

PROCEEDINGS OF THE BROWN COUNTY EXECUTIVE COMMITTEE

Pursuant to Section 18.94 Wis. Stats., a regular meeting of the Brown County Executive Committee was held on Monday, March 28, 2011 in Room 200 of the Northern Building -305 East Walnut Street, Green Bay, Wisconsin

PRESENT: Mary Scray, Chair, Jesse Brunette, Bernie Erickson, Guy Zima, Pat Evans, Tom Lund

EXCUSED: Tom De Wane

ALSO

PRESENT: Supervisors Wetzel and Moynihan, Fred Mohr, Sara Perrizo, Debbie Klarkowski, Bill Dowell, Dale De Namur, Barb West, Cheryl Corbeille, Doug Hartman, Representatives of Eland Electric, other interested parties

I. **Call Meeting to Order:**

The meeting was called to order by Chair Mary Scray at 6:30 p.m.

II. **Approve/Modify Agenda:**

Motion made by Supervisor Erickson, seconded by Supervisor Zima to approve the agenda. Vote taken. MOTION CARRIED UNANIMOUSLY

III. **Approve/modify minutes of March 7 and Special Meeting of March 14, 2011.**

Motion made by Supervisor Ericsson, seconded by Supervisor Lund to approve the minutes of March 7 and Special Meeting of March 14, 2011. Vote taken. MOTION CARRIED UNANIMOUSLY

Appeal:

1. **Eland Electric Appeal for the Brown County Project #1413/1413A – Photovoltaic Installation.**

Board Attorney Fred Mohr informed the Committee that this appeal boils down to whether or not Zeise Construction was a qualified contractor to bid on this project. There was a requirement on Page 85 of the first RFB under the "Bidder Evaluation" section that stated, "Bids will only be accepted from installers listed on 'Focus on Energy'. . . ." This requirement was adopted because the County is receiving funds from Focus on Energy (hereafter "FOE") for this project and FOE required qualified installers. Mohr stated that Zeise was not on the FOE list.

Supervisor Lund stated that at the time it was recommended to the Administration Committee to approve the combined bid of Zeise, they were not made aware of the FOE requirement. Lund questioned the accuracy of the bid if Zeise did not have subcontractors picked out at the time of the bid and further, if there would be any liability for cost over-runs. Mohr indicated that based on the information contained in Zeise's bid, his assumption would be that Zeise had not received firm bids from either Venture or Eland for the subcontracting work.

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Buyer Dale De Namur informed that at the time Zeise submitted their bid, he contacted them and inquired who they intended to subcontract with for installation. He was informed by Zeise that they had received pricing from Venture and Eland, but had not made a determination which of these companies they would use.

De Namur indicated that the first set of bids came in \$202,000.00 over the budgeted dollars. The decision was then made to reduce the scope of the projects by 35% and rebid.

Supervisor Erickson asked De Namur if all bids from the first round had been divulged prior to the second RFB and De Namur confirmed that they had. Erickson then quoted from a memo sent to the Executive Committee by the Purchasing Department that stated in part, "Zeise Construction did not meet the requirement as stated. Zeise Construction bid should have been removed from the list of prospective bidders. The next lowest bidder should have been awarded the contract." Purchasing Manager Cheryl Corbeille confirmed this language and further confirmed that Eland was the next lowest bidder. Erickson feels the way this was handled was very unethical and this cannot occur again.

Motion made by Supervisor Erickson, seconded by Supervisor Evans, to grant Eland Electric's appeal. No vote taken at this time.

Supervisor Lund stated that he was very disappointed with the Purchasing Department and Facilities Management. He felt that when Facilities Management brought their recommendation to select Zeise to the Administration Committee, the Committee was not provided with all the facts, thus making the Admin. Committee look bad.

Cheryl Corbeille and Risk Manager Barb West informed the Committee that the following three things had been learned from this matter:

1. The original RFB should not have been referenced by the second RFB.
2. The award decision should have been discussed in the Administration Department prior to being presented to the Committees for approval.
3. The RFB should have been clearer as to if the bid was to be awarded all as separate individual projects or all as one rather than leaving it open ended.

Supervisor Zima felt that there should have been an opportunity to bid aggregately as well as separately. He also felt that the wording on the RFB with regard to the FOE requirement should have stated that bidders either had to be on the list OR use a subcontractor on the list.

A bid tabulation record was prepared by De Namur and presented to the Committee (copy attached). According to this tabulation, if the low bids for each project were selected, Venture would be used for the ADRC project and Zeise would be used for the remaining projects. If the low combined bid for all five projects was selected (Zeise), the difference would be \$1,602 more than selecting individual low bids.

Zeise's combined bid was \$625,834 while Eland's combined bid was \$633,999. The difference between Zeise's combined bid and Eland's combined bid is \$8,165.00.

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Zima inquired if a contractor not listed on the FOE list used a subcontractor on the list for installation, if the requirement would be met to be a qualified bidder. Mohr pointed out that there is a definition for "contractor" in the RFB. He went on to say that on Page 85 of the RFB where the FOE requirements are listed, the term "contractor" is not used. Instead, the term "installer" is used. Mohr feels that this difference in terms creates an arguable issue that would be legally defensible. He further stated that Corporation Counsel John Luetscher's opinion is that they could take Zeise because the term "installer" is different than "contractor". If the term "contractor" had been used in the FOE requirement, then, Zeise should not have been considered.

Both Zima and Erickson emphasized that they are not in favor of rebidding this project as the grant money could be lost. Zima felt that if there is rationale to choose either bid as stated by Mohr, then the lowest bid should be selected.

Mohr stated that the issue is whether the term "installer" as used in the RFB was intended to be the same as "contractor". Clearly throughout the rest of the RFB the term "contractor" was used. Mohr reiterated that he felt this was defensible either way and the Committee would need to examine if the intent was to exclude contractors who were on the list or if the intent was to allow bids from contractors who would use subcontractors on the list.

Motion made by substitution by Supervisor Zima to award to all the low bidders on the second round of bidding which would be Venture Electric on Base Bid A and Zeise Construction on Base Bids D, F, S and WHL. Seconded by Supervisor Evans for discussion. *No vote taken at this time.*

Supervisor Brunette remarked that at the Ed and Rec Committee meeting, Facilities Management Director Bill Dowell recommended that the same company be used for all projects. Brunette went on to say that the Committee favored that recommendation and acted upon it.

Motion made by Supervisor Zima, seconded by Supervisor Evans to suspend the rules to allow public input. Vote taken. MOTION CARRIED UNANIMOUSLY

The following employees of Eland addressed the Committee:

James Eland II, 3154 Holmgren Way, Green Bay, Wisconsin

James Eland II wished to point out that all of the companies that bid on the first round were listed on the FOE list. On the rebid, all companies except Zeise were on that list.

Jesse Michalski, 100 Hillcrest Drive, Kaukauna, Wisconsin

Jesse Michalski informed the Committee that when the project was rebid, the scope of the work did not change much. The number of panels was reduced to reduce the cost which he felt was a very linear change. He also felt it would not be uncommon for a company to look at the original bid documents and then, based on the change of scope of work, know where their numbers would need to come in.

Chris Hilbert, 5663 Linda Lane, Little Suamico, Wisconsin

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Chris Hilbert explained that after the scope was changed, Eland's decision needed to be how much they wished to undercut the original bid. Their numbers were published and they were the lowest bidder the first time around. They then looked to see how much they could shave off their bid to underbid someone else. He pointed out that Eland invested time and dollars to bid the first time around and Zeise did not. He further stated that Zeise informed them that they would not be using them (Eland) on the project. Hilbert's feeling is that Eland put their numbers out on the first bid and got sold out.

Supervisor Wetzel asked what amount of work Zeise said they would sub out on the project and what would happen if the company they hired would charge more than what Zeise bid. De Namur responded that when Zeise submitted their bid, they indicated that they would use either Venture or Eland as installer but that Zeise would be doing all the metal and concrete work. When Eland submitted their bid, they indicated that they would use Zeise or IEI for the concrete and metal work.

Zima asked Dowell if when the scope of the project was reduced by 35%, if anyone went back and reduced each of the contracts by that amount. The process, as explained by Dowell, was that they looked at the budget, looked at how much they were over, and what they had to reduce to get the project within budget. After all options were explored, the decision was made to cut out the portion of the project relating to Waymoor Park and reduce the scope of the other projects. Dowell indicated that the numbers that came in on the second set of bids was about \$40,000.00 under budget.

Eland emphasized that they would be doing all of the photovoltaic work which constitutes 75% of the entire project and therefore would have full control over the majority of the project. They would sub out 25% for metal work, concrete work and earth work. Eland further pointed out that if this project were to be awarded to Zeise, Zeise would end up doing 18 – 20% of the work themselves and subbing out the remaining portion for the photovoltaic work and earth work.

Supervisor Lund asked for clarification of the figures on the Bid Tabulation. De Namur indicated that both Zeise and Eland bid individual projects and then gave a combined total and in the combined total a 5% discount was given.

Motion made by Supervisor Lund, seconded by Supervisor Zima to return to regular business. Vote taken. MOTION CARRIED UNANIMOUSLY

Wetzel questioned if Zeise had been notified of Eland's appeal. De Namur stated that Zeise and all other companies who submitted bids had been notified of both the appeal and the meeting. Further, all information that the Committee received had also been given to Zeise. De Namur indicated that he had received calls from Zeise and Venture with regard to the appeal.

Zima questioned if there would be a risk of losing grant money if the low bids of Venture and Zeise were selected. Mohr stated there would be no risk because the FOE requirement has now been dropped. Consequently, there is no doubt that the grant would be received regardless of who the bid is awarded too. Zima stated that he would stick by his motion to save the money.

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Mohr explained the Committee's options with regard to this matter. The Committee is able to a) grant Eland's appeal which would mean that the contract would be awarded to them or b) deny their appeal which would mean that Zeise would get the contract. He further stated that splitting the bids between Venture and Zeise was not an option.

Zima amended his previous motion to award the bid to Zeise. No vote taken.

Dowell indicated that the County had a good working relationship with Zeise and there was no history of cost overruns, inferior work, etc. Brunette affirmed that he trusted the opinion of Dowell and it is his opinion that the bid should go to Zeise.

Motion made by Supervisor Zima, seconded by Supervisor Brunette to deny the appeal of Eland Electric and award the contract to Zeise Construction Vote taken.

MOTION FAILED

Ayes: Zima, Brunette

Nays: Erickson, Evans, Lund, Scray

At this time a vote was taken on Supervisor Erickson's motion, seconded by Supervisor Lund to grant Eland Electric's appeal. MOTION CARRIED

Ayes: Erickson, Evans, Lund, Scray

Nays: Zima, Brunette

Communications:

2. **Communication from Supervisor Moynihan re: Request discussion and/or possible action or reclassification and/or step increase for Internal Auditor/Research Analyst.**

Supervisor Moynihan stated that this communication is for the purpose of providing the Committee with information. He brought this forward because he felt that Sara Perrizo does an excellent job as the Internal Auditor/Research Analyst. Perrizo's position is currently compensated at the Grade 21, Step 1 level. He noted that she has over seven years of experience in this position. For comparison purposes, he pointed out that an Account Supervisor in Human Services is compensated at the grade 21, Step 4 level and receives income 9% higher than Perrizo's. Further, a Benefits Compensation Manager in HR is compensated at the grade 21, Step 5 level and receives income 12% higher than Perrizo's. He felt that the Internal Auditor/Research Analyst position is vitally important and also referenced Perrizo's record of three convictions for fraud perpetrated upon the County since she has been in the position. He also wished it to be noted that this communication was solely his idea.

Zima echoed Supervisor Moynihan's thoughts with regard to Perrizo's job performance and wished to add that not only does she do excellent work, she does it accurately and quickly. He indicated that the grade 21, Step 1 compensation she is currently receiving is for the Internal Auditor position. When the Research Analyst duties were added, it was not sent to HR for evaluation or reclassification. Zima also pointed out that Perrizo has a CPA license which is required for this job.

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Both Lund and Scray agreed that Perrizo does an excellent job in her position. Lund felt that Moynihan made a good case, but said that this communication needs to be sent out to HR because all of the cases that come before the Administration Committee with regard to compensation go through HR first.

Motion made by Supervisor Zima, seconded by Supervisor Lund to refer this communication to Human Resources to re-evaluate the position with the added duties. Vote taken. MOTION CARRIED UNANIMOUSLY

Legal Bills:

3. **Review and Possible Action on Legal Bills to be Paid.**

Motion made by Supervisor Zima, seconded by Supervisor Evans to approve. Vote taken. MOTION CARRIED UNANIMOUSLY

Reports:

County Executive Report:

4. a. **Budget Status Report, December 31, 2010**
b. **Budget Status Report, January 31, 2011**
c. **Budget Status Report, February 28, 2011**

Motion made by Supervisor Erickson, seconded by Supervisor Evans to receive and place on file Items a, b & c. Vote taken. MOTION CARRIED UNANIMOUSLY

- d. **Update re: Old Mental Health Center Building (standing item).**

Erickson informed the Committee that Representative Reed Ribble had been in Green Bay recently to look at the Mental Health Center and was very interested in turning it into an extended stay facility for veterans coming to the new Veterans Clinic.

Motion made by Supervisor Lund, seconded by Supervisor Erickson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Internal Auditor Report:

- 5 a. **Budget Status Report, December 31, 2010**

Internal Auditor Sara Perrizo indicated that the County Board office came in \$41,000.00 under budget for 2010. This is due in part to savings achieved in the office as well as employee vacancies throughout the year.

- b. **Budget Status Report, February, 2011.**

Motion made by Supervisor Lund, seconded by Supervisor Erickson to receive and place on file items a & b. Vote taken. MOTION CARRIED UNANIMOUSLY

- c. **Update on budget research and analysis.**

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Perrizo indicated that she has many ideas and is currently working on putting together a draft of how the budget for the Highway Department works and will be preparing a narrative to go with it.

Perrizo also reported that she is reviewing the budget book to gather data as to where revenues come from and where the expenses are. She is generating ideas to present to the study group on things such as combining services.

Motion made by Supervisor Evans, seconded by Supervisor Erickson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

d. Upcoming Leave.

Perrizo informed the Committee that she will be out of the office for six weeks beginning April 28.

Motion made by Supervisor Lund, seconded by Supervisor Evans to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

6. Board Attorney Report:

Board Attorney Fred Mohr reported that he and HR Director Debbie Klarkowski had reached agreements with all of the unions for 2011 based on the Board directives of the last meeting.

Motion made by Supervisor Lund, seconded by Supervisor Evans to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Vacating Budgeted Position (Request to Fill)

7. Warrants/TRO Clerk – Sheriff's Department

Motion made by Supervisor Lund, seconded by Supervisor Evans to approve. Vote taken. MOTION CARRIED UNANIMOUSLY

Resolutions, Ordinances:

8. Resolution re: Department of Human Resources Review of Individual Employment Contracts

Mohr stated that he had been asked to put this into resolution form at the last meeting that the CTC had been entering into contracts with psychiatrists without having them reviewed by Corporation Counsel. It was determined between Mohr and Corporation Counsel that it would be more appropriate for Mohr to review labor contracts individually.

Motion made by Supervisor Lund, seconded by Supervisor Erickson to approve. Vote taken. MOTION CARRIED UNANIMOUSLY

9. Resolution re: Change in Table of organization UW – Extension Extend Grant Funded Position (Got Dirt? Marketing Coordinator LTE).

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10. **Resolution re: Change in Table of Organization UW – Extension Addition of Grant Funded Position (Horticulture Project Coordinator LTE).**

Motion by Supervisor Zima, seconded by Supervisor Erickson to approve Items 9 & 10. Vote taken. MOTION CARRIED UNANIMOUSLY

Closed Session:

11. Closed Session pursuant to Wis. Stats. § 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. (Labor Negotiations).

Motion made by Supervisor Lund, seconded by Supervisor Erickson to enter into closed session pursuant to Wis. Stats. § 19.85(1)(g) at 8:20 p.m. Roll Call: Present: Brunette, Evans, Zima, Scray, Erickson, Lund. Excused: De Wane. MOTION CARRIED UNANIMOUSLY

Motion made by Supervisor Lund, seconded by Supervisor Erickson, to return to regular order of business at 9:08 p.m. Roll Call: Present: Brunette, Evans, Zima, Scray, Erickson, Lund. Excused: De Wane. MOTION CARRIED UNANIMOUSLY

Motion made by Supervisor Zima, seconded by Supervisor Evans to adjourn at 9:10 p.m. Vote taken. MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Therese Giannunzio
Recording Secretary

