MEETING NO. 2012-12: The Special Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 5:30 p.m. by Deputy Mayor David Stone.

I. ROLL CALL

Assembly Present: Mary Becker, Bruce Botelho (telephonic), Karen Crane, Ruth Danner, Johan Dybdahl, Jesse Kiehl, Carlton Smith, David Stone, and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Kim Kiefer, City Manager; Jane Sebens, Deputy City Attorney; Rob Steedle, Deputy City Manager; Bonnie Chaney, Budget Analyst; Rorie Watt, Engineering Director; Beth McEwen, Deputy Clerk; Jennifer Mannix, Engineering Contract Administrator; Anne Stadnichenko, Purchasing Officer.

II. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None.

III. CONSENT AGENDA

A. Public Requests for Consent Agenda Changes – None.

B. Assembly Requests for Consent Agenda Changes

Mr. Kiehl requested that the Item B.1., the Re-Bid E12-216, Auke Bay School, be removed for discussion.

C. Assembly Action

MOTION, by Kiehl, to remove Bid E12-216 from the consent agenda and that the remainder of the consent agenda be adopted by unanimous consent. Hearing no objection, it was so ordered.

1. Resolutions

a. Resolution 2613


Administrative Report: Attached. The manager recommended adoption of Resolution 2613.

2. Bid Awards

a. Bid E12-194

Pioneer Avenue Reconstruction, Phase II
Administrative Report: Attached. The manager recommended award of this project to Arete Construction Corporation, in the total amount bid, for an award of $1,063,601.

Removed from the Consent Agenda:

b. Re-Bid - E12-216

Auke Bay Elementary School Renovation

Administrative Report: Attached. In accordance with the written finding of public interest and award recommendation in the Assembly packets, the manager recommended award of the Auke Bay Elementary School Renovation project to ASRC McGraw Constructors, LLC for base bid plus additive alternates 6 and 7 for a total award of $16,844,000.

Public Comment:

Deputy Mayor Stone asked Deputy Attorney Jane Sebens for advice on how to handle public comment. Ms. Sebens said the only public testimony that would be appropriate would be as to the finding of whether or not it is in the best interest of the CBJ, as determined by the manager and the Assembly, to award the contract while there is a bid protest pending. Ms. Sebens said there were comments submitted by the protestor, Mr. Freeman, and as the manager said, there is a protest pending before the Bidding Review Board. She strongly cautioned the Assembly from considering anything in those written comments that spoke to the merits of the bid protest, that would violate the procurement code, as there is only a process for a protest to go to the Bidding Review Board before it is forwarded to the Assembly. The sole issue before the Assembly is whether an award of the contract, pending resolution of the protest, is in the best interest of the CBJ. The manager has made that best interest finding. There is a memo in the packet from Rorie Watt, CBJ Engineering Director.

There was no public comment.

Assembly Action:

MOTION, by Botelho, to determine that it is in the public interest and the CBJ’s best interest to make the bid award and that finding would be based on Mr. Watt’s report to the city manager, specifically that the consequence of further delay in making the award would have a dramatic impact on the completion of the project and would ultimately adversely effect the educational duties of the CBJ. Further, the Assembly should award the contract to ASRC McGraw Constructors, LLC.

Mr. Kiehl said the code specifies that the manager needs to determine in writing and what is in the packet is a memo from the Engineering Director. Mr. Kiehl asked Ms. Kiefer to confirm that Mr. Watt’s memo served that purpose. Ms. Kiefer said it did, and her recommendation in the manager’s report was based on the finding in the memo.

Mr. Kiehl asked about the recommendation of the alternatives to be awarded. There are four potential additive alternatives, #4 through #7, and there is a recommendation to award the bid with #6 and #7. He asked for a description of the alternatives.
Mr. Watt said the alternatives were structured to ensure there was an awardable project. The selection of the alternates were made by a sequestered committee made of school district staff and engineering staff. Alternate #6 is site lighting and an entry canopy, Alternative #7 is additional cabinetry in the classrooms, and are recommended for award. Alternatives #4 – landscaping and #5 – landscape paving, are not recommended for award. Landscaping could be added later and the landscape paving with textured concrete, are not in the budget, and not preferred to the other alternates by the school district.

Mr. Kiehl asked if Alternatives #6 and #7 were qualified under the DEED process for 70% reimbursement. Mr. Watt said they were.

Ms. Danner asked if Alternates #1-3 were included in the bid award. Mr. Watt said they were not. The deductive alternates were included in the event the base bid came in higher than we were able to award, in which case we would have awarded the deductive alternates. They were a less expensive window system, a less expensive siding system and a more relaxed project completion schedule.

Ms. Danner asked about the process. If any bid was challenged and went before the Bid Review Board, was it normal for the Assembly to disregard the process and award a bid? What is the recourse for the petitioner. Ms. Sebens read from code, “If a timely and complete protest is filed, the award of the contract shall be stayed until the protest is resolved, unless the manager determines in writing that award of the contract pending resolution of the protest is in the best interest of the City and Borough.” [53.50.062(f)] Ms. Sebens said the Assembly could stay the award and not award the contract. The bid protest would proceed to resolution. At that point, the code also provides the various recommendations that could be made, which include awarding a recommendation that a designated bid be accepted as the lowest qualified bid. There are several things they can’t do, they can’t amend specifications, change the criteria for selection, etc. Because the code also provides that when it is in the best interest to award, it is legal to award the bid. Under state law, a bid protest, if it succeeds, is entitled only to recover the bid preparation costs. There is significant state law on that. There is no necessity to await award of the contract until the bid protest is resolved.

Ms. Danner asked if the name of the protestor was listed in the four bids listed. Ms. Sebens said no. Ms. Danner said it was possible that the protestor was the low bid.

Mayor Botelho asked Ms. Sebens to discuss what constitutes a responsible bid. There are two criteria, including the lowest responsive bid by a responsible bidder. The chronology set out by Mr. Watts memo indicates that the protest is over the determination that the bidder did not satisfy the criteria for being a responsible bidder.

Ms. Sebens said the lowest qualified bidder is defined in the procurement code as the person submitting the lowest responsive and responsible bid, both requirements must be met. The question of why the bid was determined non-responsive or not responsible is not an issue for the Assembly. The only issue before the Assembly is to decide whether it is in the best interest of the CBJ to award a contract prior to the protest resolution.

Hearing no objection, the bid was awarded to ASRC McGraw Constructors, LLC.

IV. EXECUTIVE SESSION – None.
V. ASSEMBLY COMMENTS AND QUESTIONS

Mr. Kiehl said he would appreciate a briefing at the appropriate time regarding the time schedule and the bidding of the project that led to the compressed schedule.

VI. ADJOURNMENT - 5:46 p.m.

Signed: ____________________________  Signed: ________________________________

Laurie Sica, Municipal Clerk                  Bruce Botelho, Mayor