



Petersburg Borough

12 South Nordic Drive
Petersburg AK, 99833

Meeting Minutes Borough Assembly

Wednesday, November 29, 2017

3:00 PM

Assembly Chambers

Decision on Appeal of Pool Lighting Bid

1. Call To Order/Roll Call

The meeting was called to order by Mayor Jensen at 3:00 p.m.

Present: 5 - Mayor Mark Jensen, Assembly Member Eric Castro, Assembly Member Brandi Marohl, Assembly Member Jeffrey Meucci and Assembly Member Nancy Strand

By Phone: 1 - Assembly Member Kurt Wohlhueter

Excused: 1 - Assembly Member Jeigh Stanton Gregor

2. Executive Session

The Assembly adjourned to Executive Session to deliberate on the appeal filed by Puffin Electric, Inc. on the Petersburg Swimming Pool Lighting Replacement Project Intent to Award.

3. Decision on Appeal

Based upon Findings of Fact and Conclusions of Law, the appeal was unanimously denied by the Assembly, acting in the performance of its quasi-judicial function. A copy of the Decision on Appeal is attached and made a permanent part of these minutes.

4. Adjourn

The meeting was adjourned at 3:28 p.m.



Decision on Appeal of Puffin Electric Inc. from Denial of RFP Intent to Award Protest

The Petersburg Borough Assembly, acting in a quasi-judicial capacity, conducted a hearing on November 6, 2017, during which it heard testimony and argument, and received and reviewed documents, relating to the appeal of Puffin Electric Inc. ("PEI") from the October 23, 2017 decision of Acting Borough Manager Jody Tow denying PEI's protest of the Borough's Notice of Intent to Award issued to Sitka Electric under the Swimming Pool Lighting Replacement Request for Proposals.

In brief, PEI claims in its appeal that Sitka Electric's proposal was nonresponsive as it did not meet certain letter of transmittal requirements set forth in the RFP; that PEI's proposal was responsive to the RFP; and that there were several "technical" issues with the RFP, including the RFP's call for demolition of the existing lighting system and replacement with a new 'E' shaped configured system.

Testimony and argument was received from Lane Chesley and Bruce Hess from Puffin Electric Inc, and David Freeman, attorney for Puffin Electric Inc. Testimony and argument was received from Borough employees Karl Hagerman and Chandra Thornburg. The written Record on Appeal before the Assembly consists of 180 pages, as detailed in the Record's Table of Contents. The Assembly met again on November 29, 2017 to conduct further deliberations.

In accordance with Petersburg Municipal Code (PMC) 4.04.100E, the Assembly hereby adopts the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In 2005, the City of Petersburg (predecessor to the Petersburg Borough) undertook construction of a Community Center and Swimming Pool. The lighting system designed and installed in the swimming pool natatorium area was in a "square" pattern with indirect (upward facing) lighting.
2. The lighting system has proven to be unsatisfactory for a number of reasons, and on September 11, 2017, the Borough issued a Request for Proposals entitled Electrical & Installation Services - Swimming Pool Lighting Replacement (hereinafter "the RFP"). (Record on Appeal, pages 1-44) Under the RFP, at Section 6, the proposer with the highest total evaluation points "may be invited to enter into contract negotiations with the Petersburg Borough." (Record on Appeal, page 10)
3. The RFP, at Section 1.1, sought proposals "to remove and dispose of the previous lighting system, and provide and install a new lighting system that increases luminosity of the natatorium, as described in Section 3 Scope of Work." (Record on Appeal, page 2)

4. The RFP, Section 3 - Scope of Work, provided that the contractor would "demolish and remove the old lighting structure", and after such disposal "furnish and install a new, unused lighting system." (Record on Appeal, page 5) Section 3 further provided that the Borough desired the new system to be in an 'E' shaped configuration, "with no lighting fixtures above the pool covers on the East Wall." (Record on Appeal, page 6). Upon completion, the lighting levels were to meet the required illumination levels set out in 18 AAC 30.530 ("at least 50 footcandles", to be measured "at a point 30 inches above the pool deck.") (Record on Appeal, page 6)
5. The RFP, Section 4.3, provided for a signed letter of transmittal, no more than two pages in length, which includes the proposer's "understanding of the services to be performed" and "a positive commitment to provide the services as specified" (para. 4.3.1), and the names of proposer's authorized personnel (para. 4.3.2). (Record on Appeal, page 7) Section 2.5 of the RFP states that "[a]ll proposals must be signed." (Record on Appeal, page 4)
6. Addendum #1 to the RFP was posted on September 18, 2017. (Record on Appeal, pages 48-53)
7. A pre-proposal meeting was held on September 21, 2017. (Record on Appeal, page 57). Prior to that meeting, one potential proposer (Puffin Electric, Inc. ("PEI")) had inquired about a retrofit of the existing square-shaped lighting system, rather than installation of a new 'E' shaped lighting system. Borough staff (Chandra Thornburg, Borough Parks and Recreation Director) responded that the Borough wanted proposals for a new system, with an 'E' shaped configuration. This was repeated at the pre-proposal meeting. She further stated that proposers were free to submit, along with their proposals for a new 'E' shaped lighting system, a separate, second proposal for a retrofit of the existing system, for comparison purposes.
8. Addendum #2 was posted on September 27, 2017. (Record on Appeal, pages 54-55)
9. Addendum #3 was posted on October 4, 2017. (Record on Appeal, page 56)
10. None of the addenda amended the RFP to request proposals for a retrofit of the existing square-shaped lighting system.
11. The proposal due date was October 5, 2017. No protest was filed prior to the proposal due date alleging improprieties or ambiguities in the RFP.
12. Four proposals were timely received by the Borough, from the following companies: PEI (Record on Appeal, pages 58-77), Sitka Electric (Record on Appeal, pages 78-99), Nordic Electric LLC (Record on Appeal, pages 100-106) and Premier Electric LLC (Record on Appeal, pages 107-121).
13. The submitted proposals were then evaluated by each member of the evaluation committee (Borough employees Chandra Thornburg, Karl Hagerman and Jamie Eddy), based upon the evaluation criteria set out in Section 5 of the RFP. (Record on Appeal, pages 8-10) On October 9, 2017, the evaluation committee conducted telephone interviews with both Sitka Electric and PEI to inquire further about their proposals.
14. The three evaluations of each proposal were then totaled, and the proposals were ranked as follows (Record on Appeal, pages 122-145):

	<u>Proposer</u>	<u>Total Points</u>	<u>Proposal Cost Amount</u>
i.	Sitka Electric	270	\$ 89,382.00
ii.	Puffin Electric	261	\$118,857.00
iii.	Premier Electric	194	\$174,000.00
iv.	Nordic Electric	73	\$ 93,800.00

15. In the proposal of Sitka Electric, an authorized individual signed i) the proposal, ii) each addendum, and iii) the non-collusion affidavit.

16. In the proposal of PEI, an authorized individual signed i) the letter of transmittal, ii) each addendum, and iii) the non-collusion affidavit.

17. The proposal of Sitka Electric provided for installation of a new 'E' shaped lighting system. It contained, under headings labeled 4.3.1 and 4.3.2, the names of authorized personnel and Sitka Electric's understanding of the services to be performed and a positive commitment to provide those services, by stating, in part, as follows (Record on Appeal, page 80):

Sitka Electric Company intends to demolish the existing (34) type P fixtures, and install (22) New LED fixtures. ... Sitka Electric will install new wiring and conduits to the new light fixtures where it is needed to make a complete and functional lighting system. ... Sitka Electric will have 3-4 people committed to installing the lighting in expeditious and safe manner. ... The fixture layout will be in a "E" formation. There will be no light fixtures along the East Wall. ... The new Lux fixture has fully adjustable light bars for customized distributions. The projected Foot Candles along the pool deck will be 50 foot candles. Pool #1 will be 58 foot candles, and Pool #2 will be 54 foot candles.

18. The proposal of PEI provided for a retrofit of the existing square-shaped lighting structure (with lights fixtures remaining on the East Wall), to "provide for a shorter construction schedule than a full replacement of the lighting system." (Record on appeal, page 63):

Our approach to the project is to retrofit the existing Light Truss lighting system (manufactured by SPI Lighting) with a combination of 507 Watt LED and 634 Watt LED luminaires (manufactured by SPI Lighting).

19. The retrofit nature of PEI's proposal was noted in the evaluation process. (Record on Appeal, pages 123, 127) As PEI was not the highest ranked proposer, that deviation was not further addressed.

20. A *Notice of Intent to Award* was issued to Sitka Electric, the highest ranked proposer, on October 9, 2017. (Record on Appeal, page 146) Notice was sent to all proposers, including PEI. (Record on Appeal, page 147)

21. PEI filed a protest of the *Notice of Intent to Award* with the Borough Manager on October 13, 2017. (Record of Appeal, pages 148-154)

22. Acting Borough Manager Jody Tow denied PEI's protest on October 23, 2017. (Record on Appeal, pages 155-157)
23. On October 30, 2017, PEI appealed that denial of its protest to this body. (Record of Appeal, pages 158-180)


Conclusions of Law

1. PEI's October 30, 2017 appeal was timely filed under PMC 4.04.100B and C.
2. Sitka Electric's proposal, which called for installation of a new lighting system meeting the requirements of 18 AAC 30.530, in an 'E' shaped configuration and with no fixtures on East Wall, was responsive to the Borough's RFP. Sitka Electric's proposal contained the required language of the letter of transmittal, as set forth in paragraphs 4.3.1 and 4.3.2, that language occupied less than two pages, and Sitka Electric's proposal was signed as required under section 2.5 of the RFP.
3. To the extent that Sitka Electric's proposal did not meet the letter of transmittal requirements of the RFP, any deviation is deemed not material. Laidlaw Transit, Inc. v. Anchorage Sch. Dist., 118 P.3d 1018 (Alaska 2005). Any such deviation gained Sitka Electric no substantial competitive advantage over other proposers, and did not restrict or stifle competition.
4. PMC 4.04.060M and 4.04.070G permit the Borough to waive irregularities and informalities in requests for proposals if acceptance of the proposal is in the public interest.
5. Acceptance of Sitka Electric's proposal is in the public interest, and thus the letter of transmittal matters asserted by PEI, assuming they constitute irregularities and/or informalities, are waived.
6. PEI's proposal, to the extent that it called for a retrofit of the existing lighting system (in the same square-shaped configuration with fixtures on the East Wall) was nonresponsive to the Borough's RFP.
7. The word "desired", as found in Section 3 of the RFP, means the same as "wanted", and is mandatory.
8. Retrofit proposals for the existing lighting system were not called for in the RFP and were not subsequently authorized in writing by the Borough.
9. The RFP, Section 2.9, prohibits oral changes or interpretations of any provision of the RFP, and any amendment to the RFP to request retrofit proposals of the existing lighting system would have been required to be set out in a written addendum. No such addendum was issued.
10. PEI's claim on appeal that there were several "technical" issues with the RFP, including the RFP's call for demolition of the existing system and replacing it with a new 'E' shaped configuration, was waived under PMC 4.04.090B. Section .090B requires that any protest regarding improprieties or ambiguities in the RFP be filed prior to the due date for proposals. No such protest was timely filed by PEI.

Accordingly, the appeal filed by PEI, to the Acting Borough Manager's October 23, 2017 denial of its protest, is hereby DENIED.

In accordance with PMC section 4.04.100(E), this decision may be appealed to the superior court for the State of Alaska within 30 days of the date of the Clerk's distribution.

Dated: 11/29/17

By: 
Mark Jensen, Mayor

Certificate of Service: 

This Decision was distributed by Debbie Thompson, Borough Clerk, on November 29, 2017, by email to the following individuals:

Bruce Hess: bhess@pei-ak.com

Lane Chesley: lanepuffinelectric@gmail.com

David Freeman, attorney for PEI: Dfreeman@hwb-law.com