

**Minutes of Special Assembly Meeting
Held December 8, 2016**

Mayor David Jack called the Special Assembly meeting to order at 12:00 p.m., December 8, 2016, in the Borough Assembly Chambers. Assembly Members Rooney, Gilbert, Prysunka, and Powell were present. Assembly Members Decker and Mitchell were absent. Borough Manager Jeff Jabusch and Borough Clerk Kim Lane were also in attendance.

CONFLICT OF INTEREST – None

PERSONS TO BE HEARD

Clerk Lane notified the Assembly that Misty Fitzpatrick and Michael Burgess were on the phone line for Tongass Electric.

Mayor Jack asked Tongass Electric to speak first since they were participating by phone.

Misty Fitzpatrick, Tongass Electric, stated that she had provided a detailed letter, along with letters of recommendation for Tongass Electric to the Assembly; stated that on December 5th, a letter was provided by Bunes Electric and was somewhat identical to theirs; also stated that it appeared that Bunes Electric was provided their letter and with that, Bunes Electric was able to draft their letter with responses to their (Tongass Electric's) letter. Ms. Fitzpatrick said that that concerned her.

Assembly Member Prysunka stated that there had been different names used in their (Tongass Electric's) bid packet; he asked if the bid that had been submitted with the "doing business as" or as the LLC; seemed to be crafted a couple of different ways.

Ms. Fitzpatrick clarified for Prysunka that Michael owns Tongass Electric which is an entity that is owned by Tongass Enterprises, LLC., they are one in the same.; Tongass Electric is a "dba" and is the only "dba" that Tongass Enterprises, LLC has.

Prysunka asked who had the electrical contractor's license. Ms. Fitzpatrick replied that Tongass Electric holds that license.

Prysunka asked who it was, that put in the original bid.

Ms. Fitzpatrick replied that she thought that it was Tongass Enterprises, LLC., dba Tongass Electric.

Prysunka stated that the Mayor had showed him in the documents just then that the original bid had been submitted under Tongass Electric.

Jordan Bunes, Bunes Electric, 406 Mission Street, read off points from his letter dated December 5, 2016 and also from the Bid Documents from the project. Some of Mr. Bunes' points of discussion were:

- Responsive Bids
- Bid Modifications
- Bidder's Examination of Contract Documents and Site
- Federal, State and Local Laws and Regulations
- Local Ordinances, Rules and Regulations
- Local Bidder Preference Award (WMC 5.10.040 (D))
- Local Hire (WMC 5.10.065)
- Findings Supporting Local Hire Requirement on Public Improvement (WMC 5.10.065)

Mr. Bunes also stated that the Bunes family has a proud long-standing tradition of public service including 141 years of volunteer service in the Wrangell Volunteer Fire Department, not including Tim's 26 years as Fire Chief.

Mr. Bunes stated that with regards to the option of rejecting all bids: rejecting all bids submitted could delay the project significantly, causing the project to potentially run into the Cruise Ship season.

Mayor Jack pointed out that Manager Jabusch's son (who owns LiveWire) had turned in a bid and that bid was in no way under discussion today.

Assembly Member Prysunka stated that if the Assembly chose the option to throw out all bids and re-bid the project, that could create a potential conflict of interest here for the Manager.

Manager Jabusch stated that it wouldn't, because he was not a voting member.

ITEM OF BUSINESS

5a Review of bids received for Wrangell City Dock Lighting Project and possible award of bid for the project

Manager Jabusch stated that he had sent out a clarification memo to the Assembly; all of the documents regarding the bid were sent to our Borough Attorney to review.

Jabusch stated that the issue regarding the name (Tongass Electric/Tongass Enterprises, LLC) was sent to the attorney and that the attorney did not see any issue with that point.

Jabusch stated that the issue that Mr. Bunes had brought up about being paid up within five (5) days of award applies to everyone but does not apply to the code section on Local Bidder Preference, that provision is in the bid packet.

In response to Prysunka, Jabusch clarified further by stated that the language that Mr. Bunes was referring to was in the Bid Packet, not in our Code; if you were using Federal money for the project, it would apply; does not apply in this instance.

Jabusch stated that the first step for the Assembly to consider was that Tongass Electric submitted a sealed bid; they then emailed a modification to their bid; the section in the bid documents say that they "should" add or subtract their bid modification; and that they "should not" reveal their total bid. Jabusch stated that since it says "should" and "should not"; hat is a suggestion and that the Assembly has the ability to waive any informality on the bid.

Jabusch also stated that when at the bid opening, it was evident what Tongass Electric intended for their bid; still, it's an Assembly decision on whether to waive or not waive that mistake; if ruled as a mistake, the Assembly can rule that Tongass Electric's bid was non-responsive.

Mayor Jack stated that with Tongass Electric's mistake on their bid modification, it would not be in their favor for other bidders to know their bid.

Jabusch said that if the Assembly threw out Tongass Electric's bid because of the modification error, Bunes Electric would then be the next lowest bidder and the Local Preference would not apply and the late electric bill wouldn't matter because that provision wouldn't be considered.

Jabusch said that if the Assembly decided that the mistake by Tongass Electric was an informality that they were willing to waive, the next step would be to consider whether they would want to apply the Local Preference provision and whether they would want to waive the provision of the delinquent account at the time of the bid opening; the Assembly needs to figure out if they want to consider that provision at the time of the bid or the award and/or if the Assembly wants to waive that formality.

Jabusch stated that the Attorney had said that as long as the Assembly discusses either/and or all options and decides what's in the best interest of the City then the provision to waive any informalities for what's in the best interest of the City would be appropriate.

Jabusch also stated that in our Code, under section 1, it says that "you shall award to the local preference"; section 2 says that section one does not preclude you from doing whatever is most advantageous in the interest of the city.

Jabusch stated that the Assembly needs to decide:

1. Whether the informality and the language in the bid packet was violated by Tongass Electric enough to throw their bid out; there is no language in there that says that the Assembly "shall" do that; and
2. Where Bunes Electric qualifies for the Local Bidder Preference; and
3. What is the most advantageous in the interest of the city?

Assembly Member Rooney said that her interpretation of the informalities on if Tongass Electric's bid and modification were compliant or not, it seems that they were all recommendations because they do not say "shall". Rooney stated that at least in the first part of the consideration, she would be inclined to say that Tongass's bid should be accepted.

Assembly Member Gilbert said that in her view, all three parties (the City, Tongass Electric, and Bunes Electric) entered the bid with the best of intentions; any discrepancies should be waived; our bid package wasn't stellar either; there are errors in all three areas. Gilbert said that it comes down to a subjective call, rather than an objective call.

Assembly Member Powell said that if we throw out all of the discrepancies, he would be inclined to follow our ordinance; the Local Bidder Preference should be applied; should follow our ordinances that we have in place.

Rooney agreed.

Assembly Member Prysunka stated that we took the time to write an ordinance to say that we have a Local Bidder Preference, we should honor it. Prysunka said that if a bid modification was incorrect, we should reject the bid.

Prysunka stated that he was worried that if we don't follow the rules that were set out in our code, it may become more of a personality decision and not a rule.

Rooney stated that perhaps we should change our bidding documents to say "shall" instead of "should" or "may"; would help the Assembly to be more objective and not subjective.

Jabusch stated that Tongass Electric had made the argument in their letter that the Local Bidder Preference was not included in the Bid Documents. Jabusch said that it does say that all state and local laws and ordinances should be followed were in the bid documents. Jabusch said that we could look at the ordinance so that it could be more objective; Jabusch urged the Assembly to look at the second section in the code that says "what is most advantageous".

Gilbert stated that Tongass Electric did state in their letter that their employees would lodge, eat and shop here; would contribute to the local economy.

Prysunka said that Buness Electric didn't see Tongass Electric's bid and say "well, I will bid 3% under that". Both bidders ran their numbers and submitted their bid. Neither bidder knew what the other was bidding.

Powell stated that it's up to the Assembly to look at if it's advantageous to the City to apply the Local Bidder Preference to Buness Electric or not.

Manager Jabusch agreed that it's a case-by-case decision based on what is in the best interest of the city.

Gilbert asked if it would be proper to allow Tongass Electric or Buness Electric to add anything.

Point of Order was called by Prysunka. Mayor Jack stated that unless she had something to ask either or both parties, it wouldn't be proper.

Mayor Jack read off the suggested options for the motions that could be made:

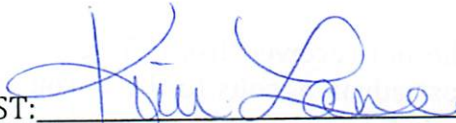
1. Move to waive any informalities in the bid received from Tongass Electric and to consider their bid responsive, and most advantageous to the borough after considering all factors in the public interest even when the price quoted by the local bidder satisfies subsection (D)(1)(a) or (b) of section 5.10.040 (D), and to approve a contract award to Tongass Electric for construction of the Wrangell Dock Lighting Project, as the lowest responsive, responsible Bidder as it may best service the interests of the City including both the Base Bid and Additive Alternate A, in the total amount, not to exceed \$246,577.79 with the funding for this project to come from the DCCED grant for the Commercial Passenger Vessel Facility.
2. Move to approve a contract award to Buness Electric for construction of the Wrangell Dock Lighting Project, as allowed in WMC Section 5.10.040(D) Local Bidder Preference Award, as most advantageous to the borough after considering all factors in the public interest even when the price quoted by the local bidder satisfies subsection (D)(1)(a) or (b) of section 5.10.040 (D), including both the Base Bid and Additive Alternate A, in the total amount, not to exceed \$254,440.00 with the funding for this project to come from the DCCED grant for the Commercial Passenger Vessel Facility and the Port Fund Reserves.
3. Move to approve a contract award to Buness Electric for construction of the Wrangell Dock Lighting Project, as the lowest responsive, responsible Bidder as it may best serve the interests of the City, including both the Base Bid and Additive Alternate A, in the total amount, not to exceed \$254,440.00 with the funding for this project to come from the DCCED grant for the Commercial Passenger Vessel Facility and the Port Fund Reserves.

4. Move to reject all bids received for the project and to rebid the project, as allowed in Section 00030 – Notice Inviting Bids in the Owner's Rights Reserved Section of the Bid Documents, as it may best serve the interests of the City.

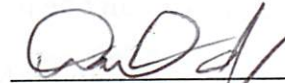
M/S: Rooney/Powell, to approve a contract award to Bunes Electric for construction of the Wrangell Dock Lighting Project, as allowed in WMC Section 5.10.040(D) Local Bidder Preference Award, as most advantageous to the borough after considering all factors in the public interest even when the price quoted by the local bidder satisfies subsection (D)(1)(a) or (b) of section 5.10.040 (D), including both the Base Bid and Additive Alternate A, in the total amount, not to exceed \$254,440.00 with the funding for this project to come from the DCCED grant for the Commercial Passenger Vessel Facility and the Port Fund Reserves. Motion approved unanimously by polled vote.

Special meeting adjourned at 12:43 p.m.

ATTEST:



Kim Lane, Borough Clerk


David L. Jack, Mayor

