

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
DECEMBER 3, 2009

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:32 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
G. Starr
D. DePiero
S. Kelly
T. Longo
W. O'Malley
R. Sulik

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mayor DePiero moved and Ms. Kelly seconded that the minutes of the November 19, 2009 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised that Norman Edwards registered to speak at public session regarding Resolution Nos. 266-09 and 268-09, which were on the agenda for Board consideration. Mr. Brown requested that Mr. Edwards please come forward and address his comments to the Board.

Mr. Edwards made reference to comments made at the November 19th Board meeting regarding out-of-town contractors and Project Labor Agreements (hereinafter “PLAs”), and he stated that “if a PLA in the future is signed by the District, we will file a lawsuit.”

Mr. Edwards claimed that PLAs have “hurt us and we fought them over at Cuyahoga County,” and that PLAs have excluded African Americans and minorities from obtaining work.

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 2 of 12

Mr. Edwards stated that “we have had good dealings” with Walsh Construction (hereinafter “Walsh”), an out-of-town contractor, and Kokosing Construction Company, Inc., (hereinafter “Kokosing”). Mr. Edwards stated that “we have union guys and we do quite well,” and that “Kokosing took a lot of our guys in and I’ve bid work with the Walsh in the past and they’re a great company.”

Mr. Edwards advised that he knew Ms. Goldstein, who presented PLAs to the Board at its November 19th meeting, but he explained that PLAs “will really hurt us” and “we spent some big money fighting it over at Cuyahoga County.” According to Mr. Edwards, the Cuyahoga County PLA issue resolved “to where we pulled our lawsuit as long as Cuyahoga County never put a PLA on their projects again.”

Mr. Edwards believed that we are moving forward in a good direction, and he advised that both union and non-union employees work for his organization. Mr. Edwards stated that he is a union worker, but “you can’t single one contractor out.” Mr. Edwards commented that Whiting-Turner and Gilbane are two of the largest builders in our area that have done over \$5 billion worth of work in the past three years, and that “Cleveland Clinic and University Hospital are two of the largest non-union contractors in the world.”

IV. Executive Director’s Report

Executive Director Ciaccia advised that the District will be meeting with the state and federal governments on December 14th concerning the Combined Sewer Overflow Long Term Control Plan (hereinafter “CSO LTCP”). The governments will likely be presenting its counter proposal to the District’s CSO LTCP. Executive Director Ciaccia advised that staff will apprise the Board of the discussions held at said meeting during an Executive Session.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter “SMP”). The District held its last scheduled public meeting in Parma and approximately 100 people attended. According to Executive Director Ciaccia, there was a mixed bag of supporters and people expressing their concerns regarding the SMP. Executive Director Ciaccia complimented Director of Watershed Programs, Frank Greenland, and his staff on doing a great job of getting through the agenda and explaining the proposed SMP to our customers.

Executive Director Ciaccia advised that the District received a letter from Summit County communities who expressed their concerns of having to send money to Cuyahoga County. According to Executive Director Ciaccia, some of the concerns seemed political in nature. Most people understand the wisdom of the SMP, but there are issues between Cuyahoga and Summit counties including not having Summit County representation on

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 3 of 12

the Board. Executive Director Ciaccia advised that the District is still trying to work through those issues with Summit County.

At this point, the District has not received threats of lawsuits from Summit County communities regarding the SMP; however, it was indicated in letters received from Summit County attorneys that if a lawsuit is initiated, then they will join. According to Executive Director Ciaccia, the District believes it is on strong ground as it pertains to the implementation of the SMP, but we do need to be prepared in the event someone does take legal action.

Executive Director Ciaccia advised that the District met with the editorial staff of *The Plain Dealer* to discuss the SMP. The District will present the SMP to Mayor Jackson on December 14th and Darnell Brown will also be in attendance at this meeting. Executive Director Ciaccia advised that he and Mayor Jackson have previously discussed the SMP and that they will be re-circling the facts with him.

Executive Director Ciaccia moved to the next report item regarding the City of Cleveland Division of Water (hereinafter "CWD") billing. CWD has proposed to bill for non-sewer and non-water stormwater customers, which will prevent the District from having to seek additional sources for those particular accounts.

Mayor Starr requested that copies of the letters the District received from the communities regarding the SMP be provided to the Board. Executive Director Ciaccia agreed to provide the Board with the letters expressing concern as well as the letters in support of the SMP.

Mr. Brown commented that he was concerned with the level of outreach needed in order to effectively relay the stormwater message to the public. Mr. Brown suggested that in addition to putting something in the local media and holding public meetings, that we also notify council representatives or others. Community newspapers are specific to certain geographic regions and there are CDCs [Community Development Corporations] that have a network of people. Mr. Brown suggested that we saturate the markets and cast the net as wide as possible as it pertains to outreach in order to prevent the potential shock after the SMP is implemented.

Executive Director Ciaccia agreed with Mr. Brown, and he stated that the District will continue its outreach efforts throughout the SMP. Additional resources may be necessary in order to accomplish the District's outreach goals. Furthermore, some city councils have requested to meet with District representatives. Executive Director Ciaccia advised that public outreach is an ongoing process, and we still have much work to do between now and the hopeful adoption of the SMP as well as actual implementation of the program.

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 4 of 12

Mr. Brown commented that the SMP will incorporate green infrastructure and therefore public education is important. By educating the public as to their role within this process will “(A) give them the opportunity to know what they can do on their side to help us get into compliance; (B) do it in a manner that’s environmentally friendly; and (C) do it in a manner that might save them some out-of-pocket expense in terms of the fees associated with it.”

Mr. Brown suggested that the various constituencies be informed of the community projects that will stem from the SMP. Mr. Greenland replied that this effort began this year by awarding watershed operating support grants and small demonstration project grants. The District awarded \$200,000 in operating support grants to local community-based watershed groups to ensure that those organizations are viable and actually broadening the message in small-scale demonstrations project grants such as rain gardens and bio-swales. The District intends to continue that support in 2010 beyond. Mr. Greenland stated that he was “pleased with what we’ve been able to do to engage the watershed groups and we need to do more of that.”

Mr. Brown felt this to be important since they have their own mailing lists and can help get the message out about the meetings.

V. Action Items

Authorization to Enter into Contract

Resolution No. 266-09

Contract with Bay Mechanical and Electrical Corp. for Southerly Wastewater Treatment Center Substation Replacement (SSR-1). Cost: \$16,703,200.00.

MOTION – Ms. Kelly moved and Mayor Longo seconded to adopt Resolution No. 266-09. After discussion, a roll call was taken, and the motion carried with four “yeah” votes from Mr. Brown, Mayor Longo, Ms. Kelly and Mr. Sulik; two “nay” votes from Mayor Starr and Mayor DePiero; and one abstention from Mr. O’Malley.

Mayor Starr commented that issues were raised at the November 19th meeting regarding the Southerly Substation Replacement (hereinafter “SSR-1”) contract award to Bay Mechanical and Electrical Corporation (hereinafter “Bay”), and that the Board heard from both sides. Mayor Starr stated that 10 bids were submitted and the engineer’s estimate for the SSR-1 project was \$23,300,000. Mayor Starr questioned as to why the

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 5 of 12

estimate of Bay, the lowest bidder, was 28% or one-third below the engineer's estimate. Mayor Starr commented that at the mid-point was Doan Pyramid whose estimate was 13.47% below the engineer's estimate and that seemed more reasonable. Mayor Starr commented that he was "trying to correlate comparatively these statistics and the bidding process" and "reconcile why one would be almost a third under the engineer's estimate." Mayor Starr questioned if "they are similarly situated to the other contractors that pay the same benefits and the same scales, or are they looking to make it up in change orders?"

Director of Engineering and Construction, Kellie Rotunno, explained that the engineer's estimate is the engineer's opinion of probable construction costs, which is the vernacular used in the industry. As such, it is an engineer's opinion and not a contractor's bid. Engineers look at jobs conservatively and much differently than contractors. Ms. Rotunno stated that a lot of the engineering standards available to engineers, such as Means Construction Data, used in preparing their opinion of probable construction costs are static and do not accurately account for market fluctuations or local bidding environments. The designer of record for the SSR-1 project was Montgomery Watson Harza (hereinafter "MWH") who was conservative in their estimate. Contractors bidding on the projects are more aggressive especially during the current economic climate. It has not been uncommon recently for the District to see the lowest bidder 18% below the engineer's opinion of probable construction costs.

Ms. Rotunno advised the space between the bids submitted from the second lowest and lowest bidder need to be taken into consideration. In this instance, there was a \$900,000 spread between the second and lowest bidders. According to Ms. Rotunno, this indicated that that Bay's number was probably valid. Bay will be required to pay their employees prevailing wage since the SSR-1 project is a prevailing wage contract, and payroll information will be validated since Bay will be required to submit monthly payroll estimates to the District.

Mayor Starr inquired if the engineer's estimates are completed internally by staff or externally by a consultant. Ms. Rotunno replied that the engineer of record prepares the engineer's opinion of probable construction cost, and that the engineer of record is the individual signing and sealing the documents. MWH provided the opinion of the probable construction cost on the SSR-1 project.

Assuming there is a list of charges for materials for northeast Ohio suppliers and since the prevailing wage is standard, Mayor Starr questioned as to why the bids are not closer to the engineer's estimates if they are using the same sources. Ms. Rotunno replied that "they do not use the same sources," and that the engineers use Means Construction Cost Data to support the opinion of probable construction cost whereas the contractors develop the bids based on their knowledge of the work, the overhead costs and labor pool. The

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 6 of 12

contractors bid jobs differently than an engineer providing an opinion of probable construction cost.

Mayor Starr inquired why we are not using the same method as the contractors in order to give us relevant information. Ms. Rotunno stated that engineers are not contractors and therefore do not prepare bids. The engineers prepare the opinions of probable construction cost. There are guidelines under the American Academy of Cost Estimating (hereinafter "ACE") pertaining to the level of detail required in an engineer's estimate. MWH sufficiently provided the District with a level 2 cost estimate for the SSR-1 project, which was in accordance with ACE standards. MWH has therefore fulfilled its contractual obligations to the District.

Executive Director Ciaccia added that the engineer's estimates are conservative. Prevailing wages are taken into consideration as well as the standard hours of productivity. In order to remain competitive, the contractors will gamble that they will be more productive than the other contractors and lower their bids according to presumed productivity.

In reference to Mayor Starr's comment regarding potential change orders, Executive Director Ciaccia stated that he hoped Bay as well as the other contractors realize that the District has been very stiff on change orders over the past couple of years, and that we will hold their feet as well as our own feet to the fire as it relates to change orders. Executive Director Ciaccia assured that he does not want to come back to the Board for any contract modifications.

Mayor DePiero indicated that he had little recollection of the discussion held at the previous Board meeting regarding this issue and he questioned whether Bay has completed work for the District in the past. Ms. Rotunno affirmed.

Mayor DePiero inquired if the District found Bay's previous work to be satisfactory. Ms. Rotunno stated that Bay "has completed their projects to the quality standard that we would expect," and like any contractor there was a "mixed bag of results" regarding change orders and that "some of their projects have been better than others." There will most likely be change orders on this project, but those will be aggressively managed.

Mayor DePiero questioned whether a large or unreasonable number stands out with respect to Bay's past change orders. Ms. Rotunno was unable to provide insight since most of Bay's project predated her tenure at the District, but she advised that this data is accessible and can be provided to Board.

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 7 of 12

Resolution No. 268-09

Contract with Walsh Construction Company for Contract 28: Renewable Energy Facility Project at the Southerly Wastewater Treatment Center. Cost: \$92,329,000.00.

Ms. Kelly inquired whether staff was satisfied with the result of the investigation of the allegations made.

Executive Director Ciaccia explained that Kokosing brought action against the District alleging that there was a discrepancy in the bid submitted by Walsh. Consequently, the District was prohibited from awarding the Renewable Energy Facility (hereinafter "REF") project at the Southerly Wastewater Treatment Plant at the November 19th Board meeting since the court issued a Temporary Restraining Order (hereinafter "TRO"). This issue has since settled in court on December 1st. Kokosing and Walsh entered into a settlement agreement. Kokosing withdrew its lawsuit against the District and the TRO was lifted. The District is now authorized to award the REF contract. As part of the settlement agreement, Walsh has agreed to employ Kokosing which will complete some of the REF project components.

Executive Director Ciaccia indicated that Walsh is committed to meeting the District's 20% Small Business Enterprise (hereinafter "SBE") participation goals on the REF project.

Executive Director Ciaccia advised that this matter has been resolved and upon Board authorization of the contract award, the REF project is ready to move forward. The District anticipates receiving the final details as to how Walsh and Kokosing will be integrating their work on the REF project.

Mayor Starr inquired about the difference between the engineer's estimate of \$130 million versus the actual bid amount of \$92 million on the REF project. Ms. Rotunno replied that her response is the same as the answer she provided to Mayor Starr's previous inquiry related to the engineer's estimate for the SSR-1 project. The engineer of record that provided the probable opinion of construction costs for the REF was Malcolm Pirnie (hereinafter "Malcolm"). Given the complexity of the REF project, the engineer's estimate was developed conservatively. Furthermore, subsequent to the original bid advertisement, the engineer's estimate was revised to \$125 million; however, the lowest bidder was significantly lower. Ms. Rotunno referred to Kokosing's bid, which was the second lowest bidder, and given the spacing between Kokosing's bid and Walsh, she was comfortable that Walsh's bid was a good number.

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 8 of 12

Executive Director Ciaccia indicated that the engineer's estimates continue to be a work in progress and that the District desires refining this process. By using a less conservative approach, the engineer's estimates will be more consistent with the actual project amount making it easier for the District to determine bond amounts for project funding.

Mr. O'Malley inquired if the primary contractors were able to vary from the subcontractors listed in their original bid submittal. Executive Director Ciaccia stated that non-SBE subcontractors can vary, but the District would need to approve SBE substitutions.

Executive Director Ciaccia noted that the District incorrectly listed Dmytryka Jacobs Engineers on the form, which was not part of the REF bid; therefore, the SBE participation will be closer to 23% as opposed to 26%.

MOTION – Ms. Kelly moved and Mayor Longo seconded to adopt Resolution No. 268-09. A roll call was taken and the motion carried unanimously.

Resolution No. 271-09

One-Year Requirement Contract with JCI Jones Chemicals, Inc. for Sodium Hydroxide Solution for Use at All Wastewater Treatment Plants. Cost: \$231,217.96.

Resolution No. 272-09

Contract with Blue Heron Consulting for Professional Services for the Oracle E-Procurement Implementation Services Project. Cost: Not to Exceed \$1,239,044.84.

Resolution No. 273-09

Contract with Global Point Technologies, Inc. for the Southerly Fiber Rehabilitation Project. Cost: Not to Exceed \$91,585.20.

Mr. O'Malley referred to Resolution 273-09, and he inquired if the Southerly Fiber Rehabilitation (hereinafter "SFR") project with Global Point Technologies, Inc. was a prevailing wage job. Executive Director Ciaccia replied that a portion of the project is prevailing wage and he turned discussion over to Director of Information Technology, Humberto Sanchez.

BOARD OF TRUSTEES

Regular Meeting

December 3, 2009

Page 9 of 12

Mr. Sanchez stated that approximately \$29,000 will be for cabling services, which will be under prevailing wage. This was included in the negotiations between the District and Global Point Technologies, Inc., and will be included in the contract.

Mr. O'Malley inquired whether the bid documents specified that this portion of the project would be prevailing wage. Mr. Sanchez replied that the District issued Requests for Proposal (hereinafter "RFP") for the SFR project, and the District did not advertise for bids.

Executive Director Ciaccia explained that the RFPs for the SFR project were issued since this is a professional services type of contract; however, the wiring will be considered a labor-related component. At the time the RFPs were issued, the prevailing wage requirement was not initially included. Executive Director Ciaccia indicated that a number of District contracts did not have the prevailing wage clause. For example, the District advertised for its fencing installation project which did not include the prevailing wage clause. Consequently, staff brought this issue to the Board for consideration to reject and rebid said project, which was authorized at the November 19th Board meeting.

Executive Director Ciaccia stated that the SFR project was advertised before the District started reviewing its contracts for the prevailing wage clause, and we are now aware of this issue. Global Point Technologies, Inc. appears to have used prevailing wages in its proposal, but this will be incorporated into the actual contract. Furthermore, contracts will be examined to ensure compliance with the prevailing wage requirements.

Mr. O'Malley commented that this is a good idea and that the bidders should be apprised of the prevailing wage requirements. Executive Director Ciaccia agreed and he indicated that this will be handled under the Office of Contract Compliance (hereinafter "OCC"), and that the District will be hiring a full-time prevailing wage administrator. The District is obligated to become more aggressive on this issue since it is the owner's responsibility if prevailing wages are not being followed.

MOTION – Mayor DePiero moved and Mayor Longo seconded to adopt Resolution Nos. 271-09 through 273-09. Without objection, the motion carried unanimously.

Authorization to Advertise

Resolution No. 274-09

**Two-Year Requirement Contract for
Radiochemical Analyses (Cobalt-60).
Anticipated Expenditure: \$75,000.00.**

Resolution No. 275-09

Purchase of Two (2) Plant Effluent Monitoring Stations for the Southerly and Westerly Wastewater Treatment Plants. Anticipated Expenditure: \$40,000.00.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 274-09 and 275-09. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 276-09

Purchase Under the State of Ohio Contract No. B27164, Two HP BLc7000 Blade Enclosures and Six Blade Servers from the Hewlett-Packard Company Public Sector Sales. Cost: \$108,394.00.

MOTION – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution No. 276-09. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 277-09

Adopting Hearing Examiner Findings with Regard to the Sewer Account of Leonid Khodor, Northeast Ohio Regional Sewer District Case No. 09-006.

Authorization to Amend Resolution

Resolution No. 278-09

Resolution No. 321-08 for the Open Market Purchase of Vehicle Parts. Cost: An Increase in the Amount of \$147,000.00 Bringing the Total Not-To-Exceed Expenditure to \$342,000.00.

MOTION – Mayor Longo moved and Mayor Starr seconded to adopt Resolution Nos. 277-09 and 278-09. Without objection, the motion carried unanimously.

VI. Information Items

There were no information items.

VII. Open Session

There were no items for discussion.

VIII. Public Session (any subject matter)

No members from the public registered to speak at Public Session.

IX. Executive Session

Mr. Brown stated that there were personnel and litigation matters for discussion in Executive Session.

MOTION – Mayor Longo moved and Ms. Kelly seconded to enter into Executive Session to discuss personnel matters and issues related to the pending federal investigation and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 1:05 p.m. to 1:26 p.m.

X. Approval of Items from Executive Session

Mayor Starr reconvened the Board meeting. Mr. Brown was no longer present.

Add-On

Resolution No. 279-09

Authorization to adopt findings of fact in AFSCME Ohio Council 8, Local 2798 and NEORS SD SERB Case No. 08-MED-09-1047.

Resolution No. 280-09

Authorization to rescind Resolution No. 124-09 and adopt 2009 general increases for non-union/non-exempt employees and special adjustments, and 2009 general increases and special adjustments.

Resolution No. 281-09

2010 general increase for all non-collective bargaining unit employees and special adjustments.

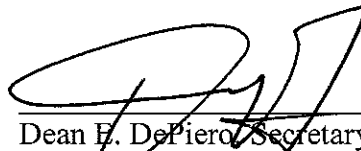
Resolution No. 282-09

2010 Employee classifications and levels of compensation.

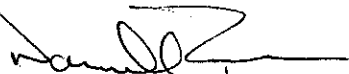
MOTION – Mayor Longo moved and Mr. Sulik seconded to add and adopt Resolution Nos. 279-09 through 282-09. Without objection, the motion carried unanimously.

XI. Adjournment

MOTION – Mayor Starr stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 1:27 p.m. Without objection, the motion carried unanimously.



Dean E. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District