



KERN HIGH SCHOOL DISTRICT

5801 Sundale Avenue
Bakersfield, CA 93309-2924
(661) 827-3154 FAX: (661) 827-3301

BOARD OF TRUSTEES

Special Meeting
October 27, 2011

OFFICIAL MINUTES

PRELIMINARY

Call to Order

The October 27, 2011 Special Meeting of the Board of Trustees of the Kern High School District was called to order at 11:05 a.m. by Board President Bryan Batey, in the Board Room of the Administrative and Support Services Office, Kern High School District, 5801 Sundale Avenue, Bakersfield.

Members Present:

Bryan Batey, President
Chad Vegas, Vice President
Martha Miller, Member
William R. Perry, Ed.D., Member

Member(s) Absent:

Mike Williams, Clerk

Administrative Staff Member(s) Present:

Donald E. Carter, Ed.D., Superintendent
Mike Zulfa, Assistant Superintendent, Instruction
Scott Cole, Assistant Superintendent, Business
Rebecca A. Shipley, Administrative Assistant to the Board of Trustees and Superintendent
Gracianne Ashmore, (*Incoming*) Administrative Assistant to the Board of Trustees and Superintendent

Administrative Staff Member(s) Absent:

Bryon J. Schaefer, Ed.D., Assistant Superintendent, Personnel

Election of Clerk Pro-Tem

It was moved by Trustee Vegas, seconded by Trustee Perry and carried with a four (4) yes, one (1) absent vote (Trustee Williams) that Trustee Martha Miller be elected Clerk Pro-Tem for this meeting in the absence of Trustee Mike Williams.

Adoption of Final Agenda

It was moved by Trustee Vegas, seconded by Trustee Perry and carried with a four (4) yes, one (1) absent vote (Trustee Williams) that the Final Agenda be approved with changes as announced by Superintendent Carter.

COMMUNICATIONS

Communications

No communications were shared with Trustees at the Board meeting. Superintendent Carter reported that all communications received for the Board of Trustees have been forwarded to the Trustees under separate cover or prior to this evening's Board meeting.

SUPERINTENDENT'S REPORT

No Items

Superintendent's Comments on District Activities

**Superintendent's
Comments on
District Activities**

No report.

HEARING OF CITIZENS

Hearing of Citizens

Requests were submitted to address the Board of Trustees regarding an appeal hearing, and those requests were heard under the presentation of the Award of Bid item under the Business Division.

BOARD OF TRUSTEE REPORTS, INQUIRIES AND/OR ITEMS FOR ACTION

**Board of Trustee
Reports and/or
Inquiries**

No reports.

SUPERINTENDENT'S OFFICE

No items.

INSTRUCTIONAL SERVICES

No items.

PERSONNEL SERVICES

No items.

BUSINESS SERVICES

**Award of Bid No.
2722 – South High
School
Modernization
Phase2 – 2006 – Re-
roofing Buildings, A,
B.**

Staff recommends that the Board of Trustees Award Bid No. 2722 – South High School Modernization Phase 2-2006: Re-roofing Buildings A, B, C1, C2, C3, C4, C6, D1-D5, E1-E2.1, F1-F1.1-F2.1, H, I, J, K, M, N, O & Building Additions to Best Contracting Services, Inc. in the total base bid amount of \$1,571,350.00. Two bids were received in response to Bid No. 2722, the second one from Graham Prewett, Inc. in the total base bid amount of \$1,590,000.00. Sean Prewett, President of Graham Prewett, Inc., presented a written request to the Board of Trustees to appeal the decision to award the bid to Best Contracting Services, Inc.

Bill Hornback, Legal Counsel with Schools Legal Service, framed the proper context for the bid protest. He reported there is a dispute between the low bidder, the next low bidder and Kern High School District as to the contract licensing requirements regarding the removal of asbestos-laden roofing from a construction project. Input has been received from all parties, including a letter from the State Licensing Board and two letters from the State Contracting Board. Letters from two individuals from the State Contracting Board give opposite views, which leads to legal counsel interpretation. "According to the final determination, the contractor has to be appropriately licensed, but it does not prohibit the awarding of a bid to a contractor who is not appropriately licensed. There is no clear language identifying which license is required and it is clear that cannot be used to reject a bid."

Joseph Nagel, Attorney for Graham Prewett distributed information for Trustees which was distributed after the Board meeting and a copy is on file with these official minutes. He reported the firm of Graham Prewett, Inc. was appealing the bid award recommendation because it was their understanding that the sub-contractors do not have the proper certification to perform the work.

Gary Graham, Vice President of Graham Prewett, Inc., reported that the first issue is the job schedule. "It is clear when work is to begin on Building C and when work is to be completed. If you reject all bids, and go out to bids...you still can have a completion date of January 19. You have plenty of time to go out to bid and change the starting date with the same completion date of January 19th. That can be put on us and is no problem. It is totally do-able within 30 days. The second issue is what is fair. The fairest thing is that the current job includes sub-contractors that will need to be changed. If these subs are used, they've already said they will come in and shut the job down. Thirdly, they shouldn't even be awarded the job to begin with. The only demolition on this job is the roof removal. Every building contains asbestos. Once you touch the roof, you have to have the proper asbestos removal certification." He encouraged Trustees to do the right thing and simply reject all bids. Director of Facilities Planning, Jack "Woody" Colvard responded to a Trustee question that only a small number of the buildings requiring demolition do not include asbestos.

Executive Vice President and Chief Legal Counsel for Best's Contracting Service, Inc. also talked to Trustees. He referred to Mr. Graham's arguments and commented that this appeal hearing is "...not about fairness or schedules." Regarding the asbestos removal certification, he reported the sub-contractor does have that certification. "Best's Contracting Services has two sub-contractors ready to assist with the project, and one of the sub-contractors does have the asbestos removal certification." He reminded Trustees that a bid does have to be awarded based on the law(s) in place at that time, not the potential of future laws.

In closing, Mr. Hornback advised Trustees that what is known is that there is disagreement between two people within the contractors' state licensing board who have expressed in writing some detail about what licensing is required for a sub-contractor to remove asbestos roofing. In 2009, the State Licensing Board said the C-39 license is not required. Yesterday, an individual with the same classification has said that he disagrees with that prior opinion and says that a C-39 is indeed required. "What you have is the left hand not knowing what the right hand is saying ... and we're supposed to know which one is right." Mr. Hornback further reported that either the contractor or the sub-contractor must hold the asbestos removal certification if asbestos removal is required. Within the State of California, once you are certified to remove

asbestos, you can remove asbestos wherever it is found.” He further reported that the sub-contractor in this case has a D-63 with asbestos removal certification, which is an appropriate license for the removal of asbestos-laden debris. There is the possibility that there may be additional clarification through the California Attorney General’s office, however, legal counsel’s suggestion is that it doesn’t matter what the end result is because Schools Legal Service has determined that the award of this bid is clearly within current law. “Having the right license is important at the time of bid.”

Counsel Hornback told Trustees they had three choices: 1) Reject all bids and go out to bid again on this item; 2) Award the bid and reject the appeal; or, 3) Set another board meeting and direct staff to come back with additional input on this issue which defers action on this issue until a future date.

President Batey called for the motion. Trustee Miller moved that the appeal be rejected and that Bid No. 2722 for the South High School Modernization Phase 2 – 2006 Re-roofing Buildings A, B, C1, C2, C3, C4, C6, D1-D5, E1-E2.1, F1-F1.1-F2.1, H, I, J, K, M, N, O & Building Additions be awarded to Best Contracting Services, Inc. in the total base bid amount of \$1,571,350.00. The motion was seconded by Trustee Perry. The motion carried with a four (4) yes, one (1) absent (Trustee Williams) vote.

CONSENT AGENDA

Items required by law and/or items in accordance with the District Administrative Code and/or the Education Code

Consent Agenda

No motion was recorded since no items were placed on the Consent Agenda.

Superintendent’s Office

No Items

Instructional Services

No Items.

Personnel Services

No Items.

Business Service

No Items

ADJOURNMENT

Adjournment

President Batey adjourned the Special Meeting of October 27, 2011 at 11:55 a.m.

J. Bryan Batey, President

Martha Miller, Clerk Pro-Tem

JH/WRP:bs