

FORT HARRISON REUSE AUTHORITY BOARD MINUTES
Monday, April 6, 2009

The FHRA Board met in public session at 9120 Otis Avenue, FHRA conference room, Lawrence, IN at 4:00 PM.

FHRA Board Members Present

Ms. Ann Lathrop, President
Mr. Jeff Congdon, Secretary/Treasurer
Mr. Quake Pletcher, Member

FHRA Staff

Ms. Kris Butler, Executive Director
Ms. Jennifer Baker, Executive Assistant

Members of the Public

No one present

A copy of the public agenda is attached.

Official Special Public Meeting was called to order at 4:00pm.

Ms. Lathrop called to order the public hearing as it relates to the discussion of the construction manager contracts.

Ms. Butler would like it on record that the FHRA originally sent out an RFQ for construction management at the request of the board in spite of not being legally required to do so. She cited an Indiana case law that held that construction manager contracts are not required to be publicly bid.

In *Attlin Construction v. Muncie Community Schools*, , the Court noted:

"We do not believe the Legislature contemplated that our bidding statute would govern contracts for professional services like the one before us which provide for the performance of duties similar to those of an architect or engineer and are entered into under IC 20-5-2-2(7), (19). These contracts are not susceptible to objective evaluation of their performance so as to make the price the ultimate determining factor. Furthermore, the nature of such contracts makes advertisement for bids impractical and undesirable. Where, as here, a contract requires the construction manager to perform duties similar to that of an architect or engineer, the rationale for exempting the architect or engineer's contract from the bidding laws is equally applicable to the construction manager's contract."

Id. *Accordingly, the Indiana Court of Appeals held that the school board had the power to enter into a construction management contract without competitive bidding.*

At the time of the board's vote to award Keystone Construction the construction management contract, the FHRA understood the contract amount to be fee based on

overall construction costs. The scope of the FHRA construction manager position is more Owner's Technical Rep in nature and was explained as such in the RFQ and in meetings with Keystone. Because the FHRA and Keystone couldn't reach an agreement on the scope, we decided to part ways.

The FHRA threw out the Browning proposal which was next in line based on fee for the reason that it was a conflict of interest and was therefore undesirable.

The next considered proposal was Meyer Najem who has expressed an understanding of OTR services and have issued a quote that is fee based on overall construction costs only.

Ms. Butler said since this is not a bidding process, a reissue of an RFQ is not necessary. She said that, if authorized by the board at this time to reissue an RFQ, let the record show that interviews will not be required in order to select a construction manager/OTR for the infrastructure project.

After the board considered this new information, Mr. Congdon made a motion for the board to award the contract to Meyer Najem pending review by legal council. Mr. Pletcher seconded. Motion passed.

Ms. Lathrop asked if there were any comments from the public. There were none.

Ms. Lathrop asked for a motion to adjourn the meeting. Mr. Congdon made the motion. Meeting adjourned at 4:25 pm.