Mr. Markowicz pause...that this could be something Arizon is worried about...and the first question he asked is having a study on the condition of the deck. He was told by Arcadis, the town's owner representative, that there is no such test that can be done. He clarified that the survey would not be an investigation or test. The owner's representative will document the condition of the pool deck right now with photographs and notes. This way, if something does go wrong, there will be a report and photographs...before and after. This paragraphs has been "beefed up", but it is not without any risk, and Arcadis did provide information to Attorney Markowicz.

The Council was told by Attorney Markowicz that Arcadis did inform him that the likelihood of anything catastrophic going wrong is non-existent...we are talking about cracks. In performing the foundation work, there will only be certain types of equipment on the pool deck, i.e. scissor lifts, onto the deck, and this is the type of similar sized equipment necessary to raise and remove the prior bubble. There is language added to have reasonable steps to protect the pool deck; the condition of the deck before hand will be documented; but, there is still some risk associated with this and the entire project. If something goes wrong the town could say Arizon fixes it...and Arizon could say the town fixes it.

Attorney Markowicz explained that the owner's representative, Arcadis, will do the testing and documentation on the condition of the pool deck. If there is an issue later on, the burden is on Arizon to prove it is not their fault. Regarding an Arizon representative seeing and signing off on the Arcadis documentation on the pool deck, Mr. Markowicz said this should be done, and everyone is on notice what will be done.

Mr. Sima asked if the deck includes right up to the water, Arizon getting equipment too close to the pool, resulting in a crack...and if the documentation protects the town.

Stating he could not answer that question, Mr. Markowicz noted the contract states Arizon will perform construction services with a level of care, professionalism, and reasonable precaution. Arizon doing something unreasonable or what a responsible contractor would not do, resulting in damage, this contract protects the town.

If the project goes forward and there is an unforeseen issue without enough money set aside to complete the project, Mr. Sima asked what happens with the contract, and if it extends beyond the time line.

Attorney Markowicz replied that with incurring and unapproved referendum costs, there is no approval in place to expend more money, without supplemental approvals. Another option is to negotiate a different change in the scope and cost of the contract. There is also a "termination of convenience provision" in the original agreement which applies to the new work as well. If the town wanted to stop trucks, stop working and done, Arizon is paid to that point for work done and incurred costs. There is a construction time line, project schedule with dates certain, and time was needed for the town to obtain necessary permits and review and approve the design. Now, these processes are complete and there is a rigid project schedule.

Mr. Talbot asked why Arizon would not want to verify the integrity of the deck knowing the scope of work and equipment to be on the deck, and safety of their equipment and people.

According to Mr. Markowicz, it is his understanding that tests cannot be done on the integrity of the deck. He said Arizon is worried about a crack developing, nothing more catastrophic, and he does not know why the company would not verify the integrity of the deck.

Mr. Oris asked about the project schedule and former timeline of delivery in September, which is not 7/2015...and if this new timeline is correct.

The new timeline provides for substantial completion on 7/2015, and it is defined (in the contract) as that point when the project is ready for its intended use.

Mr. Nash stated there are now definitive timelines.

If Arizon is wrong with the timeline schedule through their fault, Mr. Markowicz said the contract has provisions, one of which is \$500 per day damages.

PW Director Noewatne stated this is an aggressive schedule, and Arizon has agreed to it.

Mr. Purtill stated as the project goes forward there are change orders...one is money and the other is the timeline. We reserve the right...and may need to...extend the time schedule if something must be done. The conservative date of completion in August is something to be considered.

For insurance requirements, Mr. Oris stated his belief that \$1 million to \$2 million is too low for a project of this magnitude, and there should be enough insurance for the GC and all subcontractors.

There are specific insurance requirements in the original agreement, and Mr. Markowicz explained they were incorporated to include this additional work. These insurance requirements were reviewed with the towns' insurance broker prior to entering into the original agreement. There is provision for coverage amounts stated; there is an employer liability (accident) from \$100,000 to \$500,000; there is excess liability \$1 million per occurrence, \$1 million aggregate, commercial general liability \$2 million aggregate, \$1 million per occurrence, products liability \$2 million.

Mr. Oris restated that insurance requirements are too low, and should be \$5 million on this project, and with lower limits the town is at risk. Regarding the design-build change order, Mr. Oris commented on the \$2,095,619 original contract price, the \$722,000 for the change order 5 line items, which equates to \$2,817,986. According to Mr. Oris the numbers in the two contracts do not add up to the budget in the summary, \$2,108,000 -- the original contract amount needed to include the insulation, lighting, new exit doors etc. He said the numbers in the two contracts do not add up to the budget presented to the Council.

PW Director Noewatne said the difference is between the standard lighting and the LED lighting.

Mr. Oris cited contract numbers. In the new addendum it shows the original contract price of \$2,095,619...and he questions where this number comes from. The December 9th summary shows the pool structure at \$2,108,500 with many items, which Mr. Oris

assumes makes up the \$2,095,619...and he is trying to tie these numbers together. The budget we have is \$3,129,121; original contract in the new addendum is \$2,095,619; this leaves \$1,033,502, adding in \$722,367 (5 new line items); this leaves \$311,135 to get to the budget of \$3,129,121. Mr. Oris asked what makes up this additional \$311,135 which is not part of the Arizon contract. He noted soft costs of \$284,250 (from the \$311,135) leaving a balance of \$26,885 unaccounted for. There is no contingency in the project. Mr. Oris asked that the financial review and new contracts be tied together.

Chairman Slocum noted that the project cost number has gone down.

According to Mr. Oris the only thing outside of this contract with Arizon is the soft costs, and everything else should be included in this contract. The contract and soft costs should total \$3,129,121, and Mr. Oris said they do not.

Mr. Nash stated the final negotiated numbers were done by Keith Goldberg and Tom Beebe, and he is not sure if better numbers were there along the line.

According to Mr. Levine, the contract has been reviewed line by line and everything is in there.

Attorney Markowicz stated this is a question for the owner's rep whose name is on the power point being referenced. They should be asked with immediate follow-up.

Mr. Oris said in the \$2,095,619 number as the original contract amount, he questions where it comes from and what it makes up.

To his understanding, Mr. Markowicz said that is the amount of the original contract price pursuant to Arizon's submittal.

PBC Chairman Purtill told Mr. Oris that the answer to his questions is not available tonight, and a supporting worksheet will be provided to answer the questions raised.

The Council was informed by Attorney Markowicz that the original contract had provisions for various options to the town (i.e. lighting, other choices to be made during the design and manufacturing process)...and they will affect prices. He recommended that questions be posed to Arcadis, the owner's representative.

Page 4 - Mr. Oris noted the variety of stated work items added...general construction, concrete, fire protection, electrical, mechanical; mechanical is defined at \$127,782, and in exhibit G it is identified as Mechanical and HVAC. He asked if there is any reason that they say the same.

Attorney Markowicz said he did not think so, and noted more specific references on pages 9 and 10. The scope of work listed under exhibit G would be controlling.

Page 2 Exhibit G - Mr. Oris asked about a dispute on the shop drawings.

Attorney Markowicz said the town has considerable leverage in this regard.

Mr. Oris asked about General Conditions, provision of a daily tool box.

Attorney Markowicz replied that the scope of work was negotiated between Arcadis and Arizon, and he understands these are daily summaries.

PW Director Noewatne confirmed tool box talk is daily summaries, safety briefings.

Regarding the compaction requirements in the foundation scope of work, Mr. Oris asked if testing is completed by the owner, if this is being done and paid for in the soft cost budget.

Mr. Noewatne stated the initial soil testing has been accomplished and this is part of the compaction work.

Mr. Oris read an excerpt from the General Conditions section, and asked about the town paying for the testing and if this is in the soft cost budget.

The Council was told there is \$10,000 in the budget for this testing.

Fire Protection/Exclusions - Mr. Oris asked about the exclusions and read them into the record. When he reads "should not" it is not a definitive statement, and asked if any of the 3 items will be needed, and the costs which are not included in the Arizon contract.

In this regard, Mr. Noewatne stated there is no decision at this point, and Arcadis has talked to the Fire Marshal about the PSI available lines at the facility. Based on what is known at this time there should not be a fire pump or backflow preventer required.

If these are required, Mr. Oris asked if the costs are of concern to what it does to the budget.

It is a concern, but Mr. Noewatne said the design must be done before any of this work proceeds, and this has been discussed with the Fire Marshal.

Electrical Work/Exclusions - Mr. Oris asked about reconnection of the generator wiring not being required, and said this is known, and there is no risk.

Page 10 - Heat Exchanger. Mr. Oris asked about this being a fixed cost, knowing the number, and if it is in the budget.

Mr. Noewatne said it is included in the Arizon costs at \$39,498 as a line item.

With regard to the question about the \$26,000 difference, Mr. Slocum confirmed that Arizon has approved the contract, and the numbers are theirs.

Attorney Markowicz stated his understanding that they were negotiated between Arcadis and Arizon and Arizon signed off on them.

Mr. Oris has concerns about what is not in Arizon's numbers; if there is error in the numbers; and these numbers must jive.

A question was raised by Ms. Linehan about voting on this resolution, and if we are putting the town in harm's way if the numbers do not jive.

Stating he is not concerned about that issue, Mr. Oris is prepared to vote but wants to make sure that the people working on this project go back and vet the numbers, account for every line item.

The Council was informed by Mr. Noewatne that the pool is currently covered for the winter and the cover will stay in place during construction.

Mr. Levine speculated that the \$26,000 difference could come from things changed during the presentation...looking at saving a few thousand dollars here and there.

In response to a question from Mr. Schrumm about the basic structure and design from Arizon, Mr. Noewatne stated the town has a structure design and foundation design.

Mr. Schrumm cited the following designs: A - cover; B- foundation; C-lighting; D-sprinkler; E-HVAC etc. All are coming from Arcadis; they must be reviewed by the review engineer and signed off by the building officials.

To get a building permit, Mr. Noewatne said there the town must have a comprehensive design for all the pieces of construction. On January 28th the plans will be ready for building official review.

Regarding the condition of the pool deck, Mr. Schrumm commented on plans to fix the deck using part of the insurance money of \$150,000. Arizon is signing the contract stating all the sub pieces will have contractors doing all the work for the set amount. And, the entire burden for not getting it done for that amount falls on Arizon.

This is a lump sum agreement and Attorney Markowicz said this means a lump sum for the scope of work for the project. It does not mean Arizon can't stop work due to a bad storm or unforeseeable conditions, but Arizon has said it can do the project for the set amount.

Ms. Flynn-Harris commented on the possibility of other work order changes, i.e. work not designed yet, water, deck...and how these are handled. Arizon is responsible for these work order changes with the lump sum agreement.

Mr. Schrumm said there could be one general subcontractor who can do many sub-sections of the project.

According to Mr. Nash, Arizon will rely on people in the area to bid the projects, and they want to use local contractors.

Mr. Noewatne stated his understanding that Arizon has priced the work with actual contractors; they may fine tune the prices; and they have hard numbers for the work.

VOTE The motion passed 8-1; Schrumm opposed.

5. ADJOURNMENT

MOTION by Mr. Schrumm; seconded by Mr. Sima.

MOVED to adjourn the meeting at 8:54 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk