

**LANGLADE COUNTY BOARD OF SUPERVISORS**  
**SPECIAL MEETING – APRIL 29, 2010**

These Board proceedings are published as prescribed by Section 59.14(2) of the Wisconsin Statutes at County Government expense.

The Langlade County Board of Supervisors met in the Langlade County Board Room. Chairman David Solin called the meeting to order at 5:30 p.m.

On call of the roll, all Supervisors reported present, except Supervisors Rice, Bonacci, and Bornemann, who had asked to be excused. Motion was made by Supervisor Benishek, seconded by Supervisor Morse, to excuse them and the TAG students. All ayes, the motion carried. Supervisor Bornemann arrived at 5:35 p.m. Members of the public were also in attendance.

The Board recited the Pledge of Allegiance and observed a moment of silence.

Motion was made by Supervisor Morse, seconded by Supervisor Jansen, to approve the agenda as printed. All ayes, the motion carried.

Old Business:

**AMENDED RESOLUTION #49-2010**

**INTRODUCED BY: PUBLIC PROPERTY AND EXECUTIVE COMMITTEES**  
**INTENT: AWARD CONTRACT FOR THE WOOD TECHNOLOGY BUILDING -**  
**NTC ANTIGO CAMPUS (PROJECT #5775)**

**WHEREAS**, the Committees received twelve bids for the Wood Technology Building ó NTC Antigo Campus with each bid containing one (1) Base Bid and three (3) Alternate Bids (see attached Bid Tabulation); and

**WHEREAS**, bids are on file with the Project Architect, Somerville Inc., 2100 Riverside Drive, Green Bay, WI 5430; Phone:(920) 437-8136; FAX:(920) 437-1131; and

**WHEREAS**, the Base Bid represents the complete costs to construct the building without any deductions as set forth in the Alternate Bids; and

**WHEREAS**, after opening and publicly announcing the bids on April 16<sup>th</sup>, the Committees decided to select the Base Bid since this amount was less than the funding committed for the project; and

**WHEREAS**, since the Base Bid is in excess of the funding committed by the County (\$2,546,200), the County is eligible to retain the total grant award from the U.S. Economic Development Administration (EDA) for this construction project (\$1,280,000); and

**WHEREAS**, subject to confirmation by the Project Architect, the Committees determined that the lowest qualified bidder for this project Marawood Construction Services, Inc. of Marshfield, Wisconsin; and

**WHEREAS**, the Committees recommend awarding the Contract for Project #5775 to the lowest qualified and responsible bidder, Marawood Construction Services, Inc. of Marshfield, Wisconsin for a total bid of Three Million, Ten Thousand, Eight Hundred Twenty-Three Dollars (\$3,010,823), subject to confirmation by the Project Architect.

**NOW THEREFORE BE IT RESOLVED**, by the Langlade County Board of Supervisors, to award the Contract for the Wood Technology Building ó NTC Antigo Campus (Project #5775) to Marawood Construction Services, Inc. of Marshfield, Wisconsin, as the lowest qualified and responsible bidder, for a total bid of Three Million, Ten Thousand, Eight Hundred Twenty-Three Dollars (\$3,010,823) contingent upon concurrence by the EDA.

**BE IT FURTHER RESOLVED**, funds in excess of the Contract Award of Three Million, Ten Thousand, Eight Hundred Twenty-Three Dollars (\$3,010,823) shall not be committed to this project without the approval of the County Board by majority vote.

**BE IT FURTHER RESOLVED**, that work will not proceed on Project #5775 until such time as Langlade County receives EDA concurrence and approval.

**BE IT FURTHER RESOLVED**, that the County Board Chairman and the County Clerk are hereby authorized to execute all necessary contracts or agreements consistent with this Resolution.

**PUBLIC PROPERTY COMMITTEE**

Vernon Cahak  
Arlene C. Bonacci

**EXECUTIVE COMMITTEE**

Eugene Kamps  
Judy Karpf  
George Bornemann

**FISCAL NOTE:** The County has \$2,546,200 borrowed for this project, including a grant from the Federal Department of Commerce, Economic Development Administration (EDA) totaling \$1,280,000.

**ADOPTED BY THE COUNTY BOARD OF LANGLADE**  
**COUNTY THIS 20<sup>th</sup> DAY OF APRIL, 2010.**

Kathryn Jacob, Langlade County Clerk

Motion was made by Supervisor Klimoski, seconded by Supervisor Schultz, to bring this to the floor for reconsideration. On call of the roll to reconsider Resolution #49-2010 as amended, all Supervisors present voted aye, except Supervisors Benishek, Dahms, Olsen, Klimoski, Schultz and Jansen voted no. The motion carried.

Corporation Counsel Robin Stowe explained this special board meeting was requested by the Chairman and the Executive Committee after the County Board adopted Resolution #49-2010. When this resolution was last on the County Board floor, the County Board decided to waive the bid irregularity for all bidders regarding the requirement to file a completed Disclosure of Ownership form. Marawood Construction Services provided an explanation as to why they did not submit the Disclosure of Ownership form; that they were advised not to file this form by the Wisconsin Department of Workforce Development and that the form itself advising prospective bidders to file the form ONLY if two conditions exist. According to the bid documents, prospective bidders may only rely on the interpretations of the Project Architect, Somerville regarding bid requirements. However, the problem with that form is that a prospective bidder is to disclose whether they have had any problems with the payment of prevailing wage rates in the State of Wisconsin. The form clearly indicates that you should not file the form unless you have had those problems. The consensus of the County Board, as the Owner of this public construction project, was that a form can not be "completed" by simply signing the form or indicating that the form is not applicable. Therefore, the County Board waived that irregularity for all the bidders.

The County Board has decided to perform the work included in the total base bid without any deductions set forth in Addendums 1, 2 or 3. On this basis, Marawood Construction Services was the lowest qualified bidder given that the Board also waived the irregularity of submitting a completed Disclosure of Ownership form with the bid. Robin communicated with the Dept. of Workforce Development Attorney Howard Bernstein. It is the role of the DWD to oversee compliance with prevailing wage rate regulations on this public construction project. Mr. Bernstein said if the State were to audit this project, they would not find us in non-compliance if this form was not submitted by any bidder. In the determination of Attorney Bernstein, this is not a State requirement to submit this form with the bid. It was an owner requirement. Robin requested an official written statement from DWD confirming that it is not mandated by state law to file a Disclosure of Ownership form with the bid if the two conditions listed on the form do not apply. Robin is also concerned with the time constraints and the potential for delay if there is a bid challenge.

Robin presented this all to the Executive Committee. They decided to bring this back to County Board to reconsider this, with the potential to rescind the previous action, reject all the bids, and re-bid the project. The County still has the opportunity to reject all bids and re-bid the project since the parties have not yet entered into a contract given the "conditional" nature of the approval provided in the resolution.

Questions and discussion followed, including the Alternate Bid deductions.

Supervisor Karpf stated her motion at the bid opening meeting on April 16, 2010, was to choose the base bid amount from the lowest responsible bidder. With all ayes, that motion carried.

Motion was made by Supervisor Bornemann, seconded by Supervisor Schultz, to allow Dr. Lori Wyers to address the Board. All ayes, the motion carried.

Dr. Wyers stated "the EDA contacted the Technical College about their willingness to work with them on the project because of the collaborative nature. So they made the funding available to the College. They then pursued it. We have used those dollars to expand the project, based on a lot of discussion they have had. The College has put their resources in staffing and all the equipment, which is sitting in storage. They do not have money in the budget for a generator, a parking lot, or the other alternate items. That is what the EDA funds were for. They went under the impression that they were going to do those things. We have put a substantial million dollars worth of resources towards equipment, staffing, curriculum. This would create a great hardship for the College if you shifted in mid-gear with the Alternates, since they did not plan for that. That was part of the proposal submitted to EDA, they did not take that out. They connected the two and they put in the science lab. If they were now to go back and tell the EDA something different would not be a favorable thing to do." "They had said they could not afford those things, and that was their (EDA) intent to fund those things. If we take it back now, they will ask why do you need the money? If we pare it back now, that would not be a good plan because that is why they (EDA) gave us the money."

Robin stated there was a time when deciding how to bid out this project, that the Board's feeling was to keep this project as close to the original construction estimate of \$2.6 million as you can, even after the County received the additional money from the EDA.

Motion was made by Supervisor Morse, seconded by Supervisor Nonnenmacher, to allow a representative from Ellis Stone to speak to the Board. All ayes, the motion carried. He stated they followed the bid form checklist, which listed the documents that were required to be included with their bid. It stated "The following completed documents shall be submitted with the bid: The Bid Form, the Bid Security, Disclosure of Ownership." Ellis did follow the instructions and did submit the form. Ellis is merely asking that in fairness the Board could not waive this bid requirement, and award the contract to them as the lowest qualified bidder that met all bid requirements.

Motion was made by Supervisor Morse, seconded by Supervisor Hurlbert, to allow a representative from Marawood Construction to also speak to the Board. All ayes, the motion carried. He stated "Marawood had guidance from the State, that the Disclosure of Ownership form is not mandatory. According to State Statutes Chapter 66, the form is mandatory, only if it applies. It only applies if you have a prevailing wage problem. They felt they were doing

everything they could by following the bid instructions, and calling the State and getting their guidance that they did not need to file that form. He hopes they can contribute to the success of this project.ö

Motion was made by Supervisor Morse, seconded by Supervisor Zalewski, to allow another representative of Ellis Stone to speak to the Board. All ayes, the motion carried. He wanted to clarify reasons for the Disclosure of Ownership form. It is a policing form. The Architect is responsible for interpretation of bid documents. Ellis Stone Construction completes this form whenever it is required as part of the bid documents.

Supervisor Bornemann questioned if this is material enough to warrant not taking the lowest bid. We are talking about a form that everyone had written not applicable (N/A) across it and signed it, and one party had studied the form and called the State at the number that was on the bottom of the form, and received a reply stating öNo, they did not have to complete the form,ö so they did not file the form.

Robin stated if the bid was challenged, then the Board's decision would not be set aside unless a Court determines that the decision was arbitrary or unreasonable. If the Disclosure of Ownership form was a state mandate, then the County Board would not have the authority to waive this requirement. If the form is not mandated, as indicated by the State DWD, then whether this decision is arbitrary or unreasonable would depend on how the decision affects one bidder with a competitive advantage or whether it affects the lowest bidder's ability to perform the work at the same price, time, quality, or quantity. It would not be a mere irregularity or informality to waive any bid requirement that gives a bidder a competitive advantage or alters the bidder's ability to perform the work at the quoted price, time, quality or quantity.

Supervisor Morse stated he would like to have seen something attached to Marawood's bid explaining why they were not including the Disclosure of Ownership form.

Robin stated Resolution #49-2010 as amended is back on the floor. It awards the contract to Marawood Construction Services, because the Board waived the filing of that form for all bidders. He explained all the options for the Board.

Motion was made by Supervisor Bornemann, seconded by Supervisor Burns, to adopt Resolution #49-2010 as presented today. On call of the roll to adopt Resolution #49-2010 as it was amended on April 20, 2010, Supervisors Benishek, Karpf, Hurlbert, Bornemann, Cahak, Dahms, Nye, Bina, Burns, Klimoski, Schultz, and Solin voted aye, and Supervisors Nonnenmacher, Morse, Kamps, Zalewski, Olsen, Barnett, and Jansen voted no. This motion lost for lack of two-thirds vote. Robin explained that pursuant to the rules of the Board any action taken after a matter is on the floor for reconsideration requires a two-thirds vote to pass. Unless a motion is adopted by at least a two-thirds vote, then the original resolution remains unaltered. The reason for requiring the super-majority vote is to give some öfinalityö to decisions made by the Board.

Chairman Solin asked three times, öIs there another motion?ö Being none, Resolution #49-2010 is passed as it was adopted April 20, 2010, awarding the contract to Marawood Construction Services of Marshfield.

Motion was made by Dahms, seconded by Supervisor Hurlbert, to adjourn the meeting at 6:25 p.m. All ayes, the motion carried.

I, Kathryn Jacob, Langlade County Clerk, Antigo, Wisconsin, do hereby certify that the foregoing is a true and correct copy of the proceedings of the Langlade County Board of Supervisors Special Meeting of April 29, 2010.

Dated this 30<sup>th</sup> day of April, 2010.

Kathryn Jacob  
Langlade County Clerk

\*\*\*\*\*