

TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING

Town Hall

1/14/82

9:30 P.M.

Present: Supervisor Dusanenko
Councilmen Carey, Holbrook, Lettre, Maloney
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

Prior to the convening of this meeting a presentation was made on the compactor by Gary Job of H. O. Penn Company - caterpillar dealer in the area and by Bob Majors, representing Rex.

Supervisor Dusanenko declared the Special Town Board Meeting open; assemblage saluted the Flag.

Councilman Maloney inquired as to whether the bids were correct. Les Bollman stated that the former Town Attorney said there was only one valid bid - the caterpillar. The Rex did not meet the specifications. Councilman Lettre inquired as to whether the specifications were drawn properly. He asked if the Town would be in jeopardy of liability that we discriminated against anyone else.

Town Attorney John Costa stated that he was not in a position to answer that question. This matter was scheduled for the organizational meeting and it was indicated at that meeting that there was only one bid. There is no material in the files in my office regarding this and therefore I am not in a position to know.

Supervisor Dusanenko said that the previous Town Attorney said there was only one valid bid. He said there had been an opportunity for an on-site inspection but that no one had availed themselves of this opportunity. Most of the questions were answered tonight. Supervisor Dusanenko also stated that we have the obligation of a consent order and if we do not meet the standards of the DEC we are putting the Town in grave jeopardy.

RESOLUTION NO. (69-1982)

AWARDING BID FOR CRAWLER
DOZER FOR SANITARY
LANDFILL (H.O. PENN
MACHINERY CO., INC.)

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Director of Department of Environmental Control and the Director of Purchasing that

BID # 64-1981
for CRAWLER DOZER FOR SANITARY LANDFILL

is hereby awarded to:

H. O. PENN MACHINERY CO., INC.
P.O. BOX 3238, NOXON ROAD
POUGHKEEPSIE, N.Y. 12603

for one (1) New Caterpillar Model D8K CRAWLER DOZER as per the following TOTAL COST Bid Proposal

1. One (1) CATERPILLAR # D8K CRAWLER DOZER	<u>\$207,000.00</u>
2. Trade in: ONE Cat. D-8 s/n 46A21161	<u>\$ 14,337.00</u>

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RESOLUTION NO. (69-1982) Continued

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| 3. Difference (item 1 less item 2). This is the amount the Town will pay upon delivery of the machine | <u>\$ 192,663.00</u> |
| 4. Guaranteed maximum total cost of repairs for 10,000 operating hours or 5 years, whichever comes first, as per attached specifications, will not exceed <u>\$90,000.00</u> . Repair cost to be paid as incurred. Any cost above this guaranteed figure to be paid by selling dealer. | <u>\$ 90,000.00</u> |
| 5. Item 3 PLUS item 4 | <u>\$ 282,663.00</u> |
| 6. Guaranteed repurchase price at end of 10,000 operating hours or 5 years, whichever comes first | <u>\$ 92,160.00</u> |
| 7. TOTAL COST OF BID: Item 5 MINUS item 6 (Award of bid based on this figure) | <u>\$ 190,503.00</u> |

and be it

FURTHER RESOLVED, that this award is subject to a formal written agreement between the successful bidder and the Town as drawn up by the Town Attorney. Such agreement shall indicate that if circumstance beyond the control of the Town force the Sanitary Landfill to close, that the successful bidder shall agree to honor the guaranteed maximum repair cost and guaranteed maximum repurchase price also proposed for 2, 3, or 4 years.

Seconded by Co. Holbrook

On roll call the vote was as follows:

Supervisor Dusanenko.....	Yes
Councilman Carey.....	Abstain
Councilman Holbrook.....	Yes
Councilman Lettre.....	Yes
Councilman Maloney.....	Yes

* * * * *

Supervisor Dusanenko asked if there was a motion to accept or reject bids on the Compactor.

Les Bollman said only one company bid under the total cost procedure. Mr. Costa again repeated that he was not in a position to answer any legal question regarding this until he examined whatever files he could locate relative to the matter.

Councilman Lettre said that he was making a motion to accept on the recommendation of Les Bollman and Mike Araneo.

RESOLUTION NO. (70-1982)

AWARDING BID FOR COMPACTOR
FOR SANITARY LANDFILL
(H.O. PENN MACHINERY CO.,
INC.)

Co. Lettre offered the following resolution:

RESOLUTION NO. (70-1982) Continued

RESOLVED, that based upon the recommendation of the Director of Environmental Control and the Director of Purchasing that

BID # 63-1982
COMPACTOR FOR SANITARY LANDFILL

is hereby awarded to

H. O. PENN MACHINERY CO., INC.
P.O. Box 3238, Noxon Road
Poughkeepsie, N.Y. 12603

for one (1) New Caterpillar Model 826C Compactor as per the following total cost bid proposal

- 1. One (1) New Caterpillar # 826C Compactor..... \$203,000.00
- 2. Trade in Allowance - Rex 340 s/n H-T-R 246..... 4,758.00
- 3. Difference (Item 1 LESS Item 2). This is the amount the Town will pay upon delivery of the machine..... 198,242.00
- 4. Guaranteed maximum total cost of repairs for 10,000 operating hours or 5 years, whichever comes first, as per attached specifications, will not exceed \$80,000.00. Repair cost to be paid as incurred. Any cost above this guaranteed figure to be paid by selling dealer..... 80,000.00
- 5. Item 3 Plus Item 4..... 278,242.00
- 6. Guaranteed repurchase price at end of 10,000 operating hours or 5 years, whichever comes first..... 59,704.00
- 7. TOTAL COST BID: Item 5 MINUS Item 6 (Award of bid based on this figure)..... \$218,538.00

and be it

FURTHER RESOLVED, that this award is subject to a formal written agreement between the successful bidder and the Town as drawn up by the Town Attorney. Such agreement shall indicate that if circumstances beyond the control of the Town force the Sanitary Landfill to close, that the successful bidder shall agree to honor the guaranteed maximum repair cost and guaranteed maximum repurchase price also proposed for 2, 3, or 4 years.

Seconded by Supv. Dusanenko

On roll call the vote was as follows:

- Supervisor Dusanenko.....Yes
- Councilman Carey.....No
- Councilman Holbrook.....No
- Councilman Lettre.....Yes
- Councilman Maloney.....No

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Mr. Bollman then requested direction from the Board as to going out to bid again. There followed extensive discussion regarding rebidding, with input from Councilmen, Environmental personnel and sales representatives of companies selling the equipment involved.

Supervisor Dusanenko requested Councilmen, Environmental personnel and Town Attorney to get together to discuss the legality of the bid. He also ascertained that the bid was still open for action at the January 26th Town Board Meeting.

Supervisor Dusanenko stated that Mr. Costa had apprised him of a situation earlier in the week on advice from Mrs. Rivet, Private Industry Council, that there is possible jeopardy with the Freihoffer project due to certain requirements in the agreement that we had signed which they cannot comply with, or they feel they cannot comply with, in order to have the closing on their IDA mortgage.

Mr. Costa mentioned that Diana Rivet is the attorney for the Industrial Development Agency and also present is Bob Schneider, attorney with the bonding counsel. Mr. Costa said the agreement which the Town has executed with Freihoffer requires that Freihoffer pay taxes which would be on the property developed by way of the agreement. The agreement requires that Freihoffer bond the Town in an amount sufficient to cover the payments it will make in lieu of taxes. Freihoffer is not in a position to get that bond or if it is it is prohibitively expensive to get a surety bond to guarantee payment to the Town. They are requesting possible modification of paragraph 11 of the Agreement.

Mrs. Rivet stated that this clause was not in the Seiki or Lazzarone agreements and should not have been in the Freihoffer Agreement either. They are unhappy that they have been asked to do something which two other recent companies new to the County have not been asked to do.

They have been asked to put up a bond in an amount which will cover the first five years' taxes. They have to pay them but they do not feel that they should have to put up a bond as they are a reputable company and will do what is expected of them.

It was agreed that a Statement of Intent would be prepared as Mr. Schneider said that some kind of statement was needed to show a commitment from the Town Board as to the course of action to be taken. All approved of this and the Supervisor said that the Town Board will take this up at the January 26th Town Board Meeting.

"Statement of Intent

Modify Paragraph 11 in the Freihoffer Agreement for payment in lieu of taxes to require an escrow account for a period of five years with the Bank of Albany with \$25,000.00 of funds and the Bank of Albany will act as fiscal agent, instead of a surety bond or letter of credit, subject to the approval of the other signers. The Town Board of the Town of Clarkstown anticipates affirmative passage at the regular meeting of January 26, 1982. The Clarkstown School Board is requested to call a meeting as soon as possible and the County Legislature to ratify these actions as well."

There being no further business to come before the Town Board, the Special Town Board Meeting was adjourned, on motion of Councilman Maloney, seconded by Councilman Carey, and unanimously adopted, time: 10:25 P.M.

Respectfully submitted,



PATRICIA SHERIDAN,
Town Clerk