

**PUBLIC BUILDING COMMISSION – Meeting Minutes – Special Meeting
Room 210, Cheshire Town Hall
Tuesday, August 12, 2014 – 7:00 P.M.**

Members Present: Mr. John Purtill (Chairman)
Mr. Art Crooker
Mr. Mark Nash
Mr. Ed Hill
Mr. Jim McKenney
Mr. Vincent Robitaille
Mr. Joe Barba

Not Present: Mr. Jim Brennan
Mr. Keith Goldberg

Additional Present: Mr. Matt Levine, Pool Committee
Mr. Kevin Wetmore, Pool Committee
Mr. David Gavin, Pool Committee
Mr. George Noewatne, Public Works
Mr. Michael Markowicz, Murtha Cullina

ROLL CALL

Chairman Purtill called the meeting to order at 7:01pm. Roll was called and a quorum determined.

AGENDA ITEM

Mr. Purtill stated the purpose of the meeting is to recommend approval of a contract to the Town Council, rather than to approve a contract, as stated in the meeting notice.

Mr. Purtill stated that the contract in question is the product of negotiations between Arizon and various Town representatives.

There was discussion of the voting procedures, especially as it relates to user members.

Mr. Markowicz discussed the project history and how negotiations and contract preparations had been conducted.

Discussion about Contract Approval

Mr. McKinney asked why the PBC has been asked to recommend approval of a specific contract, which is not normally done.

Mr. Purtill responded that in the past, the Town has used an AIA-format contract, which is a standard template. In this case, it is a design build project, using a new contract format from ConsensusDocs.

Mr. Hill asked if the Town can walk away at any point in this process.

Mr. Markowicz referred to Section 11.3.1, which addresses this situation and allows the Town to terminate the agreement at any time for the costs incurred to date.

Discussion about Costs

Mr. Hill asked whether Arizon would know the cost of structure construction by the time the design is complete?

Mr. Markowicz answered that the costs are already known. The final structure cost is subject to enhancements selected by the Town.

Mr. Markowicz explained that to move forward with manufacturing, Arizon must receive explicit notice from the Town in the form of a Notice to Proceed. Section 4.5.1 and Section 6.2.2 define the manufacturing work.

In addition, a peer review will be conducted by a third-party design firm which will also provide a design for other aspects not covered in the Arizon Contract (electrical, sprinkler, general trades, etc.)

Discussion about Substantial Completion and Retainage

Mr. Purtill asked for clarification about "substantial completion."

Mr. Markowicz responded that 150% of the punch list value will be withheld from the final payment until the punch list is complete.

Mr. Purtill and Mr. McKinney stated they would prefer a standard retainage (10%) be held.

Mr. Markowicz pointed out that Arizon did not approve a standard 10% retainage. The 150% punch list value was a compromise so that the contract price would not be adjusted upward.

Discussion about Schedule of Values

Mr. Hill asked whether the Town or the contractor would be ahead financially under the schedule of values proposed in the contract.

Mr. Markowicz assured him that the percentage payments for the schedule of values outlined in the contract were negotiated to protect the Town as much as possible.

Mr. Hill stated that he would prefer to pay the contractor as funds are needed rather than on a percentage basis.

Mr. Markowicz reminded him that the schedule has been negotiated. In addition, the Payment and Performance Bond provides additional security that the work will be completed.

In response to a comment from Mr. Crooker, Mr. Markowicz assured the PBC that Arizon will have to communicate to the Town's satisfaction what is being purchased and the cost before receiving funding authorization. The contract provides certain payments at specific milestones.

Discussion about Liquidated Damages

Mr. Hill wondered how the \$500 per day liquidated damages was determined and whether there were provisions for consequential damages.

Mr. Markowicz pointed out that liquidated damages often cannot be proven to the court's satisfaction. Any delay not caused by the Town is to be absorbed by the contractor.

In response to Mr. Hill's query, Mr. Markowicz assured the PBC that the contract specifies liability insurance according to the Town's standard requirements and as requested in the RFP.

Discussion about Indemnity

Mr. Hill also questioned why there was no indemnity clause or discussion of intentional damages.

According to Mr. Markowicz, the standard language of the Town's RFP is sufficient; this is not a matter of concern to the Town Attorney.

Motion by Mr. Crooker to recommend the Town Council approve the Arizon Design-Build Contract. Seconded by Mr. Nash.

Discussion:

Mr. McKinney: The ten percent retainage issue is a major concern and was a problem during the initial pool construction when the contractor's bond had to be called.

Mr. Robitaille: The Town Council can approve any contract condition they decide; the PBC can only recommend terms.

Mr. Levine: One contractor is performing the work, not multiple subcontractors, so this case is a bit different as it applies to retainage and bonds.

Mr. Nash: Arizon pushed back on 10% retainage. This was a compromise to get the best result for the Town.

Mr. Nash called the question and voting proceeded as follows:

In Favor

Mr. John Purtill (Chairman)

Mr. Art Crooker

Mr. Mark Nash

Mr. Vincent Robitaille

Mr. Joe Barba

Opposed (due to the retainage issue)

Mr. McKinney

Opposed

Mr. Hill

ADJOURNMENT

Motion to adjourn by Mr. Nash at 8:10pm. Seconded by Mr. Crooker and carried unanimously.

Respectfully submitted,

George Noewatne