

September 23, 2021

The Board of Education of the County of Kanawha met in Special Session on Thursday, September 23, 2021 at the Board of Education Building, Charleston, West Virginia. The meeting was called to order by Board President Becky J. Jordon at 9:30 a.m.

PRESENT

Becky J. Jordon, President

Tracy White, President Pro Tem

Ric Cavender

Jim J. Crawford, Sr.

Ryan White

Thomas E. Williams, Secretary

Debra J. Lewis, Recording Secretary

ADMINISTRATIVE STAFF

Paula Potter, Deputy Superintendent

Lindsey McIntosh, General Counsel

Melanie Meadows, Treasurer, Budget & Finance

Alan Cummings, Executive Director, Purchasing & Supply Management

Keith Vititoe, Executive Director, Safety & Security

Chuck Smith, Executive Director, Facilities & Planning

Laura Pauley, Executive Director, Accounting

Leah Sparks, Executive Director, Technology

Kayla Donathan, Communications Specialist

OLD BUSINESS

Mr. Crawford-Mrs. Jordon, yesterday Mr. White asked for an opinion from the State Auditor's Office. I've looked it over very thoroughly and I'm in agreement with Mr. White, who is an attorney, and his suggestions and I would like for Mr. White to go over that with the Board.

Mrs. Jordon-We need to read this old business first don't we?

Dr. Williams- The highest scoring firm under Enclosure 47 and 48, of the September 16, 2021 Board Meeting, was CMTA. At this meeting the Board by a 3-2 vote, rejected the recommendation of the Superintendent to award CMTA the contract. During this meeting, Board Members questioned several elements of the process to county administrators, which needs further explaining.

DISCUSSION

Mr. White-I had some questions based on the meeting last week and I had some questions about what the process was for recommendations to us so I asked Dr. Howard O'Cull at the School Board Association if we have to pick what was recommended to us in the 5G and also whether the letter was sent, at some point I want to have that letter read, the letter that was sent to the vendors who didn't get the award, I'd like to have that read for the record for this meeting. Mr. Cavender-Can we do that now? Mrs. Jordon-Isn't that the same letter that all vendors get when they don't get it? Alan Cummings-I'd like to clear the air about this letter if we can. Mr. White-Just read the letter please, I'm not interested in any commentary until we read the letter and then you can comment on it. Alan Cummings-I'll have to pull that letter I don't have it with me at this moment. I don't want to hold up the Board from this discussion if you will give me a moment I will pull it up. Mr. White-I'll go on and you can read the letter later. So, I asked him some questions and you can see in the email that I sent what the questions I asked were. I asked about the letter being sent before the Board made a decision and he said it was his opinion that this was premature without any Board action. I also asked does the Board have to award the contract to the entity that the committee chose and he flat out said no. Mrs. Jordon-Who is he? Mr. White-This is Steve Connelly the General Counsel to the State Auditor, so we have discretion unlike what was stated in the previous meeting, we do have discretion on this. He also said that the Board of Education Members have the ultimate approval authority for the funds. Further there was some implication that the Board Members have inherent conflicts of interest and couldn't serve on committees and I asked him about that and he said I am not aware of any clear prohibition of a Board of Education Member participating in the interview process. That would be better addressed by the Ethics

DISCUSSION (continued)

Commission and it's my understanding that others Boards have their Board Members participating in committees. I also asked if it is true, as she alleges, that a flaw in the process of awarding contracts would put our federal funds in danger. Would it not be true as well that the sending of a letter, which as he stated as premature, would also put that in danger. He said I do not know whether either action, the Board reconsidering the vote and going forward with the award as is, or rescinding the RFP and starting over with local provision would trigger a callback. This is all new territory for every state and local government assessing what would or would not endanger the flow down funds. In other words, in my opinion if one of the actions does, then I think the other one does too because it was not done in the proper procedure. If that's the allegation that a callback is triggered because it is not done by the proper procedure then sending the letter also is. Finally, I asked the issue about the federal statute with local preference. He says federal law permits it and state law requires it for state purchases. That said I'm unaware if your Board of Education procurement policy requires it or not. My assumption is that your process does not acknowledge local vendor preference and that's why it was omitted from the RFP. If the Board of Education is lacking such a process and you decide to go forward with the award as it stands, you may consider adopting such a policy and mandating that it be expressly informed in any future RFP or purchase. So I think, we did receive a letter here from a non-attorney from the Department of Education stating their opinion, but he obviously doesn't have that opinion and we need to get more information from out an outside law firm with legal interpretation on that issue. Having said that, I don't think that, as I've said previously, my decision to vote against this was based on the letter that was sent. I think it is important to read that if you have that right now.

Alan Cummings-I pulled a sample letter to the one that was sent to ZDS. In the subject line it says EOI-22-110 architectural and design services for HVAC improvements to various schools. Thank you for participating in the expression of interest process to provide design services for HVAC improvements to various schools. We regret to inform you that your firm was not selected. We appreciate your interest in doing business with Kanawha County Schools and would like to encourage you to take full advantage of future opportunities. This letter is being emailed to you and via mail by vondamiddleton@mail.kana.k12.wv.us. If you wish to obtain additional details regarding the award of this contract all officially awarded contracts are available for public inspection at the Kanawha County Schools Purchasing Department, 3300 Pennsylvania Avenue, Charleston WV 25302. Again, we appreciate your participation in this process and we encourage your continued involvement. Sincerely, Alan Cummings, Kanawha County Schools Purchasing Director.

DISCUSSION (continued)

Mr. Cavender-What was the date on that letter? Alan Cummings-September 10th. Mr. Cavender-What date did we meet last week, the 16th? Alan Cummings-Yes. Mr. White-Just because something improper has been done for years doesn't mean it's proper. Alan Cummings-I think it's important to note that this letter was sent the same day that the agenda was published. At that time it was public knowledge. It's also important to note that this was sent only to the 6 vendors who were not the highest scoring vendors for this project. The recommendation itself went before the Board and we would not presumably assume that you were going to accept or deny this, but you should know that at this point and time the selection process dictates that we are to award to the highest scoring vendor. You as a Board, Mr. White you are correct, you can say yes or no, however the motion is what it is. You either, yes accept CMTA, or no you don't. You cannot go back at this point and time and select any one of the 6 that were considered by the evaluation committee. Mr. White-That is not exactly accurate. 5G says you look at the top 3 and it doesn't say anything about selection committee. It says the entity can select any of the 3. It first has to negotiate with the first one and then it can go to the next one if it is not satisfied with the negotiating. Mr. Cummings-You are referring to price. We are coming to you on the basis that this is the most qualified vendor. Price is not considered at this point. Mr. White-No, no, no. There is a price. Alan Cummings-Not during the selection of the process. Mr. White-In the actual contract there is a price and you are asking us to approve that with a price in there. You are saying you haven't negotiated it yet. Alan Cummings-We have at this point and time and I'll be completely transparent, at the request of the Board at times we have been told that we would like to see the contract as well and that's what we brought to you as well. So during the time that the evaluation committee selected this we also provide a draft contract for the Board to approve. Mr. White-Where did the price come from? Alan Cummings-It's negotiated. Mr. White-So it was already negotiated? You said it wasn't negotiated and now you are saying it wasn't negotiated so which one is it? Was it negotiated or not? Alan Cummings-Well the price is negotiated at that point after we select it and if it meets...Mr. White-So you are asking us to approve it prior to the negotiation? Alan Cummings-I don't follow, say that one more time. Mr. White-You are asking us to approve the person prior to us knowing what the price is going to be? Alan Cummings-No, you know because we have submitted that in the Board package. Mr. White-So you have negotiated it? Alan Cummings-On the Board's behalf but it is your....Mr. White-How did you negotiate it? What did you do, how did you negotiate it? Alan Cummings-We just asked them for their pricing. Mr. White-And you just said its okay? You asked them for their pricing and you said that looks good? Alan Cummings-I am not the subject matter expert when it comes to actual negotiations and I'll be the first to admit that. Mr. White-Then who is? Alan Cummings-Mr. Smith.

DISCUSSION (continued)

Dr. Williams-First of all we have a lot of things to discuss here and I want it to be clear that we do not follow, the county Boards of Education do not follow state purchasing regulations. We follow the WVDE purchasing instructions so a lot of what was said in the letter from the auditor really doesn't apply to us because we don't follow those regulations. Mr. Cavender-Is that policy 8200? Dr. Williams-Yes. Also....Mr. White-The auditor...Dr. Williams-Excuse me Mr. White, I am speaking and I did not interrupt you. Also in the letter that you received it has been vetted. The Board Attorney at the West Virginia Department of Education looked at this letter that we received this morning and approved everything that was in it so it has been vetted by an attorney. She states in the letter if you will read it, what our people have been telling us all along that we cannot give local preference to architectural work. We cannot do it. It's been signed off on by the attorney at the West Virginia Department of Education. We are not allowed to do it period. As far as the letter is concerned we've been doing it for years. You all have approved all of the contracts for years, it's not sent out until the board agenda is published. On the agenda it names the person that we are going to recommend so this letter just gives a way for the people to know they weren't recommended. The agenda, which is published, states who will get the recommendation to the Board. Of course the Board can vote to approve it or not to approve it. That's the bottom line. Melanie, you have some things you want to go through right now. Mr. Cavender-Just real quick, recommendation is different than selection and I think the word in the letter is you are not selected and Mr. White made it clear that we have the power to reject any proposal or bid that comes to us. That letter is presumptuous. Lindsey McIntosh-Actually, there is 3 things. There is a selection, a recommendation and a board approval. This letter states selected. That selection was done by the selection committee. The selection committee then brings that to Dr. Williams and he makes the recommendation to the Board and then you approve it. This letter states you were not selected and that's fact. You are then recommended to the Board which is something that we do with any type of recommendation that Dr. Williams makes to the Board. If we have a job applicant and there are 5 applicants, the people that are not going to be selected by the selection committee they are also told prior to the Board Meeting that, by the way we don't want you to be caught off guard, but you aren't going to be recommended tonight because you were not selected. It doesn't necessarily mean, and you all know this, that you can't approve it. You can decide whether you want to approve that recommendation or deny the recommendation. This letter could use an edit to say still pending approval but factually that is not incorrect. They were not selected, and Mr. White in the email that you read where there is blue and red, I don't know who did the blue comment, but I think that part was left out whenever you stated it. The person wrote in blue said that since this practice with letters have been in place for several years and our auditors have never had an issue with them before I do not feel it would be an issue now.

DISCUSSION (continued)

I just wanted to make sure that was clear. Mr. White-Where was that? It's not in mine. Melanie Meadows-Ms. McIntosh I sent that letter to you and Dr. Williams and I had planned to hit on some of those points in today's meeting. Mr. Cavender-So that is Mrs. Meadow's comment and not the auditor's counsel comment? Mrs. Meadows-When I am able to speak I will touch on some of those points with Mr. White. Mrs. White-Dr. Williams, you had stated that we cannot go by local preference as it is written now meaning it can be changed or we can't do anything about that as far as federal dollars? Dr. Williams-We can't change it because we follow policy 8200. Policy 8200 is written by the State Department so they would have to make that adjustment. Mr. Cavender-Okay, just real quick, just to be clear because I have read Policy 8200 several times it doesn't expressly say anywhere that we cannot it just doesn't say we can. Melanie Meadows-When it's my turn to speak I have several things to touch on. Mr. Cavender-Local preference isn't really the term, its geographical location. Melanie Meadows-There's a tie between 8200 and 2CFR200. Mr. Crawford-Basically what you are saying is that this Board doesn't have the authority to put local preference in the RFP....Mr. Cavender-Geographical location and we don't know that, because we haven't got a legal opinion. Dr. Williams-No sir, we do not have anything according to the State Department of Education and their attorney....Mr. White-They did not sign that letter. Mr. Crawford-There's a conflict of opinions whenever the State Auditor Office says that we can do that. Dr. Williams-Mr. Crawford we don't follow the state purchasing guidelines....Mr. Crawford-I heard that Dr. Williams and I understand that we are not following that, but I'm asking why can't we do that? Dr. Williams-Because the State Department of Education says we have to follow their rules in Policy 8200 and that's all county Boards of Education, not just us, in purchasing have to follow those rules. We don't have a choice. Mr. Crawford-But then what you are saying is the State Department of Education is denying what the State Auditor's Office is saying? Dr. Williams-They also, in this letter that they just sent this morning, said they checked with the state purchasing department so they could put that in here. The state purchasing department and the state Board of Education attorney agrees with this letter right here that we cannot allow for geographical preference. Mrs. White-Just to be clear, even if it did and even if we did go by geographical location, CMTA by definition is a local company correct? Dr. Williams-By definition yes. Mr. Crawford-Based on that information, I think we need to have a revote on this contract to see where it goes. Melanie Meadows-I have several things that I would like to share. Mr. White-I'd like to still talk about everything. Mrs. Jordon-Let Mrs. Meadows talk and then we will finish the discussion. Mrs. Meadows-A couple of points from the previous meeting and then I will circle back to what Mrs. McIntosh was referencing about Mr. White's communication with the State Auditor's Office. You all received a copy of an email that I

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sent to Dr. Williams earlier this week. I sent it on Monday. Essentially the reason I wrote this email is we are taught in the audit world that you have to write a document so that 10 years from now if the feds come in to review you have to remember what happened with every dollar that was spent, so I wanted to write this so it was fresh in my mind and I wanted everybody to have a copy, that is the purpose behind this email. The first thing I wanted to mention it seemed that there was some confusion during last week's meeting about us referencing 2CFR200 and saying that we cannot give geographical preference in terms of any federal award. There is a sentence in 2CFR200 that specially references local preference within architectural and engineering services. The issue is further down in 2CFR200, 318A it references that we also are subject to our own policies, so essentially what you have to think about is you have to kind of picture that you take 2CFR200 and put it on the table and you take policy 8200 and set it on the table and we have to take our own policy and set it on the table and whatever has the strictest language in terms of the feds is what we have to follow when spending federal dollars. Because 8200 only gives us statutory authority to use local preference in terms of commodities and printing services, that's all we can do with federal dollars. There is no room, no allowance, no nothing that we can do that would allow us to give geographical preference. For the record, I want to say when we are not dealing with federal dollars, we always look at geographical preference in every procurement that we do that we are allowed to do, because we also agree that that is very important. That was the first point that I wanted to make. The second point that I wanted to make, outside of everything else that we are talking about, the one thing we have to remember with our ESSERF money is that the WVDE is our Grantor we are a sub-grantee of them. They send the money down to us. Not only are we subject to review from our own auditors and the federal government, but we are subject to review from the West Virginia Department of Education so we are held to their interpretation. When they come in to monitor us, so even if I didn't agree with their interpretation, even though I do, we have to be in compliance with what they say we have to do so that's the other thing I wanted to mention in terms of federal dollars. So what Ms. McIntosh was referring to Mr. White is late yesterday Dr. Williams forwarded me your email from the state auditor's office where you communicated with Mr. Connelly and I went back in late yesterday evening and added some comments to Dr. Williams and Ms. McIntosh that I wanted to share in today's meeting. Mr. Connelly had some very good points, but I will say that Mr. Connelly references state purchasing policy and we are held to policy 8200 not state purchasing policy so a couple of the things that he actually said about state purchasing policy are not applicable to us and that is part of what Amy Willard confirmed when she spoke with state purchasing this morning. The first mention that I wanted to say is Mr. Connelly mentioned something about maybe we can start over and make local preference part of the process since it seems that the Board is interested in

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that in this particular bid because it is federal funds. No we cannot, we cannot because it is federal funds and I even added I said Mr. Connelly seems to think that we are subject to state purchasing policy and we are not. We are subject to WVDE 8200 and because of that we would not be able to give geographical preference. The next point of mention is I want to make it clear that I never claimed that the Board can't reject a bid. You can vote down anything you want. What I said was that I had strong reservations about you voting down a bid that was properly procured. That was what I said. It was in compliance with all of our rules and regulations. In terms of the letters that was sent, I can see how it may be deemed as premature and I also agree with you Mr. White, just because something has been done forever doesn't mean it's okay to continue doing that. I actually hate it when someone says that, but we can add the language that says pending Board approval just like Ms. McIntosh was saying. These have been part of our standard procedures long before my tenure or Mr. Cumming's tenure. The very last point on the email was Mr. Connelly says federal law permits it and state law requires it, but again we are not state purchasing we are subject to Policy 8200 so those were the points that I wanted to make based on the communication from the State Auditor's Office. Mr. Cavender-I have a question for Mrs. Meadows. I totally understand what you are saying with policy 8200 you explained it, but where I got concerned at with the meeting last Thursday was once I had outlined my concern that yes, you are correct that it doesn't expressly say that we can use geographical location for a qualifier for architectural engineering services, in policy 8200 it also doesn't say we can't. I understand we have had conversations before where your position is if it doesn't expressly say that we can do something you assume we can't. Is that your position? Melanie Meadows-That is my position, but it is also the position of the WVDE who we have to follow especially in terms of them being our grantor. Mr. Cavender-So using that logic then, I just wanted to understand everything, for any other qualifier that we would want to see in a process like this policy 8200 would have to be amended. That's how strict you and the other folks believe policy 8200 is. Melanie Meadows-Yes. Mr. Cavender-Again, I've really yet to see a legal interpretation of that, not that I don't believe you, please don't take that as an insult, I find you to be very talented. When I'm looking at a policy that the legislature passed...Mr. White-The legislature doesn't pass the policy. Melanie Meadows-The Board of Education passed policy 8200. Mr. Cavender-Considering it is a policy that we have to follow, I would like to hear a legal interpretation of that just because it says there is no language that says we can use it does that mean in fact that we can't use it, because I still haven't read anywhere that we cannot. As a matter of fact, I understand that we aren't following federal code here. Where I got confused was that you all were referencing 2CFR200 319 to me after I had refuted you, then you brought up the federal code and the federal

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code expressly says we can. Mrs. Meadows-The federal code says that we have to follow our code or the strictest code. Mr. Cavender-Not to make this a loop here, that is where I get confused because if the strictest code is Policy 8200, Policy 8200 doesn't expressly say that, we cannot use it and that's where I have somewhat of an issue. Mr. White-I have a question for Ms. McIntosh. You said that the word selected is somehow different, so when the code says there is some administrative part that can select something and that the Board doesn't do the selecting so why are we even asked to approve of this? Lindsey McIntosh-Because you approve whether or not the selection is going to the most qualified person. Mr. White-So who does the selecting? Lindsey McIntosh-The selection committee. Mr. White-That's what the code says. Lindsey McIntosh-That's what happens. Mr. White-But the code says that the committee makes the decision. Lindsey McIntosh-They selected based on the qualifications. Mr. White-Who makes the decision? Lindsey McIntosh-You ultimately make the decision. What you stated in this email is actually not what anybody here stated. We said you could vote up or down. I just said it wasn't advisable because you did not state anything that was done wrong in the selection. Mr. White-Okay, but why was something sent out that said they were not selected when the Board has not approved it. Lindsey McIntosh-Because they weren't selected. Mr. White-But that selection is not valid until the Board approves it otherwise we don't have to approve it. Lindsey McIntosh-Think about this the way we do employees. Whenever you hire an employee or you are looking at employees to hire and you guys approve administrators like principals, a selection committee is put together, they do the interview, they figure out the most qualified candidate. That is the selection. Then Dr. Williams looks at that selection and says this is the person that I want to recommend to the Board. He then makes a recommendation and you guys approve it and we have been through this so I know you know this. Mr. White-Oh, I know. Lindsey McIntosh-This is the same process. There is a selection, there is a recommendation and your jobs are to vote yes or no to the recommendation. Mr. White-And we can question the selection. Lindsey McIntosh-You can question the recommendation absolutely. Mr. White-I believe a letter saying you are not selected is premature. And I think that what we do with employees is that we say you are not going to be recommended. If it had said you are not going to be recommended that's fine. Lindsey McIntosh-The recommendation happens after the selection. Mr. White-You are not selected in my mind and I think most people would agree that if you are not selected it's final. Finality. Lindsey McIntosh-No. You are not Board approved is finality and maybe there needs to be something in the letter that says this is still pending Board approval but either way Mr. White, this isn't a rational basis to deny an RFP. Mr. White-Yes it is. Lindsey McIntosh-A letter going out is not. You still did find anything wrong with the RFP. Mr. White-I have questions on that. Lindsey McIntosh-That's what we are here to answer. Mr. White-I think it is because it's part of

DISCUSSION (continued)

our policy that you send a letter that said you are not selected to the ones who didn't get it, is that part of our policy? Lindsey McIntosh-I don't know if it is part of our policy but it is part of the practice. Mrs. White-I get the point of, obviously if someone isn't selected our agenda goes out 3 days before and I get that you don't want someone to see that they weren't selected, recommended, chosen, whatever word we choose. I get that you don't want to see it on a public document, but the only issue honestly that I have is that September 10th was when they were notified and September 16th was our meeting. That's not a 3 day window so maybe we could send an email that says the day of the meeting before we put this out that says you weren't selected and follow up with a letter later. Dr. Williams-That's the Friday before Mrs. White and that's when the agenda was sent out. Mr. Cavender-I have a couple of questions in regard to CMTA quickly. I had made the comment in the email that I sent to you all and a few others, when we are talking about a local company, I understand that local preference is not a term we want to use, geographical location is what we need to use, I totally understand that, but when we talk about a local company, I went back and watched the video that we were shown two meetings ago, the well-produced video with the drone footage of our HVAC systems, and what struck me, I decided to look up a few of the folks that CMTA that had in the video and I think the majority of them aren't even residents of West Virginia. They are residents of Kentucky. I get it, there are times that this happens, we end up hiring firms that are not from here and there is nothing we can do about it and tough luck right, but it just did not sit well with me and if I remember this correctly it was a while back, and this is a legal question, are we allowed to give references to, like whenever a company comes that we have hired in the past and that want a reference letter, are we allowed to provide reference letters to them? Lindsey McIntosh-As a Board Member? Mr. Cavender-No, as a system. Mrs. Jordon-Like Mr. Smith writing one since he has dealt with them. Like if Boone County asked about a roofing company. Mr. Cavender-I thought we a policy that a public entity can't write a reference letter. Lindsey McIntosh-Can and should are what matters here. We have previously said that we don't do that because we are not in the business of advertising for private companies. Mr. Cavender-In that video, let's face it, there were 3 different KCS employees that were advertising for CMTA. Lindsey McIntosh-I think they were advertising for the good work that is happening in the county so people know what is happening in the county but however you want to interpret it. Mr. Cavender-I only interpret it because they said CMTA did this great work. That's not interpretation, that's a fact. I think there are consistency issues with that especially, this is not in disrespect to CMTA, they do great work. This company does have an office here, Washington Street in Cross Lanes, wherever that is but the principal office is in Kentucky and the majority of their employees in that video are from Kentucky and that makes me not the most comfortable with the situation. That's why, when we are talking about local

DISCUSSION (continued)

preference, we can't use that term and I understand why. I believe if Policy 8200 is open to interpretation at this point, still to get another opinion, I think we need to look at that. Lindsey McIntosh-I think that something that hasn't been noted here, it was noted in the letter and in the auditors letter where there was some indication that there wasn't a local policy, there is a local policy it is D14A which was last revised in May of 2018 by this Board that states in 15.06 resident vendor preference and it states how that is considered based on what you all put into this policy in 2018 CMTA, am I correct would be a resident vendor so that was updated by you all and would have been approved. Mr. White-I have a question. I want to talk to Mr. Smith please. So how is the 7% determined? Chuck Smith-The architectural rates have a sliding scale that the SBA uses as guidelines. We utilize that scale it maxes out at 7% based on the size of the project. After that it becomes a negotiated fee. As this was basically 13 individual projects the 7% was a good rate for what we are getting. Mr. White-Did you try to get them down? Chuck Smith-Yes. Mr. White-And they wouldn't do it? Chuck Smith-7% was the best that I could get. Mr. White-Did you go to the next one and ask them or not? Chuck Smith-They didn't score the highest. Mr. White-It specifically says you can do that right? Chuck Smith-Yes, I felt confident with the rate I felt that it was a good rate. Mr. White-I asked 3 separate contractors. I have an office with a contractor and I asked them about a \$30 million HVAC improvements at 14 different schools what would be a going rate for architectural services and they came back at 5%. I asked another HVAC guy and he came back at 5%. Chuck Smith-I'm not 5% at Hoover sir and that's a \$100 million dollar project. Mr. White-I've been told that other school boards in the state has a HVAC at 4-6%. It was a similar type of thing with the Mercer County Board and they have a contract. I've also been told by another contractor that I called up that I'm friends with and I asked the exact same question and he told me 5%. I don't know why if you tried to get it down and they wouldn't budge why you didn't go to the next one. That doesn't sound like negotiating to me. Chuck Smith-Mr. White if you look at the individual projects your rates are going to be 9% or more and that's 13 individual projects. Mr. White-They should get a volume discount which you said 7% is the highest, so we aren't getting a discount, those were your words. Chuck Smith-No sir, 7% is the maximum that they quit calculating as the dollar values go higher. At that point it becomes more of a negotiated fee. The standardization maxed at 7% as a minimum percentage because of the volume. Where you have one project at \$32 million compared to 13 projects at 9 or 10%. I felt 7% was a good rate and also you need to take into consideration there are different levels of HVAC system designs. Some contracts you might be talking about 5% for a simple swap out replacement for the drawings. We don't do that in this county, we do fully-designed systems to operate effectively and efficiently to get the best bang for the buck. These are more detailed projects than just a simple swap out and based on the 41 years of experience that I have

DISCUSSION (continued)

I felt that was a good rate. Mr. White-I understand that you think it's a good rate, but I think based upon the fact that you did not try to at least check with the other vendors to see what their rate was. Chuck Smith- I didn't feel they were the best qualified candidate. Mr. White-I think the Board needs to know what the other rates would be if we are making the decision. Another thing, I think we were told at the last meeting that we couldn't split out these contracts because of the way that the RFP was done and I read the RFP and the RFP, which has numerous typos, specifically states the Board of Education considers design construction of these facilities as separate projects and through the qualification process reserves the right to award to separate groups and then it states in italics so at the end it says again, these are individual projects that can be individually or as a group. I can't see how we cannot award it to more than one because it specifically states that and the email we received from Mrs. Meadows said we shouldn't do that because of economic blah, blah, blah but we just heard that 7% is the only quote that we got so we have no idea if it would be more economical to go with separate ones or not. I think there is a good possibility, based on the information that I have received, that we could get a lower rate and make it more economical, so if the sole purpose of not separating it is because it's not economical. I think there is a possibility that that is inaccurate because I think we could get a better rate. Mrs. White-What is the rate that CMTA is getting for our levy projects? Chuck Smith-That is a completely different animal. The way that is done is completely off the charts. Dr. Williams-First of all I think when you check with contractors and they don't know exactly what they will be doing because they don't have the drawings and they don't understand the enormity of the projects, it would be difficult for them to give an idea of how much they would charge. I believe Mr. Smith just said if they were broken out into individual projects it could be up to 9% which would be considerably more than one total project at 7%. Mr. White-So you are saying it's unreasonable for us to ask for what the others would charge if we were interested in doing more than one contract? You are saying that is totally unreasonable? Dr. Williams-No, I am not saying that it is unreasonable. Mr. White, please don't put words into my mouth. What I did say was that Mr. Smith has told us with his 41 years of experience, if these projects were broken out individually that it could be up to 9%. He also said that he felt they were the best person for the project and he got them to 7% so I don't see where there is any question. I do think that we have the best deal that we can get. Mr. White-I think we need more information before making a decision on this because I think it would be very attractive for breaking it out and I would like to get a sense of what the others would charge.

Mr. Ryan White moved: That we table this discussion until further information is provided. Motion was seconded by Mr. Ric Cavender.

DISCUSSION (continued)

Mrs. White-Can I ask the time frame? I know that we have a time frame that we can use these funds. Pushing back would that affect this time frame? Dr. Williams-We would take projects off because we wouldn't be able to complete them by the time the money has to be spent by. Mr. White-Point of order, I think a motion to table is non-debatable.

Mr. Crawford-What is the timeline to have this project completed? Dr. Williams-June 2024. Mrs. Jordon-There's a motion on the floor, call for the question.

Dr. Williams-This motion is to table the discussion.

The above motion failed 3-2 with Mrs. Jordon, Mrs. White and Mr. Crawford voting No.

Mr. Crawford-I think we need to get this settled today. We have dilly dallied around with it so long and I personally think our kids need these projects finished so they will have a comfortable place to get their education. I'm not happy with how this turned out, but again, I think the deputy auditor said we might consider continuing on with this project and work out straightening things that we want done in the future and possibly put a local preference in the RFP if the law allows it. Mrs. White-Can we as a Board request that they change their policy and add that? Dr. Williams-Sure, we can make a recommendation to the State Department. Mr. Crawford-Not only that, but have a Board Member serve on it because I definitely know from past experience and talking with other board members from other counties whenever they have a project like this the architectural firm usually shows up at the board meeting and makes their pitch and the 5 member board decides who gets the project. I know that has happened in West Virginia by talking to other board members at State meetings. Mrs. White-Mr. White had brought up having a Board Member to set in on the selection committee. If that is done, would that Board Member since they are part of the selection committee, have to reclude themselves when voting and not being able to vote at the final? Dr. Williams-That's a Lindsey question. Lindsey McIntosh-That would be a concern because they are involved in the selection process so therefore they have information that would probably preclude from participating as far as a voting member. I believe the policy states, that nobody that had a part of the process shall vote on it, am I correct Alan? Alan Cummings- I would have to review it, I don't have it in front of me. Lindsey McIntosh-It does create a conflict because they selected it. Now you guys can always ask questions of the selection committee and be there, but as far as making the selection, I would not advise that you be a part of the selection. I think if you are part of the selection and part of the vote that puts you in inherent conflict. Mr. Crawford-Your advice is well taken and I see that every county is doing that and nothing is ever said. That's my personal opinion. Mrs. Jordon-We have a lot more bids and a lot more staff

DISCUSSION (continued)

than any other county Mr. White-If we do it, I think it would be over a \$10 million dollar project. Mr. Cavender-Real quick, just a request, I'm going to move past this Mr. Crawford is right we need to move past it and the bottom line is at the end of the day the process was followed as our policy states and we have to move to move past it. I don't agree with parts of it, as you know, but what I would ask for the future can we immediately, we've asked this 3 or 4 times since I was elected in 2016, can we further research policy 8200 and get a legal opinion that actually tell us that since it is not in there that it means we can't and if we find out that maybe we can, when we get around to our next RFP process can we as a Board pass a policy in our procurement process that would allow if appropriate geographical location to be a qualifier? Can we research that and maybe get a policy presented to us? Lindsey McIntosh-When you say a legal opinion Mr. Cavender, I'm not sure who you are asking a legal opinion on because I have given it, so I guess I need clarification. Do you want an outside lawyer to look at this and give a legal opinion on? Mr. Cavender-Mr. White had mentioned earlier about outside counsel. I'm not saying that your opinion is wrong Ms. McIntosh. You are saying from your legal opinion because they don't say we can do it that means we can't? I would love to hear that answer. Lindsey McIntosh-I believe what the Supreme Court has said. Yes, they are saying that this is restricted but I can offer you a memo if you would like to listen to it. I can write one for you. We've already stated what we believe the policy is and how it should have been followed. I don't know what more we can give you. Mr. White-Have you ever sent us a memo? Lindsey McIntosh-On this no, I've never been specifically asked. Dr. Williams-It also states right here that I have confirmed my interpretation of the applicable statutes with WVDE General Counsel Heather Hutchins and with individuals from the West Virginia State Purchasing Division, the WVDE General Counsel has already said that this is correct. Mrs. White-I would like for us as a Board to draft something that is sent to the folks that can change this. Dr. Williams-We certainly can do that. Mr. Cavender-I agree. Mrs. White-I think we are all in agreement that we need to use local folks as much as we possibly can. This is something we can't change, so if we could put our opinion out to the people that can. I feel as a Board that we should voice our opinion. Mrs. Jordon-Keep in mind that CMTA has a shingle here and they are local. Are they a bigger presence than ZMM, maybe not? Mrs. White-I hope that all of our bids get the attention that this one has gotten. Mr. Crawford-There are several good architects in the City of Charleston. Mr. Cavender-I just want to go on record again that the term local is relative. We could say the Southbridge Walmart is local but we know it's not a locally owned company there is a difference. Mr. Crawford-They didn't bring an office into Kanawha County until after they got a contract year before last. Mr. Cavender-There's nothing we can do we can't dwell on the past Mr. Crawford-Once they got the contract they used our money to put a satellite office in the county. Mr. Cavender-Yes. Mr. Crawford-Let's get together here and do the right thing

DISCUSSION (continued)

for these children and the people in the community. I just feel like I'm not satisfied with it but we can improve it. I think we need to have a revote and move on. Mr. White-Point of order. Before this motion is made. Isn't it true if you make a motion that's passed it cannot be made again and it would have to be a motion to reconsider by a non-prevailing party? Lindsey McIntosh-This is not a motion to reconsider, it's a motion to renew which is different. Mr. White-Isn't that the exact same thing? Lindsey McIntosh-No, it is not. Mr. White-what is different? Lindsey McIntosh-The difference is in a motion to reconsider, you do it in the same meeting or a meeting that is the following day per Robert's Rules of Order. A motion to renew can be done at any time after a failed vote or an approved vote. It's not usually recommended that you do it more than once because the Board makes a decision and it is supposed to be made, however, it is an option that Boards have when they have been presented with differing information which you have been today. Mrs. Jordon-Mrs. Meadows, I really appreciate your email the other day it clarified a lot I felt. Mr. Crawford-I have to say that I respect Amy Willard's opinion and I respect yours. I'm not being critical of any of our people, I think we are entitled to ask questions and if we don't do that than we are not doing what we are supposed to do.

Mrs. Tracy White moved: I move the Board enter into contract with the highest scoring firm, CMTA, to provide ESSERF funded architectural and engineering design services for HVAC improvements at: Sharon Dawes Elementary, Ruthlawn Elementary, Elkview Middle, Sissonville Elementary, Chamberlain Elementary, South Charleston Middle, Pratt Elementary, Bridgeview Elementary, Shoals Elementary, Central Office, Montrose Elementary, Regulatory Training Center and Edison per EOI #22-101 as shown in Enclosure 47 and 48. Motion was seconded by Mr. Jim J. Crawford and carried 3-2 with Mr. White and Mr. Cavender voting No.

ESTABLISHMENT OF MEETING DATES

- A. Thursday, September 23, 2021, 9:30 a.m.-Special Session
- B. Monday, October 4, 2021, 6:00 p.m.-Special Session at Piedmont Elementary
- C. Thursday, October 21, 2021, 6:00 p.m.-Regular Session
- D. Monday, November 1, 2021, 6:00 p.m.-Special Session at Mary C. Snow West Side Elementary

ESTABLISHMENT OF MEETING DATES (continued)

- E. Thursday, November 18, 2021, 6:00 p.m.-Regular Session
- F. Monday, December 6, 2021, 6:00 p.m.-Special Session at Riverside High School
- G. Thursday, December 16, 2021, 6:00 p.m.-Regular Session

NOTE: The above meetings of the Kanawha County Board of Education, unless otherwise indicated, will be held in the Board of Education Building, 200 Elizabeth Street, Charleston, WV.

ADJOURNMENT

Mrs. Tracy White moved: That the Special Session of the Board be adjourned. Motion was seconded by Mr. Jim J. Crawford and unanimously carried. The Special Session was declared adjourned by Board President Becky J. Jordon at 10:26 a.m.

President

Secretary

djl

9/27/2021