

CITIZENS' OVERSIGHT COMMITTEE
MEETING MINUTES
September 29, 2003

Chairman Al Valdez called the meeting to order at 5:02 p.m. with Roger Larkin, Glenn Duncan, Stuart Holland, Michael Calta, Maurice Ayala, and Paul Andersen present. Geoffrey Vanden Heuvel arrived at 5:05 and Andy Anderson at 5:22. Gerald Bruce and Gary Ovitt were absent.

Mr. Valdez explained that there was only one agenda item. That item is to format a letter of recommendation to the school board to consider using a second construction management firm for several reasons: number one, to encourage competition; number two, have a second firm ready to go should B.E. McMurray Construction Management go out of business; and, number three, to have a measurement of competency of services received. He asked that everyone review the letters proposed by Mr. Calta and make recommendations for changes or additions. He said he plans to make this recommendation to the board.

Mr. Duncan said he disagreed with the statement that the process was not competitive. He said the bids were put out competitively originally and B.E. McMurray was the low bidder. Dr. Andersen said the process involved a request for proposals sent out to numerous construction management firms. A selection staff reviewed those proposals. Successful applicants were interviewed and from that list the committee recommended five or six construction management firms they felt were qualified to do the work in the district, and the board took action on that. Mr. Duncan asked if B.E. McMurray was the low bidder of those firms. Dr. Andersen confirmed that they had one of the lowest bids. Mr. Duncan commented that there are other approved firms on the list and the statement in the letter that there should be more than one on the list is not necessary.

Mr. Duncan asked how much it costs to solicit competitive bids on a request for proposal. Dr. Andersen estimated four people reviewing proposals at an hour each, and if 20 proposals were received, 80 hours along with interviews, perhaps a total of 100 hours of staff time at \$50 per hour, for a total of approximately \$5,000 each time the district advertises a request for proposal. Mr. Ayala asked if the district would realize a savings if it kept McMurray and didn't do anything different. Dr. Andersen said it would be speculation, and Mr. Ayala said the cost of an RFP is also speculation. Dr. Andersen said he thought the staff time required is a reality. If the process were to be redone, this is his estimate of how much staff time would be involved. Mr. Duncan said at this point the district wouldn't have to go out for an RFP if a firm on the approved list was chosen. He thought the letter stated that each time the district would need to go through this process. Mr. Calta didn't think it said that and didn't intend for it to say that. He quoted from the letter saying, "a minimum of two pre-qualified construction management firms from the current approved list of six firms be contracted by the district." Mr. Duncan quoted, "We believe it is a wise business practice to maintain a competitive selection process in all job categories," and thought that meant doing this selection process and incurring the approximately \$5,000 cost each time a project comes up. Mr. Calta thought the

recommendation overall is "that a minimum of two pre-qualified construction management firms from the current approved list of six firms be contracted by the district for separate projects just as the district contracts with multiple architectural firms and multiple firms for every other construction job category."

Mr. Holland suggested changing "maintain a competitive selection process" to "competitive environment." Mr. Duncan thought the comment that it's not competitive at this time is misleading because it was competitive; they did go through a competitive bid process. Mr. Holland said it was just a request for proposals to select companies but there wasn't any contracts. Mr. Calta said from that there were six companies chosen but for some reason only one is being used at this point. Dr. Andersen said that B.E. McMurray has a contract for every project that they are actively under construction. The reference that they don't have a contract is in regards to the oversight or the general administrative work that they are doing. That is yet to be resolved.

Mr. Duncan said he thinks the district is happy as long as McMurray is doing the job and coming back with satisfactory results. He said McMurray is not doing the construction; they are the administrators. Their job is to represent the district's best interest versus the general contractor's job in representing his own best interest. The company is the district's advocate in the field and as long as the district is happy with what they're providing, their prices are competitive in the overall picture, then that's why the district is choosing them to do the work. Mr. Valdez stated that one of the questions the committee has is what is the definition of "complete." He said the schools are open but there is no certificate of completion on any of them. He said there seems to be a discrepancy between what the board thinks is satisfactory and what the committee thinks is satisfactory. He feels that as far as staff is concerned, if the board says something is satisfactory, then staff has to agree. He said he didn't agree with that definition. Mr. Duncan said that didn't have anything to do with McMurray. Mr. Valdez said McMurray has no culpability. He said all they do is manage the construction and there's no feedback mechanism that motivates them to be the district's advocate. He said they get a flat rate no matter what happens. If there's a feedback mechanism that motivates them, then that would be more satisfactory. He mentioned that Mr. Truett of the school board said some bills weren't paid for Chino Hills High School, and accused staff of being behind and not paying and also not giving correct information to the committee. He said that every bit of information the committee has asked for they have received. He thought that the board feels that as long as a school is open, it's complete, and he doesn't agree with that definition. Mr. Duncan said they weren't talking about the school board; they're talking about the construction manager. Mr. Valdez said B.E. McMurray is responsible for their completion and they have not completed a single project on time and that is what he's questioning. He thought it would help to see if this is normal on a construction project. And if it's normal, there's nothing the committee can do. He also thought that a feedback mechanism, like a second management firm, would provide more information for comparison.

Mr. Duncan asked about what the past history was with using other construction management firms. Dr. Andersen said the district has used no other construction management firm, other than Turner for a constructability study. Mr. Duncan asked if

McMurray has been consistently late on the projects. Dr. Andersen said that in his mind the projects have not been delivered on time. Mr. Duncan asked if it was McMurray's fault that they weren't delivered on time and if so, why do we continue to use them. Dr. Andersen said there are all sorts of reasons why projects don't necessarily come in on time that would take an extensive time to discuss.

Mr. Valdez said some of the reasons might be because of changes on the district's part. He will be requesting information to examine the change orders to see if they are extras. Mr. Duncan stated he didn't want to recommend the district do something that will cost more money. Mr. Vanden Heuvel said there's a certain amount of cost that comes in any time you try to create a competitive environment. His opinion is that the construction manager does not have a meaningful competitive environment and the committee has no way to evaluate. He felt that if it costs \$5,000, it costs \$5,000. He said the committee is dealing with millions of dollars worth of projects. He said competition is the best way to assure excellence. He agreed that the committee doesn't have a basis upon which to make an evaluation whether B.E. McMurray is doing a great job or not. He thought the committee should move forward with the recommendation and the board will decide what to do.

Dr. Andersen wanted to clarify that the \$5,000 he estimated would not come from Measure M funds. It would come from general fund. Mr. Ayala said part of the committee's job is to assure the public that things are going well and it's hard to give an honest assessment without all necessary information. Mr. Valdez said B.E. McMurray could come out with the best qualifications. Mr. Calta said the committee is not being personal in this process and they are being careful not to be personal. Mr. Ayala thought that it wasn't important for the committee to consider the happiness of the school board. He said there's an election coming up in the future and members might change. He said that State law and the public want the committee to be independent, and it's difficult to be independent and also concerned with the school board's happiness at the same time. Mr. Duncan said he wanted to make sure that whatever is sent to the board is factually accurate and tactful.

There was further discussion about the competitive process and the wording of the letter. Mr. Vanden Heuvel said he's not critical at all of the district for doing what they've done. But now the construction has reached a plateau and the observation as the oversight committee, as well as auditors, is on a go-forward basis. He felt there is a need for more competition in the construction management area. Mr. Larkin felt there was also a need for more expertise and the checks and balances that more than one firm would offer.

Mr. Valdez said there is an appearance of some bias using this one company. He felt the history as to how the company was put on the list is suspect. He said they didn't make the initial cut, one of the board members put them back on the list, and that same board member has been an advocate for this company since that time. Maybe there is nothing there, but it could give the appearance that something is going on. Mr. Duncan asked if he thinks that's true, does he think the letter will change anything. Mr. Valdez said he thinks this will put the board and the public on notice because he plans to read it at a

board meeting and say this is the committee's observation and recommendation. He said maybe they don't realize we don't have a check in place to see if B.E. McMurray is really doing the bang-up job they say they're doing. He felt the evidence supports a different conclusion.

Mr. Ayala made a motion that the committee accept the short letter and submit it to the school board. Mr. Vanden Heuvel seconded the motion, but said he liked the longer letter better. Mr. Ayala withdrew his motion for the short letter and made a motion that they accept the long letter. Mr. Vanden Heuvel withdrew his motion and seconded the motion to present the long letter to the school board.

Mr. Anderson asked if the letter was read into the record and the school board doesn't respond, what the committee would do at that point. Mr. Ayala said either they can consider their responsibility is complete after they present the letter or stronger steps can be taken, and that can be discussed at another meeting. Mr. Valdez said the committee has no authoritative power over the board. He suggested they make their recommendation and move on to the next item to make sure they're spending the money appropriately. He asked Dr. Andersen to provide copies of all the change orders and categorize them as to what are extras and what are true change orders to verify the claim of .9% of change orders for Wickman and Rhodes falling under McMurray's purview. He said they could look at the cost of payrolls, certified payroll under Labor Code 1776, to make sure they're getting their money's worth. Mr. Holland suggested if there is no response, they could make it a part of the annual report.

Mr. Larkin asked if the district has some means of measuring how the construction manager is doing on the projects they have. Dr. Andersen said the means he would use would be to assess their ability to keep a project within cost and budget, ascertain where they are on change orders, and compare the work with the schedule that they have produced and measure that schedule against the district's need to open schools. Mr. Larkin asked if that process is followed in a formal form right now. Dr. Andersen said they don't have an assessment tool in place at this time. At this time he would review these criteria as the project progresses, make a determination, and forward that information to his superiors. Mr. Larkin asked if a firm were not meeting his expectations, what was the process in which he could either correct that or terminate their contract. Dr. Andersen said he would bring that issue to cabinet and present it to the superintendent, make that recommendation to him and wait for his decision on how to proceed. The superintendent then will decide whether or not he wishes to formulate an agenda item, discuss it with the board president who sets the agenda. If the president sees fit to agendaize that item, then it goes forward. Board members also have that authority to agendaize an item. Mr. Larkin asked if there was language in the contract talking about termination. Dr. Andersen said there is termination language in the contract.

Mr. Anderson asked if any progress been made regarding a master contract. Dr. Andersen said not to his knowledge. He said that contract issue is with district counsel at this time. There was further discussion regarding some minor wording changes to the letter.

Mr. Valdez called for a vote on the motion. All voted yes except Mr. Duncan, who voted no.