

Approved
4-17-01

March 26, 2001
Keyport, New Jersey

Minutes of a Special Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Keyport Senior Center, 110 Second Street, Keyport, N.J. pursuant to the adoption of Resolution #117-01, in accordance with the Open Public Meetings Act. Notices were faxed to the Courier, Asbury Park Press, Independent and Two River Times and posted on the Bulletin Boards.

Mayor Graham called the meeting to order at 7:12 P.M. and read the Sunshine Law Notice.

ROLL CALL

On Roll Call the following were present: Councilmembers Ashmore, Antonucci, Atkins, Bergen (arriving at 7:22 PM), Pedersen. Absent: Councilman Merla. Others present: Gordon Litwin, Borough Attorney.

COMMUNICATIONS AND PETITIONS

1. World T'ai Chi & Qigong Day, April 7th, Benjamin Terry Park, requesting use of tables and garbage cans.

Motion to approve, moved by Mr. Pedersen, seconded by Mr. Antonucci, with Ayes by all present.

UNFINISHED BUSINESS

1. Ferry Service. Michael Cummins has requested to apply to the State for a permit to moor the ferry, to make a preliminary application which could be rescinded. Mr. Litwin said it would be ok as long as it is clear it is without prejudice and it does not in anyway indicate that the Borough would award a lease to Fast Ferry or any other bidder. The approval would facilitate Fast Ferry as a potential bidder. A waterfront development permit takes approximately 90 days. This could be allowed in the public interest and doesn't give him a leg up. Mr. Litwin said he would endorse the request to facilitate the process. Motion to approve moved by Mrs. Atkins, seconded by Mrs. Ashmore. Roll Call Vote: Ayes: Councilmembers Ashmore, Antonucci, Atkins, Pedersen. Absent: Councilmembers Merla, Bergen. The Borough may be required to endorse subject to granting of the permit.
2. Interlocal with Aberdeen Township. Mayor Graham reported that there will be a meeting on Wednesday, March 28th at 5 PM between Messrs. Coren, Kauff and Peno of Aberdeen and Mr. Litwin, Mrs. Poling and Mayor Graham. As of this date there is no formal agreement and there will be a gap between when Middletown finishes and when Aberdeen begins. Mr. Litwin recommended sanction by the Mayor and Council for Aberdeen to perform the services as an interim measure for 30 days. Aberdeen is revising their fee schedule.

RESOLUTION

1. Resolution #121-01, Enter Into Temporary Arrangement with Township of Aberdeen for Construction Inspection Services.

WHEREAS, the Interlocal Contractual Services Agreement with the Township of Middletown to provide construction inspection services to the Borough of Keyport is expiring March 31, 2001; and

WHEREAS, the Township of Aberdeen has agreed to negotiate and enter into an agreement with the Borough of Keyport to provide said services on April 1, 2001; and

WHEREAS, said Agreement has not been concluded and it is necessary for the Borough of Keyport to make temporary provision for construction inspection services with the Township of Aberdeen and the Township of Aberdeen has agreed to provide said services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF KEYPORT AS FOLLOWS:

1. The Borough Administrator is authorized to enter into temporary arrangements with the Township of Aberdeen to

2. provide construction inspection services to the Borough of Keyport on a reasonable fee basis not to exceed a period of thirty (30) days and pending a conclusion of satisfactory contract negotiations to provide said services on a long-term basis.

Offered for adoption by Mr. Pedersen, seconded by Mr. Antonucci

Roll Call Vote: Ayes: Councilmembers Ashmore, Antonucci, Atkins,
Pedersen

Absent: Councilmembers Merla, Bergen

UNFINISHED BUSINESS

2. Garbage Contract. Mr. Haber, attorney for Marpal sent a letter questioning Marrone's capacity to provide roll-offs. Mr. Pedersen said the Public Works pulls one 30 yard dumpster a month with excess Borough garbage. At this time 7:22 PM Mr. Bergen arrived. Mr. Litwin said this will be discussed in public and the protest in closed session. Mr. Bergen said that other municipalities have expressed concern. Mr. Litwin said he had asked Mr. Pedersen about the roll-off for Public Works; approval is required if assigned; this is an insignificant part of the contract. Mr. Pedersen said the Borough owns roll-off equipment and a transfer of the contents could be done on site. Mr. Litwin said that the Hearing was held and he advised the Mayor and Council that a certified financial statement is not required under the uniform specifications. No one commented on this prior to receipt of bids. Marrone's financial condition was examined and an investigation of their service was conducted and the Borough Administrator made inquiries. Mr. Provence said he called the attorney for Point Pleasant. There was a three year contract and there was a lawsuit, certificate of public conveyance. When the father died and the son took over, the contract was terminated; failure to file annual report (they were new). The bid was rejected. Point Pleasant was prepared to award a 5 year contract, but only awarded a one year contract. Point Pleasant would consider Marrone again if they were the low bidder. Mr. Bergen said he was told by the Administrator in Keansburg that the collection times were changed. Mr. Bergen said he doesn't see anything on which to base a denial and his only argument is that the other bidders didn't notice. Mr. Litwin said there are always problems with changing haulers, but legally there is no basis to disqualify Marrone and no other municipality has terminated their services. Marrone has represented to the Borough that they can supply the trucks. The bid specifications should say audit, not certified financial statement. Mr. Litwin said if the contract is awarded it will be for the base bid, condominiums and Public Works roll-off and that the Borough take reservations on the other options. There is a difference of \$110,000 between the first and second bidder. The apartments are moot for the year 2001, in 2001-20%, 2003-40% and so on. Mr. Bergen asked about awarding a three or five year contract, that there is more flexibility with a three year contract if it doesn't work out. Mr. Litwin said a shorter term gives control if the service is not up to the specifications. Mr. Bergen said they have to comply with the recycling and recommended a three year term. Mr. Bergen asked Mr. Mesler, owner of Marrone's, if they would be available during the day to deal with problems and he said yes, using a cell phone, the radio goes to the truck, and he will be in Keyport the first 30 days. Mr. Bergen asked what happens if the truck breaks down; he would bring in another truck from Avenel. Mr. Bergen asked that there will not be any other municipalities garbage in the truck and Mr. Mesler said no. Mr. Bergen asked about personnel problems in Keansburg and Mr. Mesler said there were none, that they were learning their way around Keansburg and have received a minimal amount of calls. Mr. Bergen asked what time they would start, and Mr. Mesler said he starts at 6 am in Keansburg. Mr. Mesler said communication is the key. Mr. Bergen asked if they would put the garbage cans back on the sidewalk, Mr. Mesler said yes. Mrs. Atkins said this is one of the biggest complaints. Mr. Haber said he was not sure he understood the legal advice given by Mr. Litwin regarding the financial statement (that the present DEP specifications don't provide for a financial statement and that no one questioned this before the bids were received and that the bidders did not have to comply), and he was not sure if Marpal will file a lawsuit. Mr. Litwin said everyone had the same bid specifications which were

taken from the Web site which were in error. Uniform bid specifications are paramount. No one protested and the Administrative Code prevails over the Web site. There are no grounds to reject the statement which Marrone submitted. Mr. Haber asked that if they were in Keyport's specifications which were not consistent with the uniform specifications, then the financial statement is not required? Mr. Litwin said there are many issues and many opinions and this is the Borough's position.

RESOLUTION

2. Resolution #122-01 Award of Contract for Collection and Disposal of Solid Waste and Recyclable Materials to Marrone Waste Paper and Disposal, Inc., May 1, 2001 to April 30, 2004, Three Year Contract.

WHEREAS, on February 14, 2001, the Borough of Keyport received sealed proposals for the collection and disposal of solid waste and recyclable materials; and

WHEREAS, four (4) bids were received for said work; and

WHEREAS, each bid set prices for various options based on a three and five year contract term; and

WHEREAS, the Borough Council has further determined to make a three (3) year contract award; and

WHEREAS, the Borough Council has determined that Options 1-1.0 ("Base Bid"), 1-2.0 ("Condominiums") and 1-4.0 ("Public Works") are the options to be presently exercised by the Borough; and

WHEREAS, the lowest bid proposal for said Options was submitted by Marrone Waste Paper and Disposal, Inc., 300 South Inman Avenue, Avenel, New Jersey 07067 (herein "Marrone") in the amount of \$482,517 (herein "Low Bid"); followed by the bid proposals of Republic Services Inc., d/b/a the Marpal Company, P.O. Box 188, Lincroft, New Jersey 07738 (herein "Marpal" or "Protestor"), in the amount of \$591,099; M & S Waste Services, P.O. Box 332, Middletown, New Jersey 07748 (herein "M&S"), in the amount of \$650,217; and Waste Management of New Jersey, 181 Route 34, Matawan, New Jersey 07747 ("Waste Management"), in the amount of \$686,347.20; and

WHEREAS, correspondence has been received on behalf of Marpal protesting the award of the subject contract; and

WHEREAS, the Mayor and Council have reviewed said protest and same has also been reviewed by the Borough Attorney; and

WHEREAS, upon notice to all bidders, the Mayor and Council conducted a hearing (the "Hearing") on March 20, 2001 pertaining to the merits of the Low Bid as submitted by Marrone at which both Marrone and Marpal participated and were represented by counsel; and

WHEREAS, the Chief Financial Officer has certified that funds are available to award this bid.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Keyport as follows:

1. The protest of Marpal alleging multiple grounds for the rejection of the Low Bid is hereby rejected in accordance with the below findings:
 - a. The allegation that Marrone lacks the financial ability, experience, capital and equipment necessary to perform this contract is not supported by sufficient evidence to disqualify Marrone based upon:
 - (1) The bid documents of Marrone;
 - (2) Representations by Marrone presented to the Borough Council at the Hearing regarding its financial and physical capacity to perform for

- (3) the Borough of Keyport; and
 - (4) A report by the Borough Administrator as to the satisfactory performance of solid waste collection and disposal by Marrone for the municipalities of Keansburg, Caldwell, West Caldwell, and previously for Point Pleasant Borough.
- b. The protest of Marpal, alleging that the Low Bid is defective for failure to supply a certified financial statement in accordance with the Bidder Questionnaire fails to state a material basis for rejecting the Low Bid, based upon the following:
- (1) The Bidder Questionnaire was drafted in accordance with the Uniform Bid Specification of the New Jersey Department of Environmental Protection ("DEP"), N.J.A.C. 7:26H-6 et seq., as posted and maintained by DEP on its website as of September 7, 2000;
 - (2) After the bids were received, the Borough became aware that the Questionnaire posted on said website was not current and that same had been revised several years earlier;
 - (3) At the hearing and by correspondence in anticipation of same, Marrone correctly argued that the Bidder Questionnaire of the Uniform Bid Specifications, as amended, no longer requires submitted financial statements to be certified;
 - (4) Hence, the Low Bid was consistent with the Uniform Bid Specifications in effect at the time of submission with regard to the financial statement submitted by Marrone and said Specifications are mandated to be uniform in all municipalities; and
 - (5) No bidder or prospective bidder protested or communicated with the Borough regarding the mistaken requirement for a "certified" financial statement prior to the receipt of bids.
2. Because no material basis for disqualifying the Low Bidder nor for rejecting the Low Bid has been established, the Borough makes no findings regarding any defects of any other bid submitted, including those defects alleged by Marrone against the bid of Marpal.
3. Accordingly, the contract for the collection and disposal of solid waste and recyclable materials including the present exercise of Options 1-1.0 ("Base Bid"), 1-2.0 ("Condominiums") and 1-4.0 ("Public Works") is hereby awarded to Marrone Waste Paper and Disposal, Inc. for a term of three (3) years at a present cost of \$482,517.
4. The Mayor and appropriate Borough Officials are authorized to execute the agreement with Marrone Waste Paper and Disposal, Inc. for the collection and disposal of solid waste and recyclable materials pursuant to the bid specifications at a present cost of \$482,517, and in the event of the future exercise of any options not presently exercised as allowed for in the specifications (but not contemplated at this time) at a cost not to exceed (in the event all options under a three (3) year term were exercised) Seven Hundred Thousand Nine Hundred and Eighty-one (\$700,981) Dollars.
5. The appropriate Borough officials are authorized to enter into an agreement with Marrone based upon the foregoing.

Offered for adoption by Mr. Bergen, seconded by Mr. Pedersen

Roll Call Vote: Ayes: Councilmembers Ashmore, Antonucci, Atkins,
Bergen, Pedersen
Absent: Councilman Merla

Mr. Litwin reported that the next meeting with the Mediator pertaining to the PBA contract will be May 30th.

Mrs. Atkins reported that last week when it rained, the water came into the Annex and that something has to be done about the building. Mayor Graham recommended that a trailer be rented. Mrs. Atkins said the trailers do not have holding tanks, that the waste would have to be pumped out. Mr. Litwin said it has been requested that the appeal be expedited regarding the new Municipal Complex. Mrs. Atkins and Mr. Pedersen will address the matter of the Annex.

RESOLUTION

3. Resolution #123-01, Closed Meeting-Litigation

WHEREAS, the Mayor and Council of the Borough of Keyport propose to discuss the following subject:

Litigation

1. Riparian Rights

WHEREAS, the Governing Body has determined that within the provisions of the Open Public Meetings Law, the Public should be excluded from the discussion of said subject;

NOW, THEREFORE, BE IT RESOLVED by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Senior Citizen Center Meeting Room for the purpose of discussing the following subject:

Litigation

BE IT FURTHER RESOLVED that the discussions on Litigation conducted at said closed session shall be disclosed when the matters discussed are resolved and this meeting shall continue in approximately 20 minutes.

Offered for adoption by Mr. Pedersen, seconded by Mrs. Atkins

Roll Call Vote: Ayes: Councilmembers Ashmore, Antonucci, Atkins,
Bergen, Pedersen
Absent: Councilman Merla

Mayor and Council went into Closed Session at 8:04 PM and this meeting was reconvened at 8:37 PM.

On Roll Call the following were present: Councilmembers Ashmore, Antonucci, Atkins, Bergen, Pedersen. Absent: Councilman Merla.

ADJOURNMENT

Motion to Adjourn moved by Mr. Pedersen, seconded by Mr. Antonucci, with Ayes by all present.

Time of Adjournment: 8:38 PM

Respectfully submitted,


Judith L. Poling, RMC/CMC
Borough Clerk/Administrator

