

**MINUTES OF A SPECIAL MEETING  
OF THE  
FRIEDMAN MEMORIAL AIRPORT AUTHORITY\***

**March 9, 2015  
12:00 P.M.**

**IN ATTENDANCE:**

**BOARD MEMBERS:** Chairman – Ron Fairfax, Vice-Chairman – Don Keirn, Board – Lawrence Schoen, Fritz Haemmerle, via Teleconference: Angenie McCleary, Pat Cooley  
**FRIEDMAN MEMORIAL AIRPORT STAFF:** Airport Manager – Rick Baird, Emergency/Operations Chief – Peter Kramer, Contracts/Finance Administrator – Lisa Emerick, Administrative Assistant/Alternate Security Coordinator – Roberta Christensen, Administrative Assistant – Cecilia Vega  
**CONSULTANTS:** T-O Engineers – Dave Mitchell; R/L/B – Mike Smith  
**AIRPORT TENANTS/PUBLIC:** Western Construction – Jack Snyder; Knife River – Steve Earl, Jim Lauteren, Jesse Rosin, Sean Marsley; Glass Cockpit Aviation – John Strauss; WS&G – Jim Walker; Atlantic Aviation – Mike Rasch  
**AIRPORT LEGAL COUNSEL:** Lawson Laski Clark & Pogue, PLLC – Jim Laski

**CALL TO ORDER:**

The meeting was called to order at 12:07 p.m. by Chairman Fairfax.

**I. APPROVE AGENDA**

The agenda was approved with the following changes:

**III. EXECUTIVE SESSION – I.C. §67-2345 (1)(f)**

**II. UNFINISHED BUSINESS**

**A. Airport Solutions**

**1. Existing Site**

**a. Plan to Meet 2015 Congressional Safety Area Requirement**

- i. Project 6 Relocate Taxiway B/Remove Taxiway A/North Apron – In light of FAA failure to concur with prior award:**
  - reject all bids presented and re-bid the project or portions of the project, or**
  - accept lowest responsive bidder for AIP eligible work only (Schedule A+B), or**
  - otherwise address bidding for Project 6**

Engineer Mitchell and Airport Attorney Laski updated the Board on the FAA's failure to concur with the prior award of Project 6 of the RSA Improvements Project.

Chairman Fairfax briefed the Board on the FAA's AIP process and requested comment from the contractors present.

Jim Lauteren of Knife River commented that the bid directions were very clear as to how the successful bidder is obtained and gave the Board Members a letter regarding Knife River's position on the matter (Minutes Attachment #1).

Jack Snyder of Western Construction commented that without FAA funding there is no project and suggested that the Board delete Schedule C from the bid and award the contract to Western Construction. He also commented that to simply re-bid the same work would not present a clear indication of the cost for this work and his bid has already been made public.

The Board took a few minutes to read the letter provided by Knife River.

Board Member Haemmerle suggested that the Board take a day to allow themselves and Attorney Laski a chance to review the material and develop an adequate response for the contractors.

Attorney Laski advised the Board to amend the agenda to include an executive session and enter executive session to discuss possible legal consequences.

**MOTION:** *Made by Board Member Haemmerle to amend the agenda to include an Executive Session – I.C. §67-2345 (1)(f) in good faith in order to review possible legal consequences of Knife River's letter. Seconded by Board Member Schoen.*

**PASSED UNANIMOUSLY**

**III. EXECUTIVE SESSION –  
I.C. §67-2345 (1)(f)**

**MOTION:** *Made by Board Member Haemmerle to enter into Executive Session under Idaho code I.C. §67-2345 (1)(f) to consider matters of potential litigation. Seconded by Board Member Schoen.*

**ROLL CALL VOTE:**

<i>Chairman Fairfax</i>	<b>YES</b>
<i>Vice-Chairman Keirn</i>	<b>YES</b>
<i>Secretary Schoen</i>	<b>YES</b>
<i>Board Member Cooley</i>	<b>YES</b>
<i>Board Member Haemmerle</i>	<b>YES</b>
<i>Board Member McCleary</i>	<b>YES</b>

**PASSED UNANIMOUSLY**

The Board opened the meeting to the public.

Board Member Haemmerle suggested that the Board re-bid Schedules A and B of Project 6 with the correct instructions.

**MOTION:** *Made by Board Member Haemmerle to reject all submitted bids and re-bid Schedules A and B for Project 6. Seconded by Vice-Chairman Keirn.*

Board Member Schoen commented that the bid instructions should be consistent and reflect the accurate criteria for FAA-eligible projects.

Chairman Fairfax asked if Bid Schedule C for Project 6 should be re-bid separately and commented that he is concerned with contractors submitting unbalanced bids.

Engineer Mitchell answered that the Board could either re-bid Schedule C as an add/alternate while making the instructions clear that the award will be based on Schedules A and B only, re-bid it as a stand-alone project, or separate it into several different projects.

**MOTION AMENDED:**

***Made by Board Member Haemmerle to reject all submitted bids and re-bid Schedules A and B together pursuant to the correct instructions and to re-bid Schedule C as an add/alternative for Project 6. Seconded by Vice-Chairman Keirn.***

Board Member Schoen commented that he does not favor the approach of re-bidding Schedule C as an add/alternate and would rather it be bid separately from Schedules A and B.

**MOTION AMENDED:**

***Made by Board Member Haemmerle to reject all submitted bids and re-bid Schedules A and B together pursuant to the correct bidding instructions for Project 6 as advised by the FAA. Seconded by Vice-Chairman Keirn.***

**PASSED UNANIMOUSLY**

The Board discussed the options for how to re-bid Schedule C for Project 6 and agreed that the decision should be made by Engineer Mitchell and Airport Manager Baird.

**IV. III. PUBLIC COMMENT**

Jack Snyder of Western Construction commented that his company's rights have been violated in that their bids for Schedules A and B have been released to the public already which makes bidding more difficult and competitive. He also commented that the Board has jeopardized the ability to complete this work in the timeliness required as they are only allowing a 25-day closure period and a sufficient amount of time is needed to obtain all the materials necessary to complete the project.

**V. IV. ADJOURNMENT**

The March 9, 2015 Special Meeting of the Friedman Memorial Airport Authority was adjourned at approximately 1:10 p.m.

  
Lawrence Schoen, Secretary

\* Additional resources/materials that should be reviewed with these meeting minutes include but are not limited to the Friedman Memorial Airport Authority Board Packet briefing, the PowerPoint presentation prepared for this meeting and any referenced attachments.

**David T. Krueck**  
dkrueck@greenerlaw.com

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March 9, 2015

Via Email

Dave Mitchell, P.E.  
T-O Engineers  
9777 Chinden Boulevard  
Boise, ID 83714  
Email: dmitchell@to-engineers.com

Re: Friedman Memorial Airport  
Runway Safety Area Improvements, Project 6  
**BID AWARD**

Dear Mr. Mitchell:

I write to you as the attorney for Knife River Corporation – Northwest (“Knife River”) regarding the award of the contract for the above-described project (“Project”). I am aware a Special Meeting has been scheduled by the Friedman Memorial Airport Authority (“FMAA”) for Monday, March 9, 2015, to consider alternatives for awarding the contract for the Project.

For the reasons set forth below, Knife River respectfully submits that the FMAA must either proceed with awarding the contract to Knife River as the successful bidder for the Project or, alternatively, reject all bids and rebid the Project.

1. Knife River is the Successful Bidder

On February 26, 2015, the FMAA publicly opened and considered bids for the Project. Knife River submitted the lowest responsive bid in the amount of \$6,755,863.00. Knife River, therefore, is entitled to be awarded the contract for the Project. Knife River’s bid complies with all material terms in the Bidding Instructions for the Project, and Knife River is a qualified, responsible bidder, capable of timely performing the work in accordance with the contract documents for the Project.

Dave Mitchell, P.E.  
 March 9, 2015  
 Page 2

Section 19.03(B) of the Bidding Instructions provides as follows:

For the determination of the apparent low Bidder when unit prices are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item together with any lump sum items.

Section 22.04(D) of the Bidding Instructions defines the "Successful Bidder" as follows:

The 'Successful Bidder' for the purpose of subsequent negotiations, if necessary, will be the responsive Bidder who submits the low bid for Schedules A and B and C for the work to be awarded; which is expected to be all items of Schedules A and B and C based on availability of funding. The Owner's order of priority is Schedule A, Schedule B, and Schedule C in the order shown on the Bid Form.

Based on the plain language of the Bidding Instructions adopted by the FMAA for this Project, Knife River is the Successful Bidder because it submitted the lowest responsive bid for the completion of the work described for Schedules A, B and C. The Bidding Instructions do not describe the various Schedules of work as alternates or provide any different definition of how the FMAA is permitted to determine the low Successful Bidder for the Project. The clear process for determining which Bidder submitted the lowest bid is to add the amounts for Schedule A and Schedule B and Schedule C. When evaluating the bids under the mandatory formula set forth in the Bidding Instructions, Knife River is the Successful Bidder entitled to enter into negotiations with the FMAA to be awarded the contract for the Project.

Knife River is also the "Apparent Low Bidder," pursuant to FAA Order 5300-38D, Airport Improvement Program Handbook ("AIP Handbook"). Subsection 6 of Table U-8 of the AIP Handbook provides the following definition for the Apparent Low Bidder when the procurement of the contract is through sealed competitive bids:

**Apparent Low Bidder.** The apparent low bidder is the bidder with the lowest dollar proposal, and does not reflect whether the sponsor has determined the bidder to be responsive or responsible.

Section U-13 of the AIP Handbook further provides that when procurement of the Project will be made through sealed bids, the contract must be awarded "to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction."

Pursuant to the terms of the Bidding Instructions and AIP Handbook, Knife River is the low responsible and responsive bidder for this Project. As such, Knife River is the only bidder

Dave Mitchell, P.E.  
 March 9, 2015  
 Page 3

that has a property interest in the contract to be issued for the Project as a result of Idaho's competitive bidding statutes.

2. The FMAA Should Consider Whether Conditions Can Be Made in the Notice of Award of the Contract to Knife River to Maintain AIP Funding

Knife River recognizes Section 19.04(A) of the Bidding Instructions states "no award can be made until the FAA has reviewed and approved Owner's recommendation of award." On March 6, 2015, the Airports District Office ("ADO") sent an email to the Project Engineer referencing Table U-6 of the AIP Handbook as a basis to refuse concurrence with the recommendation to award the contract to Knife River. Based on the Bidding Instructions and Sections of the AIP Handbook cited above and applicable Idaho law, the FMAA cannot award the Project to the lowest bidder for only the AIP funded portion of the work (Schedules A and B).

Knife River believes the FMAA can, and should, consider including conditions in the Notice of Award to Knife River to satisfy the issues raised by the ADO. Section 19.04(D) allows the FMAA "to issue a Notice of Award with additional conditions identified as appropriate. Conditions shall be clearly stated on the Notice of Award. Conditions may include the deletion of items of a Schedule or an entire Schedule." The FMAA also has the right under Section 22.04(F) to delete all or a portion of individual Schedule(s) for "budget, weather, schedule or other circumstances." Knife River is prepared to proceed and will consider appropriate conditions in the Notice of Award to achieve the FMAA's goal of timely completing this Project while qualifying for AIP funds for Schedule A and Schedule B work.

Knife River respectfully submits that there must be alternatives for the FMAA and the ADO to consider to allow this Project to proceed with an award of the contract to Knife River. Table 3-27 of the AIP Handbook only allows for non-AIP funded work to be included with AIP funded work in the same project when "the sponsor provides a compelling reason documenting that it is in the federal government's best interest and the ADO has concurred with the sponsor's request in writing." Examples of situations that are in the federal government's best interest are set forth in Table 3-28 of the AIP Handbook, and include benefits to the FAA that result in the runway being closed for a significantly shorter period of time and when the inclusion of non-AIP work "will reduce the overall unit cost of the pavement, thus reducing the AIP project costs." There is no question the inclusion of the Schedule C work saves costs to the federal government for the Schedule A and Schedule B work. Indeed, the overall savings to both the federal government and the FMAA are best achieved by awarding the full contract to Knife River, with possible conditions in the Notice of Award to allow for ADO concurrence with the award.

The FMAA, however, is limited to negotiating with Knife River since Knife River is the Successful Bidder for the Project. As set forth above, the Successful Bidder is determined by the lowest total bid after adding the costs for Schedule A and Schedule B and Schedule C work (Section 22.04(C)), which is Knife River. The Bidding Instructions explicitly state that the FMAA can negotiate with the Successful Bidder (Knife River) to perform the work, but neither

Dave Mitchell, P.E.  
March 9, 2015  
Page 4

the Bidding Instructions, nor the applicable provisions in the AIP Handbook, allow the FMAA to negotiate with any other bidders to contract for the work after the bids have been opened and the Successful Bidder has been determined.

3. If the FMAA Chooses Not to Award the Project to Knife River, the FMAA Must Reject All Bids

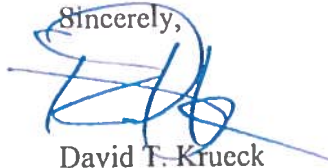
In the event the FMAA does not proceed with issuing a Notice of Award to Knife River, the FMAA cannot award the contract to Western Construction, or any other bidder for that matter, without violating the Bidding Instructions, applicable federal regulations and Idaho's competitive bidding statutes.

Section 3-31 of the AIP Handbook provides that the FMAA as the Project sponsor is "responsible for meeting all procurement requirements ... including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues." Pursuant to Section U-9 of the AIP Handbook, the FMAA must use its "own procurement procedures which reflect applicable State and local laws and regulations." If the FMAA attempts to award the contract for the Project to any bidders other than Knife River, the FMAA would be violating its own Bidding Instructions, the AIP Handbook and Idaho law. Failure to properly evaluate bids in conformance with the adopted Bidding Instructions could cause the FMAA to lose its right to the grant for the AIP funded portion of the work. The only proper and legal course of action the FMAA can take if it chooses not to award the contract to Knife River is to reject all bids.

Knife River reserves all rights in this matter, including the right to lodge a bid protest if the FMAA attempts to award the contract for this Project to any other bidders because Knife River submitted the lowest responsive bid. The FMAA, therefore, can only award the contract to Knife River or reject all bids.

If you have any questions or comments regarding the position taken by Knife River, please do not hesitate to contact me.

Sincerely,



David T. Krueck

DTK:kdh