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NASSAU COUNTY LEGISLATURE

NORMA GONSALVES,
PRESIDING OFFICER

RULES COMMITTEE

LEGISLATOR NORMA GONSALVES
CHAIR

Theodore Roosevelt Building
1550 Franklin Avenue
Mineola, New York

August 23, 2017

4:41 P.M.

Regal Reporting Service
516-747-7353

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2 A P P E A R A N C E S:

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4 LEGISLATOR NORMA GONSALVES

5 Chair

6

7 LEGISLATOR RICHARD NICOLELLO

8 Vice Chair

9

10 LEGISLATOR DONALD MACKENZIE

11

12 LEGISLATOR VINCENT MUSCARELLA

13

14 LEGISLATOR KEVAN ABRAHAMS

15 Ranking member

16

17 LEGISLATOR SIELA BYNOE

18

19 LEGISLATOR ELLEN BIRNBAUM

20

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1 Rules - 8-23-17

2 LEGISLATOR GONSALVES:

3 Mr. Pulitzer would you call the roll.

4 MR. PULITZER: Legislator

5 Birnbaum.

6 LEGISLATOR BIRNBAUM: Here.

7 MR. PULITZER: Legislator Siela

8 Bynoe.

9 LEGISLATOR BYNOE: Here.

10 MR. PULITZER: Ranking member

11 Kevan Abrahams.

12 LEGISLATOR ABRAHAMS: Here.

13 MR. PULITZER: Legislator Donald

14 MacKenzie.

15 LEGISLATOR MACKENZIE: Here.

16 MR. PULITZER: Legislator Vincent

17 Muscarella.

18 LEGISLATOR MUSCARELLA: Here.

19 MR. PULITZER: Vice-chairman

20 Richard Nicolello.

21 LEGISLATOR NICOLELLO: Here.

22 MR. PULITZER: Chairwoman Norma

23 Gonsalves.

24 LEGISLATOR GONSALVES: Present.

25 MR. PULITZER: We have a quorum

1 Rules - 8-23-17

2 ma'am.

3 LEGISLATOR GONSALVES: Thank you
4 very much Mr. Pulitzer. Usually we do the
5 contracts first but in this case we will
6 recess rules to do the contracts after we take
7 care of the items.

8 And as we did in Finance, I'm going
9 to call, with the okay of the minority, the
10 items with the exception of 320. The first
11 item is clerk item 317, 318, 319 and I think
12 that's it. Wait a minute. The other item is
13 item 326. And I believe then we have item
14 331.

15 All those in favor of the items I
16 just called please indicate by saying aye.
17 Any opposed? I guess it's unanimous.

18 Now for item 320, which is the bond
19 ordinance for providing for capital
20 expenditures to finance the capital projects
21 identified herein within the county of Nassau
22 and authorizing \$3,260,000 in bonds of the
23 county of Nassau to finance such expenditure
24 pursuant to the local finance law of New York
25 and the county governmental law of Nassau

1 Rules - 8-23-17

2 County. Moved by Legislator Nicoletto.

3 Second by Legislator Muscarella.

4 Any comments or questions? There
5 being none, all those in favor of 320 signify
6 by saying aye. Any abstentions? We have
7 three abstentions. It passes four to three.

8 The Rules Committee is now in
9 recess as I said earlier because we have the
10 contracts to address.

11 (Meeting was recessed at 4:43 P.M.)

12 (Meeting reconvened at 5:45 P.M.)

13 LEGISLATOR GONSALVES: Rules is
14 back in session. Let's go with the items that
15 we need to do now. We have I believe some
16 contracts before us and it's B17, a contract
17 with the Department of Public Works and
18 Posillico Civil Inc.

19 Motion please. Moved by legislator
20 Nicoletto. Second by Legislator Muscarella.
21 Who is going to speak on B17?

22 MR. ARNOLD: Ken Arnold, Public
23 Works. B17 is a resurfacing contract. It's
24 phase 43. It's a federally funded contract.
25 We had two bidders and the lowest responsible

1 Rules - 8-23-17

2 bidder is Posillico in the amount of \$8.9
3 million. Any questions?

4 LEGISLATOR GONSALVES: Looks like
5 we 80 percent of this refundable?
6 Reimbursable I should say.

7 MR. ARNOLD: Yes. 80 percent is
8 reimbursable, that is correct.

9 LEGISLATOR GONSALVES: Any
10 questions regarding this contract? Any public
11 comment? There being none, all those in favor
12 of B17 signify by saying aye. Any opposed?

13 Minority Leader what are we doing?

14 LEGISLATOR ABRAHAMS: We just had
15 questions I'm sorry Madam Presiding Officer
16 Mr. Arnold this is the one if we're looking at
17 this correctly there were two bids received on
18 November 26th?

19 MR. ARNOLD: That's correct.

20 LEGISLATOR ABRAHAMS: 2016 I'm
21 sorry. And the backup recommends that is
22 Posillico was the responsible bidder?

23 MR. ARNOLD: Correct.

24 LEGISLATOR ABRAHAMS: My question
25 ties to the backup as it pertains to the

1 Rules - 8-23-17
2 principals. On the business history form a
3 yes response was given for the question
4 regarding whether in the past five years has
5 the business and/or any of its owners and/or
6 officers or affiliated business been subject
7 of investigation by any government agency
8 including but not limited to federal, state
9 and local regulatory agencies.

10 However, none of the principals
11 answered yes to the question. On the
12 principal questionnaire forms they submitted I
13 would think they should have answered yes to
14 question ten. Did you get a chance to review
15 the forms?

16 MR. ARNOLD: Yes. And my staff
17 did also. I believe the issue you are talking
18 about is an OSHA violation regarding
19 excavation. We did look into that. That was
20 resolved by the company.

21 LEGISLATOR ABRAHAMS: But I would
22 think wouldn't the forms have to be
23 consistent?

24 MR. ARNOLD: I would have look at
25 what affiliates these companies are. If you

1 Rules - 8-23-17

2 give me one second.

3 LEGISLATOR ABRAHAMS: This is why
4 Mr. Arnold does that. Obviously if we put a
5 process in place we should make sure --

6 MR. ARNOLD: Presiding Officer,
7 the department saw it on the business history
8 form. We didn't dig deeper on the principal
9 because we saw the violation, and since the
10 business identified it that's what we
11 researched. In the future we will make sure
12 it's consistent with the principals. That
13 they identify also on their forms.

14 LEGISLATOR GONSALVES: I see Mr.
15 Cleary there. It does give the impression
16 that there's an inconsistency. Can you
17 clarify this for us? What's your opinion?
18 One question says yes and one question says
19 no. Then it says see attached and so on and
20 so forth.

21 MR. CLEARY: Robert Cleary,
22 director of procurement compliance. The
23 vendor did disclose the investigation through
24 the business history. The principals, it
25 would have been preferable for them to

1 Rules - 8-23-17

2 indicate on ten as well I believe. This was
3 an oversight on the principals and we missed
4 it.

5 LEGISLATOR GONSALVES: Can we get
6 them to clarify this in writing for us to make
7 it clear?

8 MR. CLEARY: I would expect that
9 we would be able to do that.

10 LEGISLATOR MUSCARELLA: If I just
11 may. Tell me if I'm wrong. It appears there
12 may be an inconsistency but there doesn't
13 appear to be any intent to hide anything here
14 since they attached information with respect
15 to it.

16 MR. CLEARY: As I said, the
17 investigation itself was disclosed in the
18 disclosure. The vendor was in all appearance
19 acting in good faith.

20 LEGISLATOR GONSALVES: Thank you
21 very much Mr. Cleary. Thank you very, very
22 much. So let's go back to I believe that was
23 item B17. Any other comments regarding B17?
24 Any public comment? There being none, all
25 those in favor of B17 signify by saying aye.

1 Rules - 8-23-17

2 Any opposed? The item passes four to three.

3 The next item is B18, a resolution
4 authorizing the county executive to award and
5 execute a contract between the County of
6 Nassau acting on behalf of the Nassau County
7 Department of Public Works and Pratt Brothers
8 Inc.

9 Moved by Legislator Muscarella.

10 Seconded by Legislator Nicolello.

11 Tell us about this one.

12 MR. ARNOLD: B18 is a resurfacing
13 requirements contract. This contract is for
14 an as-needed basis to resurface roads that
15 need to be addressed immediately or cannot
16 make a certain schedule that we are looking to
17 achieve. We had two bidders on this
18 contract. The lowest responsible bidder,
19 after other items that came up, was dropped
20 from consideration. So the department went
21 back to the second bidder, which was Pratt
22 Brothers. We renegotiated a price with them.
23 They revised their bid to \$746,919 which is a
24 bid for comparison purposes. This contract is
25 actually a \$4 million contract for a two-year

1 Rules - 8-23-17

2 period.

3 LEGISLATOR GONSALVES: Legislator
4 Nicolello.

5 LEGISLATOR NICOLELLO: My
6 question is, did the lowest responsible bidder
7 withdraw or were the dropped by the Department
8 of Public Works.

9 MR. ARNOLD: They were dropped by
10 the department.

11 LEGISLATOR GONSALVES: Any other
12 questions? Legislator Bynoe.

13 LEGISLATOR BYNOE: I have some
14 questions about the actual reevaluation of the
15 bid and coming to I guess a \$746,919. And
16 that was what we reevaluated and awarded and
17 then we gave a two year contract or one
18 year -- two years at \$4 million per year.

19 MR. ARNOLD: That is correct.

20 LEGISLATOR BYNOE: Which then
21 gets us to eight million.

22 MR. ARNOLD: That's correct.

23 LEGISLATOR BYNOE: Help me here
24 because I don't understand how the contract
25 gets awarded.

1 Rules - 8-23-17

2 MR. ARNOLD: I know what your
3 question is going to be. How did we go from
4 746 to \$4 million. This is a typical question
5 we have. The department has to put together a
6 bid estimate of factors on a contract so we
7 can compare all the bids equally. We utilize
8 those bid factors to come with an engineer's
9 estimate. In this case the engineer's
10 estimate -- I don't have it in front of me but
11 the bid factors, when you compare the bid
12 prices that each contractor gave compared to
13 the factors that we applied to the contract
14 you get to the price of -- the original bids
15 came in at 776 for the low bidder and then
16 Pratt was at 899.

17 We then went back to Pratt when we
18 dropped the low bidder and said can you do
19 better on your bid prices? You are quite a
20 bit higher than our lowest bidder.

21 We negotiated different items
22 within the contract lower, applied the bid
23 factors that the department put into the
24 contract and came back with a total price of
25 746.

1 Rules - 8-23-17

2 We award the contract for \$4
3 million because we have much more work than we
4 put in our bid factors. The bid factors was
5 just a comparison exercise. The actual work
6 we're capping at \$4 million. That's what we
7 believe we will do in one fiscal year.

8 LEGISLATOR BYNOE: How do you
9 deal with the surety bond on this.

10 MR. ARNOLD: It's a percentage of
11 the \$4 million.

12 LEGISLATOR BYNOE: Each year?

13 MR. ARNOLD: Yes.

14 LEGISLATOR BYNOE: The engineer's
15 estimate, we weren't able to find that in the
16 backup, the 1.2.

17 MR. ARNOLD: The bid factors are
18 in the proposal sheets of what the contractors
19 applies are the bid factors or estimated
20 quantities is another term that can be used.
21 That's what we use to make sure we have a
22 well-founded bid. We don't want a contractor
23 to underestimate one item that he knows that
24 we don't use as compared to an item that we
25 may use a lot of. We want to make sure we get

1 Rules - 8-23-17

2 bids that are actually usable in the field.

3 So we apply bid factors and that's
4 how we come back with a comparison bid. Which
5 in this case was the 746.

6 LEGISLATOR BYNOE: Question, just
7 given the controversy around the initial
8 bidder, should say winner of the bid, we
9 didn't consider rebidding this? Putting it
10 back out? Feeling as though maybe there was
11 some taint on it?

12 MR. ARNOLD: Once we negotiated
13 and we were comfortable with the revised bid
14 was actually a better price than the original
15 bidder, we felt that we were comfortable
16 awarding this bid. If we could not get the
17 second bidder to come down as much as we did
18 we would have rebid the project.

19 LEGISLATOR BYNOE: What are the
20 MWB.

21 MR. ARNOLD: At this point it's
22 probably not defined because this is a
23 requirements contract. So there's certain
24 work that -- we don't have all work detailed.
25 Let me just check the backup real quick. At

1 Rules - 8-23-17

2 it point, which is typical for resurfacing,
3 they're looking at a total of six percent of
4 contract work to MWBE. Three percent each.
5 That's typical for our resurfacing contracts.
6 We see somewhere around five to six to seven
7 percent.

8 The phase 43, the phase you guys
9 just voted on, was a state contract which had
10 goals, which was a five percentage goal which
11 we met in that. So six percent is actually
12 above what the state requires us to do in
13 contracts, so we're comfortable.

14 LEGISLATOR BYNOE: So when we vet
15 this particular contractor, because they were
16 the most qualified, lowest most qualified
17 bidder, at the eight million mark let's say --
18 I'm sorry \$800,000 mark, we then judge them to
19 determine that they actually would be able to
20 qualify to do the work based on much larger
21 contracts and giving them much more work than
22 the \$800,000 contract?

23 MR. ARNOLD: Yes. We look at
24 these contractors to make sure they can supply
25 the material, manpower equipment for the scope

1 Rules - 8-23-17

2 of work. And Pratt is a very well known
3 contractor. They have done our work for many
4 years.

5 LEGISLATOR BYNOE: Thank you very
6 much.

7 LEGISLATOR GONSALVES: Legislator
8 Birnbaum.

9 LEGISLATOR BIRNBAUM: I know we
10 have several contracts that involve repaving
11 but I just wonder, does the county DPW do and
12 or could they do any of these projects and
13 have they in past or have we always relied on
14 outside contractors?

15 MR. ARNOLD: The department does
16 small repaving projects. We try to focus a
17 lot of our repavings in county parks, pathways
18 and parkways. We have done some county
19 roads. We did Union I think in Legislator
20 Bynoe's district. Last year we did Corporate
21 Drive after that. We're actually looking to
22 work with Oyster Bay in doing some paving.
23 The county does not have a milling machine so
24 we only do the paving portion of the work.
25 The milling would still be done by a

1 Rules - 8-23-17

2 contractor. But we look to do cost effective
3 sized projects for the department. That's why
4 Oyster Bay working with them is more amenable
5 than using some of the larger county roads.
6 The larger county roads require a lot of
7 manpower for protection, maintenance of
8 traffic and all kinds of other details that
9 require the larger roads when you have four
10 lanes and you've got to keep the roads open.

11 LEGISLATOR BIRNBAUM: The second
12 part of my question would be partnering with
13 other municipalities, the towns and the
14 cities. Have we been doing that? Because a
15 lot of these roads go villages, through main
16 roads in the town.

17 MR. ARNOLD: Right now through
18 the shared services work that the
19 administration is focusing on we're talking to
20 towns and villages about work. The Town of
21 Oyster Bay is one that comes to mind on
22 resurfacing. I know that North Hempstead does
23 their own resurfacing. I can't speak for what
24 Hempstead does.

25 LEGISLATOR BIRNBAUM: That's what

1 Rules - 8-23-17

2 I was suggesting, that maybe if you speak to
3 the DPW at North Hempstead or Glen Cove or
4 Long Beach.

5 MR. ARNOLD: There's also a
6 balance of my manpower, my work and also
7 shared services with other municipalities. So
8 we have to be careful of that.

9 LEGISLATOR GONSALVES: Any other
10 questions or comments from the legislators?
11 Any public comment? There being none, all
12 those in favor of item B18 signify by saying
13 aye. Any opposed? The item passes four to
14 three.

15 The next item is B19, a resolution
16 authorizing the county executive to award and
17 execute a contract between the county of
18 Nassau acting on behalf of the Department of
19 Public Works and Posillico Civil Inc.

20 Motion please. Moved by Legislator
21 MacKenzie. Seconded by Legislator
22 Muscarella. Mr. Arnold.

23 MR. ARNOLD: B19-17 is another
24 road resurfacing contract. We call this
25 contract phase 52. In this case we had three

1 Rules - 8-23-17

2 bidders, and similar to the last contract we
3 spoke of, the lowest responsible bidder we
4 dropped as a result of some investigations
5 that are ongoing. We went back and spoke with
6 the second lowest bidder which is Posillico
7 Civil Inc. and they revised their bid from \$4
8 million to \$3.7 million. Our engineer's
9 estimate was \$4.5 million. Based on those
10 numbers, the department decided it was -- made
11 a decision to recommend awarding this contract
12 to Posillico.

13 LEGISLATOR GONSALVES: Any
14 questions of Mr. Arnold? Legislator Bynoe.

15 LEGISLATOR BYNOE: I'm just
16 stating for the record that the same issue
17 that Minority Leader Abrahams stated earlier
18 in terms of the disclosure is also present in
19 this issue as well. Stating for the record.

20 LEGISLATOR GONSALVES: Any other
21 comments or questions from the legislators?
22 Any public comment? There being none, all
23 those in favor of item B19 signify by saying
24 aye. Any opposed? The item passes four to
25 three.

1 Rules - 8-23-17

2 The next item is B20 a contract
3 between the county of Nassau acting on behalf
4 of the Nassau County of Public Works and Pratt
5 Brothers Inc.

6 Moved by legislator Nicoletto.
7 Seconded by Legislator MacKenzie.

8 MR. ARNOLD: B20 is another
9 resurfacing contract this is what we call
10 phase 55. This contract had four bidders.
11 And again, the lowest responsible bidder was
12 dropped because of an investigation. We
13 worked with the second lowest bidder and
14 renegotiated the price to \$4.3 million. Our
15 engineer's estimate was 4.4. Based on that
16 fact, we recommended awarding of the
17 contract.

18 LEGISLATOR GONSALVES: Any
19 questions or comments? Legislature MacKenzie.

20 LEGISLATOR MACKENZIE: We did a
21 number of phases here, 43, 52 and 55. Is it
22 anticipated that at least part or all of these
23 phases will be completed this paving season?

24 MR. ARNOLD: It all depends on
25 when I can get NIFA and the comptroller's

1 Rules - 8-23-17

2 approval. We anticipate that these phases,
3 especially 52 and 55, should start sometime
4 this fall. I'm not sure how far along we'll
5 get with that work. 43 is a federal project,
6 so they might be in step with the state that
7 we have to get some approvals that may delay
8 that to start in the spring. But we'll do our
9 best to try to get that work started in the
10 fall.

11 The requirements contract will
12 require full NIFA board approval because it's
13 an \$8 million contract. So that I would
14 expect, I'm not sure when their next meeting
15 is, whether the comptroller would get this
16 approved in time to get on the board meeting.
17 I can't speak to that.

18 Actually, one of the other phases
19 was above \$5 million also. That would require
20 a full board meeting.

21 LEGISLATOR MACKENZIE: Then if
22 they are able to start this year are the roads
23 prioritized in terms of those in the worst
24 condition being done first? Is that something
25 that can be worked out with the contractors?

1 Rules - 8-23-17

2 MR. ARNOLD: No. The department
3 will dictate what roads are in the worst shape
4 that we want them to address before the winter
5 season. What we want to minimize is having
6 the roads fall apart during the winter or
7 having a pot hole circus on the roads. So we
8 would look to get those roads done first. The
9 ones that are in most severe condition.

10 LEGISLATOR MACKENZIE: In the
11 event something is currently in a phase but
12 looks to be in such poor condition that it
13 needs to be done more quickly can that be
14 done? Removed from the phrase and put on the
15 requirements or something like that?

16 MR. ARNOLD: It can be. It does
17 cause me paper headaches but I have to put
18 change orders on contracts. But if it was
19 critical it could be something that we could
20 address. With the exception of the federal
21 project. The federal project you really don't
22 want to do any change orders on because they
23 preapprove all the work and we would have to
24 go back to them and have them approve the
25 design of any roads that we take out and put

1 Rules - 8-23-17

2 in any design and work we put in.

3 LEGISLATOR MACKENZIE: Thank you.

4 LEGISLATOR GONSALVES: Any other
5 comments?

6 MR. BECKER: Madam Chair, I just
7 wanted to add one thing. Legislator MacKenzie
8 in my office and legislative affairs we're
9 going to work on this and try and get these
10 processed as quickly as possible. We have a
11 new contract routing system. These are no
12 longer delivered by hand to NIFA. Although if
13 it has to go before their meeting that would
14 hold it up somewhat. When did you say the
15 next meeting is?

16 LEGISLATOR GONSALVES: The 29th
17 of this month.

18 MR. BECKER: We can tell you that
19 it's going to be in their possession
20 immediately and the comptroller's office. My
21 office is going to push these very hard. And
22 as I said, through our contract routing system
23 things are not moved physically anymore
24 they're moved electronically. That should
25 help with the process.

1 Rules - 8-23-17

2 LEGISLATOR MACKENZIE: Thank you
3 Fran. I just want to say thank you to Fran
4 for all the hard work he's done.

5 LEGISLATOR GONSALVES: Minority
6 Leader.

7 LEGISLATOR ABRAHAMS: Thank you
8 Presiding Officer.

9 Ken I know you answered a similar
10 question before obviously with one of the
11 bidders in reconsidering their awarding of the
12 contract and two things. One, we couldn't
13 tell from the backup who the third bidder
14 was. Being that we decided to go with, in
15 this case, Pratt Brothers, just wanted to find
16 out who the third bidder was.

17 And secondly, just wanted to get
18 your position again for the record on why we
19 did not rebid this contract after initially
20 awarding it to Carl Lizza who was the lowest
21 responsible bidder.

22 MR. ARNOLD: The third bidder was
23 Posillico Civil. Their bid was \$4.8 million.
24 The department recommended an award to Pratt,
25 the second bidder after renegotiations,

1 Rules - 8-23-17

2 because it was below the engineer's estimate.

3 We felt it was a competitive price and we

4 would not do much better if we rebid the

5 contract.

6 LEGISLATOR GONSALVES: Legislator

7 Nicolello.

8 LEGISLATOR NICOLELLO: Real

9 quickly I'm assuming there's a limited

10 universe of companies that do paving on this

11 scale. So if you rebid you'd probably have

12 the same bidders who would have knowledge that

13 Lizza was out of the picture. You actually

14 might wind up with more expensive contracts I

15 would assume.

16 MR. ARNOLD: That's a

17 possibility.

18 LEGISLATOR GONSALVES: Any other

19 comments or questions? Any public comment?

20 There being none, all those in favor of B20

21 signify by saying aye. Any opposed? The item

22 passes four to three.

23 And we have one final item which is

24 a personal services agreement E174 between the

25 county of Nassau acting on behalf of the

1 Rules - 8-23-17

2 Nassau County Department of Public Works and
3 Liro Engineers Inc.

4 Moved by Legislator Nicoletto.

5 Second by Legislator MacKenzie. This is it.

6 MR. ARNOLD: E-174-17 is a design
7 contract for the complete street project on
8 Grand Avenue in Baldwin. We're receiving ESD
9 funding for part of the design phase, which is
10 about \$135,000. Construction phase work we
11 have a complete earmark from the state of \$4.7
12 million for the construction portion of the
13 work.

14 This design contract, why we pushed
15 it to get it here today, we have to the design
16 complete and obligated a year from today,
17 which is the design period for this
18 recommended contractor.

19 Liro was selected as the preferred
20 option for the design services associated with
21 this contract.

22 LEGISLATOR GONSALVES: Any
23 questions or comments for Mr. Arnold? Any
24 public comment? There being none all those in
25 favor of E-174 signify by saying aye. Any

1 Rules - 8-23-17

2 opposed? The item passes four to three.

3 Thank you very much Mr. Arnold.

4 Thank you colleagues. Thank you Frank. Of
5 course thank you Mr. Becker otherwise you
6 won't sleep tonight because I didn't say thank
7 you.

8 Motion to adjourn. Moved by
9 Legislator Nicoletto. Seconded by Legislator
10 Muscarella. All those in favor of adjourning
11 signify by saying aye. Any opposed? We are
12 adjourned.

13 (TIME NOTED: 6:15 P.M.)

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CERTIFICATION

I, FRANK GRAY, a Notary
Public in and for the State of New
York, do hereby certify:

THAT the foregoing is a true and
accurate transcript of my stenographic
notes.

IN WITNESS WHEREOF, I have
hereunto set my hand this second day of
September 2017

FRANK GRAY