



Tuesday, November 24, 2015
STAMP Committee Meeting - GCEDC
Innovation Zone Conference Room
9:30 am
MINUTES

ATTENDANCE

Committee Members:

P. Zelif, R. Cianfrini, J. Rizzo, P. Battaglia

GCEDC / GGLDC Board Members:

Staff:

S. Hyde, M. Masse, C. Suozzi, R. Tabelski, E. Richardson

Guests:

Adams Walters (Phillips Lytle), Jay Gsell (Genesee County), Kevin Fisher (Town of Alabama), Pam LaGrou (Town of Alabama)

Absent:

1. Call To Order / Enter Public Session

P. Zelif called the meeting to order at 9:35 a.m. in the Innovation Zone Conference Room of the Genesee County Economic Development Center.

2. Executive Session

P. Battaglia made a motion to enter into the executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 9:35 pm, for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.
3. Discussions regarding proposed, pending or current litigation.

The motion was seconded by R. Cianfrini and approved by all members present.

J. Gsell joined the meeting at 10:00am.

Re-Enter Public Session

P. Battaglia made a motion to enter back into public session at 10:45 a.m., seconded by R. Cianfrini and approved by all.

P. LaGrou and K. Fisher joined the meeting at 10:45am.

3. Chairman's Report & Activities

3a. Agenda Additions / Other Business – Nothing at this time.

3b. Minutes: October 23, 2015

P. Battaglia made a motion to approve the Minutes from October 23, 2015; the motion was seconded by J. Rizzo. Roll call resulted as follows:

P. Zeliff - Yes
J. Rizzo - Yes
R. Cianfrini - Yes
P. Battaglia - Yes

The item was approved as presented.

4. Discussions / Official Recommendations to the Board:

4a. ESD \$5M Award Update - M. Masse shared that Empire State Development (ESD) approved the \$5M budget to enable Project Eagle to break ground in April or May 2016. The next step is to hold a public hearing. That would be the final approval necessary to release the funds. Once the Agency has final approval, it can begin to draw down on the line of credit and start moving forward with preparation for Project Eagle.

J. Rizzo asked if M. Masse was continuing his dialogue with First Niagara Bank, and asked if they had assured him that the sale to Key Bank is not going to impact our relationship in any way.

M. Masse shared that he's been talking with First Niagara about our timelines and they have assured him that they can meet those timelines.

4b. Reimbursement Agreement with Town of Alabama – A. Walters shared that the Board has promised to reimburse the Town of Alabama for reasonable expenses related to the STAMP project. We wanted to create an agreement that made the GCEDC's obligation to reimburse the Town clear while also setting parameters and a framework; defining a scope of work, putting in a fixed not to exceed amount, etc. There has been some back and forth with Mark Boylan, the Town's attorney, and the Town of Alabama Board has approved this agreement with one minor modification to which M. Masse can speak to.

M. Masse shared that depending upon the Town's position as it relates to the water project engineer; the engineering fees related to the district formation would be covered under that agreement if the Town appointed Clark Patterson Lee the engineer for the entire water project. The language in the agreement presented to the Committee today would be modified to reflect that.

P. LaGou added that she feels as if A. Walters summarized this agreement very well. The Town appreciates that opportunity to take a look at what they need to cover and to be a good partner and keep this project moving forward. They were pleased with the time that A. Walters and M. Masse put into coming up with this agreement.

M. Masse asked the Committee to recommend approval of this Reimbursement Agreement with the Town of Alabama for consultant expenses related to the STAMP project in the amount not to exceed \$247,000.

P. Battaglia made a motion to recommend signing a reimbursement agreement with the Town of Alabama not to exceed \$247,000 to the full Board; the motion was seconded by R. Cianfrini. Roll call resulted as follows:

P. Zeliff - Yes
J. Rizzo - Yes
R. Cianfrini - Yes
P. Battaglia - Yes

The item was approved as presented.

A. Walters left the meeting at 10:58am.

4c. STAMP Construction Legal Services Agreement – S. Hyde shared that the GCEDC staff decided to issue a simple request for proposal to the legal teams that support the agency currently or have supported us in the past relative to legal support that will be necessary for the agency as planned owners of the factory to be constructed and leased by 1366 Technologies. We decided to implement this process although professional services do not require an RFP process by policy or statute because it was an activity that is not normal course for the agency. Hence, the questions we have relative to constructing a facility for 100% occupation by 1366 Technologies are rather unique because we, GCEDC, will be the owner of the facility but largely in a “conduit capacity”. Hence, we felt it necessary to explore which firm could provide the agency best value in the representation of our interest on a cost effective basis relative to the cost of construction. The key aspects of legal services and guidance needed related to: A) The potential ability for the GCEDC to legally appoint 1366 Technologies as our agent to lead the effort to design and construct the facility while following all legal requirements of GCEDC as a public benefit corporation (i.e. public works, prevailing wage, competitive bidding); B) development of the Agent agreement contemplated in “A”; implications related to construction project delivery models (Design/Bid/Build, CM @ Risk, Design/Build et. Al.) given the facility will ultimately be owned by the agency; C) PLA implications; D) facility Master Lease development support among the parties (1366, GCEDC, NYS, US DOE); E) parcel ground lease development; and F) parcel B purchase option. The RFP was issued 10/30/15.

S. Hyde shared that the GCEDC received responses from all three firms; Harris Beach, Webster Szanyi and Phillips Lytle by the November 16th deadline. A scoring criteria and budget summary sheet was developed and is attached with the evaluators of the proposals being M. Masse and S. Hyde. After careful review and discussion by Mark Masse, Lezlie Farrell and S. Hyde, it was felt that all RFP responses were well done and all firms are quite capable in their own right. The proposal submitted by Phillips Lytle scored the highest across the six decision criteria as well as on the budget summary because Phillips Lytle quoted a fixed fee to undertake the defined scope of work while the other firms proposed an hourly rate based model with the willingness to discuss other forms of pricing. Given the importance of keeping costs low and well understood – Phillips Lytle provided the RFP response closest aligned with the RFP requirements.

It is his recommendation as CEO to award this portion of the legal services for the 1366 Technologies project, as outlined above, to Phillips Lytle. The budget for the scope of work which embodies the elements of legal services described above is \$37,375 plus out of pocket disbursements (filing, recording fees, etc.). The funding source to cover these legal services costs is intended to be the \$18M grant from NYS to GCEDC to support factory construction as reflected in the signed NYS Incentives Proposal with 1366 Technologies.

J. Rizzo pointed out that in the evaluation form, for Phillips Lytle, they have included a blended hourly rate and a budget estimate. I assume they will send you a monthly bill with an hourly breakdown. Can we assume that under no circumstances will the cost exceed the \$37,375? Even if they exceed the number of hours projected for this scope of work.

S. Hyde shared that yes, we can assume they will not exceed the \$37,375 to complete the entire scope of work listed in the RFP.

J. Rizzo stated that it is important that the contract is a firm “not to exceed” otherwise the analysis here isn’t quite correct; we wouldn’t be comparing apples to apples. The analysis seems to be a budget based on projected hours and a blended rate. If this is truly a fixed fee then we should request further analysis from Harris Beach.

S. Hyde shared that he should have enough time to reach out the Harris Beach and Phillips Lytle for some more information to bring back at the Board meeting.

J. Rizzo made a motion to move to the full board signing of the STAMP Construction Legal Services Agreement and award to be determined, pending more information; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Zeliff - Yes

J. Rizzo - Yes

R. Cianfrini - Yes

P. Battaglia - Yes

The item was approved as presented.

Adjournment

As there was no further business, P. Battaglia made a motion to adjourn at 11:11 p.m., seconded by R. Cianfrini and passed unanimously.

DRAFT