

SOMERSET COUNTY VOCATIONAL BOARD OF EDUCATION  
SOMERSET COUNTY VOCATIONAL & TECHNICAL SCHOOLS  
14 Vogt Drive  
Bridgewater, New Jersey 08807

Special Meeting  
February 3, 2010

The meeting was called to order at 10:38 a.m. with the following board members:

Dr. Alan P. Braun, President  
Theodore Smith, Vice President  
William Hyncik, Jr., arrived at 10:40 a.m.  
Trudy Doyle  
William Dudeck

Also:

Michael Maddaluna, Superintendent of Schools  
Diane Strober, Assistant Superintendent for Business/Board Secretary  
Lisa Fittipaldi, Board Attorney  
Others: Members of the press and public.

Adequate notice of this meeting has been provided specifying time and place.

Pledge of Allegiance

A. Bid Award - Buildings C and E Roof Replacement

On recommendation by Dr. Braun, seconded by Mr. Hyncik and passed on roll call vote, the Board of Education deferred the vote on this resolution to award the contract for the Buildings C and E Roof Replacement project to Strober-Wright Roofing, Inc. of Lambertville, New Jersey in the amount of \$450,305.00 until the next board meeting when at such time the board has information available from the board attorney with regard to the name change.

Base Bid	Building "C" Roof	\$248,000.00
Alt Bid 1a	Portion of Building "E" Roof	56,000.00
Alt Bid 1b	Portion of Building "E" Roof	77,305.00
Alt Bid 1c	Portion of Building "E" Roof	69,000.00

Discussion ensued. Ms. Fittipaldi reviewed the written opinion she prepared at the request of the board to address the concerns raised by the Executive County Superintendent at the January 25<sup>th</sup> board meeting regarding the award of the bid for the roof replacement of Buildings C and E. The written opinion was distributed to the board in their agenda packet and is attached to these minutes. Ms. Fittipaldi reported on her findings as follows:

- Although the principal of the lowest responsible bidder is the husband of the present business administrator, the bid submitted followed the public bidding procedure as outlined in the School Contracts Law. Ms. Fittipaldi informed the board that she reviewed the bid package to insure that the required documents were included in the packet and accurately completed. Further, she informed the board that the architect also reviewed the bid submission and ultimately recommended the award of this contract to this contractor.
- N.J.S.A. 18A 12-24 defines conflicts of interest. Again, Ms. Fittipaldi noted the overriding consideration to be given here is the fact that the bid was awarded through an open public bidding process.
- With regard to nepotism, Ms. Fittipaldi stated the nepotism policy applies to the hiring of family members as employees of the district and does not have any relationship to non-

employees. The contractor is not an employee of the district. Therefore, that policy does not apply.

Due to the action taken by the board to defer the contract award at the January 25<sup>th</sup> board meeting and the low bidder's recent company name change effective February 1<sup>st</sup>, Ms. Fittipaldi now recommends the board again defer the vote until the February 22<sup>nd</sup> board meeting which will allow her additional time to insure all bid documents are updated to reflect the name change. Ms. Fittipaldi again reminded the board that the architect's role in construction projects is to supervise the work and authorize the payments; the business administrator merely presents these authorized payments to the board for the board's approval.

Mrs. Doyle noted that in her position as Executive County Superintendent she is the one who receives calls from the public and our board needs to be conscious of the public perception of the award of this contract to this contractor, which in her opinion, will be negative. Mrs. Doyle questioned the amount of legal costs associated with a potential lawsuit by the contractor. Ms. Fittipaldi estimated the cost to the board would be in excess of \$100,000. Mrs. Doyle feels that if we are taken to a court of law she would welcome the court making that decision in that a court decision on this matter would put the board in a position that takes away the public's ability to question the board's judgment. Mrs. Doyle feels this is not a black and white issue.

Mr. Smith understands the concept of public perception, but noted the board needs to act on the legal counsel provided by the board attorney.

Mr. Hyncik stated the project is completely transparent; the contractor has the right to earn a living; and the board has a fiduciary responsibility to the taxpayers to make financially sound decisions. Mr. Hyncik is also aware of the impact of public perception; however, he is more concerned that by the board not acting on the advice of legal counsel and potentially exposing the district to a lawsuit this could also be negatively construed by the public to be a poor management decision.

Mr. Dudeck questioned what the process would be if the board were to not award the contract. Ms. Fittipaldi responded that the board has 60 days to award this contract from the January 20<sup>th</sup> bid opening date; if the board does not award this contract, the board would have to go out to bid again.

Mr. Maddaluna suggested the board attorney be given the additional time to insure all bid documents are updated to reflect the name change. Dr. Braun agreed.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Mr. Hyncik	X	
Mr. Dudeck	X	
Mrs. Doyle	X	
Mr. Smith	X	
Dr. Braun	X	

Resolution

BE IT RESOLVED by the Vocational Board of Education of the County of Somerset that:

- A. This Board will go into closed session with the Board Counsel for the purpose of discussing matters within the provisions of 7A(11)c231.
- B. The general nature of matters to be discussed relates to personnel matters, Karen Hart. Action may or may not be taken.
- C. Under the provisions of the above stated laws, the public shall be excluded from attendance at the portion of the meeting relating to the above matters.
- D. It is anticipated that the items discussed will be made public when the matters discussed are resolved.

Closed Session

On motion by Mr. Hyncik, seconded by Mr. Dudeck and passed on roll call vote, the Board of Education went into closed session at 11:15 a.m.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Mr. Hyncik	X	
Mr. Dudeck	X	
Mrs. Doyle	X	
Mr. Smith	X	
Dr. Braun	X	

**Open Session**

On motion by Mr. Hyncik, seconded by Mr. Smith and passed on roll call vote, the Board of Education reopened the meeting at 11:55 a.m.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Mr. Hyncik	X	
Mr. Dudeck	X	
Mrs. Doyle	X	
Mr. Smith	X	
Dr. Braun	X	

**Adjournment**

On motion by Mr. Hyncik, seconded by Mr. Smith and passed, the meeting adjourned at 11:56 a.m.



Diane Strober  
Assistant Superintendent for Business/Board Secretary

DI FRANCESCO, BATEMAN, COLEY,  
YOSPIN, KUNZMAN, DAVIS  
& LEHRER, P.C.

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JAMES J. MOLOUGHNEY<sup>o</sup>  
TODD B. RUBACK<sup>o</sup>  
MICHAELA A. PATICCHIO

via email

February 1, 2010

Writer's Ext: 224

Michael Maddaluna, Superintendent  
Somerset County Vocational and Technical Schools  
North Bridge Street and Vogt Drive  
P.O. Box 6350  
Bridgewater, NJ 08807

Re: Award of Bid for Roof Replacement on Buildings C and E

Dear Mr. Maddaluna:

At its meeting on January 25, 2010, the members of the Board asked me to submit a written opinion with regard to the award of the Roof Replacement Bid for Buildings C and E.

The concerns regarding the bidding were raised by the County Executive Superintendent with regard to the fact that the contractor is Strober Roofing, Inc. The principal of Strober Roofing, Inc. is the husband of the present Business Administrator, Diane Strober. Strober Roofing, Inc. submitted the lowest bid. SSP, the architectural group responsible for the preparation of the bid documents and the supervisor of the bid opening has advised by letter dated January 20, 2010 that its review of the bid submission did not reveal any incomplete items or obvious defects or deficiencies. It is the architect who performed the bid tabulation and made a recommended award of the contract to Strober Roofing.

In conjunction with concerns raised by Mrs. Doyle, I contacted New Jersey School Boards in order to discuss the matter with the attorneys there. The attorney and I reviewed the School Ethics Law found under 18A:12-21, et seq. and the form nepotism

policy at 6A:23A-6.2 which was adopted by the District. The attorney did not find any violation of either the School Ethics Law or the Nepotism Policy

I conducted my own research in the area. As a preliminary matter, the bid followed the procedure outlined in the School Contracts Law. There was a public bidding advertisement prepared by SSP Architects. The documents were routed through SSP. The advertisement complied with N.J.S.A. 18A:18A-21. The bids were scheduled to be opened on January 20, 2010 at 10:00 a.m. in the District's Board of Education offices. Present at the bid opening were several bidders, the architect representative Scott Mihalik, from SSP Architectural Group and Michele Fresco. The bids were opened and tabulated by the architect. The architect, based upon the lowest responsible bid in the amount of \$450,305, recommended the award for that amount to Strober Roofing, Inc. My review of the bid package shows that the documents required were submitted and accurately completed.

N.J.S.A. 18A:18A-22 provides for rejection of bids. That statute states:

“A Board of Education may reject all bids for any of the following reasons:  
(a) the lowest bid substantially exceeds the cost estimates for the goods or services;  
(b) the lowest bid substantially exceeds the Board of Education's appropriation for the goods or services;  
(c) the Board of Education decides to abandon the project for provision or performance of the goods or services;  
(d) the Board of Education wants to substantially revise the specifications for the goods or services;  
(e) the purposes or provisions or both of N.J.S. 18A:18A-1, et seq. are being violated; and that the Board of Education decides to use the state authorized contract pursuant to N.J.S. 18A:18A-10.

The General Conditions, which are part of the contract, provide that “The architect will provide administration of the contract as described in the contract documents, and will be an owner's representative (1) during construction; (2) until final payment is due; and (3) with the owner's concurrence from time to time during the one year period for correction of the work as described in Section 12.2. “. . .

The following are provisions from the General Conditions which explain the architect's role in supervising, inspecting and approving payment.

The architect as a representative of the owner, will visit the site intervals appropriate to the stage of the contractor's operations;  
(1) to become generally familiar with and to keep the owner

informed out the progress and quality of the portion of the work completed: (2) to endeavor to guard the owner against defects and deficiencies in the work; and (3) to determine in general if the work is being performed in the manner indicating that the work when fully completed will be in accordance with the contract documents.

Except as otherwise provided in the contract documents, the owner and contractor shall communicate through the architect.

Based on the architect's evaluations of the contractor's Applications for payment, the architect will review and certify the amounts due the contractor and will issue certificates for payment in such amounts.

The architect will have authority to reject or accept what does not conform to the contract documents. Whenever the architect considers it necessary or advisable, the architect will have authority to require inspection or testing of the work in accordance with Sections 13.5.2 and 13.5.3, whether or not such work is fabricated, installed or completed.

The architect will prepare change orders and construction Change Directives and may authorize minor changes in the work as provided in Section 7.4.

The architect will conduct inspections to determine the date or dates of substantial completion and the date of final completion, will receive and forward to the owner for the owner's review and records, written warranties and related documents required by the contract and assembled by the contractor, and will issue a final certificate for payment upon compliance with the requirements of the contract documents. (emphasis added)

Claims, including those alleging an error or omission by the architect but excluding those arising under Sections 10.3 through 10.5 shall be referred initially to the architect for decision.

Change order is a written instrument prepared by the architect and signed by the owner, contractor and architect stating their agreement upon all of the following:

.1 – Change in the Work

. 2 - The Amount of the Adjustment, if any, in the contract sum; and

. 3 – The Extent of the Adjustment, if any, in the contract time

A construction change directive is a written order prepared by the Architect and signed by the owner and architect, directing a change in the work prior to agreement on adjustment, if any, in the contract sum or contract time or both.

At least 10 days before the date established for each progress payment, the contractor shall submit to the architect an itemized application for payment for operations completed in accordance with the schedule of value. Such applications shall be notarized, if required, and supported by such data substantiating the contractor's right to payment as the owner or architect may require, such as copies of requisitions from sub-contractors and material suppliers, and reflecting retainage if provided for in the contract document. (emphasis added)

The architect will, with reasonable promptness after receipt of the contractor's application for payment, either issue to the owner certificate for payment, with a copy to the contractor, for such amount as the architect determines is properly due, or notify the contractor and owner in writing of the architect's reasons for withholding certification in whole or in part. (emphasis added)

After the architect has issued a certificate for payment, the owner shall make payment in the manner and within the time provided in the contract documents, and shall so notify the architect.

Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final application for payment, the architect will promptly make such inspection and, when the architect finds the work acceptable under the contract documents, and the contract fully performed, the architect will promptly issue a final certificate for payment stating that to the best of the architect's knowledge, information and belief, and on the basis of the architect's onsite visits and inspections, the work has been completed in accordance with the terms and conditions of the contract documents and that the entire balance found to be due the contractor and noted in the final certificate be due and payable. (emphasis added)

Neither final payment nor any remaining retained percentage shall become due until the contractor submits to the architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the owner or the owner's property might be responsible or encumbered have been paid or otherwise satisfied . . . .

I have spent considerable time outlining the contractual provisions so the Board can see that the duty to supervise the project, to approve its completion and payment for it lies with the architect. The Business Administrator's responsibility is simply to relay the architect's approval for payment to the Board so that it can be voted on at the appropriate time by the Board.

N.J.S.A 18A12-24 defines conflicts of interest. Out of the list of sub-sections that could possibly apply in the case, sub-sections A, C, F and H are the most related to the subject at hand. They state as follows:

(A) No school official or member of his immediate family shall have an interest in a business or organization or engage in any business, transaction or professional activity which is in substantial conflict with the proper discharge of his duties and the public interest.

(C) No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

(F) No school official shall use, or allow to be used his public office of employment, or any information, not generally available to the members of the public, which he receives or acquired in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family or any business organization with which he is associated.



(H) No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group to any greater extent that any gain could reasonable be expected to accrue to any other member of that business, profession, occupation or group.

The overriding consideration to be given here is the fact that the bid was awarded through an open public bidding process. There is no dispute based on my review of the bid tabulation sheet prepared by the architect, that Strober Roofing is the lowest bidder. The architect deemed Strober Roofing to be responsible and therefore under the public bidding statute, Strober Roofing qualifies in that regard. The supervision of the construction project is within the purview of SSP Architectural Group. It is the architect who certifies payment and acts as the owner's representative to ensure that the work is completed in accordance with the specifications and that the contractor is not paid for work that remains uncompleted or is deficient.

The public bidding process ensures that Strober Roofing did not receive any greater benefit as a result of its principal's relationship with the Business Administrator than any other bidder. The lowest bidder would receive the job no matter who it was as long as it was a responsible company. In this case, the next lowest bidder would be paid \$36,000 more to do the work.

Information regarding the project was available equally to all bidders. In fact, 13 bids were submitted. The same opportunity to inspect the premises, review the specifications and provide a bid was given to everyone.

The nepotism policy applies to the hiring of family members as employees of the District and does not have any relationship to non-employees. Obviously a contractor is not an employee of the District. Therefore, that policy does not apply.

As I stated at the meeting, I am concerned that rejection of the bid could result in a lawsuit by the contractor. In that circumstance, the District would have to pay Strober Roofing any profits it may have earned on the project in addition to paying counsel fees to defend the lawsuit which could be \$30,000 - \$50,000 and pay the next lowest bidder \$36,000 more than Strober Roofing's bid.

Very truly yours,

*/s/ Lisa M. Fittipaldi*

Lisa M. Fittipaldi  
LMF/cb