

Moraga-Orinda Fire Protection District



BOARD OF DIRECTORS SPECIAL BOARD MEETING MINUTES

September 6, 2017
(Approved September 20, 2017)

1. Opening Ceremonies

The Board of Directors convened in Open Session at 5:30 P.M. on September 6, 2017 at the Moraga Library Community Room, 1500 Saint Mary's Road, Moraga. President Famulener called the meeting to order.

Present were the following Directors and Staff:

President Famulener	Director Jorgens	Grace Santos, District Clerk
Director Anderson	Stephen Healy, Fire Chief	Doug McManamon, District Counsel
Director Barber	Jerry Lee, Interim Fire Chief	
Director Jex	Gloriann Sasser, Admin Service Director	

2. Public Comment

There was no comment from the public.

3. Closed Session

At 5:32 P.M., the Board adjourned into Closed Session.

4. Reconvene the Meeting

President Famulener reconvened the regular business meeting of the Moraga-Orinda Fire District Board of Directors at 7:25 P.M. Present were the following Directors and Staff:

President Famulener	Director Jorgens	Grace Santos, District Clerk
Director Anderson	Stephen Healy, Fire Chief	John Bakker, District Counsel
Director Barber	Jerry Lee, Interim Fire Chief	Doug McManamon, District Counsel
Director Jex	Gloriann Sasser, Admin Service Director	

5. Report of Closed Session Action

There was no reportable action taken in Closed Session on items 3.1 Conference with Legal Counsel – Potential Litigation and 3.2 Public Employee Appointment (Fire Chief).

6. Public Comment

There was no comment from the public.

7. Consent Agenda

Motion by Director Barber and seconded by President Famulener to approve and file items 7.1 Meeting Minutes and 7.2 Monthly Incident Report, 7.3 Monthly Financial Report, 7.4 Monthly Check/Voucher Register, 7.5 Quarterly Ambulance Billing Report, 7.6 Quarterly Treasurer's Report, 7.7 Quarterly Balance Sheet, 7.8 PARS Account Report, and 7.9 Contra Costa County EMS Ambulance Service Payer Mix 2010-2016 Summary. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8. Regular Calendar

8.1 Approve a Written Agreement Terminating the Contract between Pacific Mountain Contractors, Inc. and the Moraga-Orinda Fire District

After receiving their June 18, 2017 letter, PMC expressed no desire to complete the Fire Station 43 project and twice requested to be released from its contract. District Staff and legal counsel evaluated PMC's request and evaluated the practical and legal impacts of moving forward with PMC as the general contractor.

The construction contract between PMC and the District allows the District to terminate the contract for cause, or for convenience. The District can only terminate for cause for certain reasons stated in the contract, including a material breach of the contract that is not cured by the Contractor. If the contractor does not cure the material breach and is terminated for cause, the District may also

demand the performance bond surety take steps to complete the project for the penal sum of the construction performance bond, subject to the conditions stated in the bond.

District Staff and legal counsel believes that, based on PMC's letters and conduct, the District had grounds to terminate the contract for cause. However, pursuing this course would have likely resulted in construction delays and litigation, and the legal outcomes were uncertain.

The District negotiated the terms of an agreement to both terminate PMC's obligation to continue to perform its contract, and, to obtain repayment of some of the general conditions cost paid to PMC, and to transfer some of the potential value of preparatory submittal work done by several of the subcontractors.

Richard Olsen, Moraga resident, commented on his disappointment in the Station 43 rebuilding process. Mr. Olsen asked who should have been responsible for determining which agency approvals were required before the project went out to bid, if there were significant errors in the plans and specifications, and if construction costs have actually gone up by \$680,871 or 26% in the last 11 months or if there are other significant cost increase factors involved.

Director Jorgens stated it was the architect's responsibility to obtain the permits and make sure all the drawings were up to date before they were sent out to bid.

Motion by Director Anderson and seconded by Director Jorgens to approve the written agreement terminating the Contract between Pacific Mountain Contractors, Inc. and the Moraga-Orinda Fire District. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8.2 Approve Exemption of the Completion of Construction of Fire Station 43 From Competitive Bidding Requirements – Findings of Fact

Ordinarily, compliance with the terms of a statute requiring that public agency contracts be let for competitive bidding and advertising for bids is mandatory with respect to those contracts coming within the terms of the statute and any contract made without compliance with the statute is void. (See *Miller v. McKinnon* (1942) 20 Cal. 2d 83, 87).

Under Public Contract Code section 20813, "all contracts for the construction or completion of any building, structure, or improvement, when the expenditure required for the work exceeds ten thousand dollars (\$10,000), shall be contracted for and let to the lowest responsible bidder after notice."

There are exceptions to the public bidding requirements given the circumstances here. First, under *Shore v. Central Contra Costa Sanitary Dist.* (1962) 208 Cal. App. 2d 465, a public agency may complete a competitively bid contract when the original contractor is terminated pursuant to the contract. Here, to avoid the expense and delay of a termination for cause of the contract (although Staff believes grounds existed for such termination), Staff negotiated the terms of a termination agreement as discussed above. The recommended completion contractor will complete the same scope of work that was competitively bid by PMC.

Second, under the circumstances, there does not appear to be a public advantage in engaging in a second round of competitive bidding on the project. Staff contacted the other contractors that had originally submitted bids and obtained revised pricing from two of the bidders. Staff then engaged in negotiations to finalize the price and scope of the contract as discussed in Agenda Item 8.3 below, at a price of \$3,341,000. The other contractor's price was \$3,424,000, which is higher than the recommended replacement contractor but only by approximately 2.5 percent.

A new round of competitive bidding would likely only confirm the pricing the District obtained and would result in additional delays because the work could not commence until the Spring of 2018. District staff has also been informed that the Northern California construction market is extremely busy and there has been significant price escalation over the past year.

Motion by Director Anderson and seconded by Director Jex to adopt Resolution 17-15 to Exempt the Completion of Construction of Fire Station 43 From Competitive Bidding Requirements. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8.3 Award Completion of Competitively Bid Contract Originally Awarded to Pacific Mountain Contractors, Inc. to Federal Solutions Group, Inc. and Approve a Capital Projects Fund Expenditure Budget Increase in the Amount of \$4,243,057 (a Net Increase for the Project in the Amount of \$1,009,291 Since the FY 2016/17 Budget)

Federal Solutions Group, Inc. has agreed to enter into a construction contract to complete the Fire Station 43 project, including the scope of work originally bid by PMC and the changes made to the design since the bid, for the lump sum price of \$3,341,000. FSG has confirmed that it can start work on the project within the next two to three weeks. Barring unforeseen delays, the project should be completed in approximately one year, or late summer of 2018.

The proposed agreement with FSG is substantially similar to the previous agreement with PMC. The final agreement will be made available at the Board meeting.

Director Olsen commented on his inability to find information on the internet about Federal Solutions Group (FSG) and stated that it would be helpful to include information acknowledging their capacities, particularly if they have previously built fire stations.

Kabir Singh, from FSG, introduced himself, and gave a brief summary on FSG and its history. FSG does a lot of federal government work with the Army Corps of Engineers, Camp Parks Army Reserve Base, Lincoln Army Reserve Base, Moffitt Field Army National Guard and other federal properties throughout California, doing commercial building renovation, upgrades and new construction projects that are similar to fire stations. They focus primarily on commercial building projects similar to fire stations, and they have worked with several contractors and subcontractors in the area. Mr. Singh answered Mr. Olsen's question about the increase of \$680,871 (or 26%) between the bid received in October of 2016 and what FSG submitted today. He explained that a 25% increase in the past year is very doable in the current construction market with construction at its all-time peak from where it was in 2008. The price of lumber alone has increased in cost by 30% since the time of the original bid in 2016. With labor shortages, material requirements, and summertime being the most productive and constructive time for any general contractor in the industry, it is very feasible to see a 25% increase.

Mr. Singh reported that FSG studied the breakdown provided by PMC back in October 2016. The costs to put up a building was not enough money, and in Mr. Singh's opinion, was just not possible, which is where the root of the problem was.

Mr. Singh commented on design issues on the plans and specs, explaining that they are a guide to build a project. What you see on site changes all the time and you cannot account for those. PMC accounted for several unforeseen site conditions, but you do not foresee those until you actual mobilize and start doing the physical work or inspecting the physical work as a contractor. To blame it completely on the architect or someone else is not uncalled for, especially given what we know and what we go through in situations like this on a daily basis.

Mr. Singh commented on FSG's capabilities. FSG has been around since 2004 when his mother started the company. FSG is based out of San Ramon and does business with many public agencies throughout the Bay Area. Their core business is federal work building commercial buildings, and can provide a list of references.

Director Anderson stated that he could only approve the contract if Mr. Singh provides the Board with a list of references within 48 hours. He also asked if FSG would commit to start on the project within two weeks after the contract is approved by the Board. He would like to get the piers in before the rains come. Director Anderson asked Mr. Singh if he foresees any major cost overruns, and if FSG can really do this project for their bid.

Mr. Singh stated that FSG will be ready. The grading contractor confirmed that they are ready to begin the moment the contract is awarded. Once the grade is set, the piers and other drilling contractors can be brought in. As for the cost overruns, Mr. Singh stated that to date, he has not heard from any of the subcontractors regarding the unfeasibility of building this project. He has not heard of any issues from the subcontractors, and therefore does not foresee any major issues.

Director Barber commented on the number of requests for information on the project. He asked Mr. Singh if he had the opportunity to review what was being asked for, what has been responded to, and if FSG received any feedback.

Mr. Singh stated that one of the tasks FSG did was to look at all the drawings, plans and specifications. The requests received are for various pieces of the construction – mechanical, structural, electrical, plumbing, etc. The requests have been distributed out to the main subcontractors and have been acknowledged by the subcontractors as part of an additional addendum within their subcontract that will be issued upon award of this contract. Anytime a subcontractor submits a proposal for a bid to a general contractor, they acknowledge all the documents that you send along with it. To date, all the proposals that FSG received have acknowledge all the Request for Information (RFI) answers, addendums and changes in designs. It is not something that is overlooked.

Director Jorgens asked what kind of oversight FSG would provide onsite. Mr. Singh stated that as part of the contract requirement, FSG is responsible to have a full-time superintendent on-site, and for providing an office trailer for the construction manager who will be overseeing the project for the District. The construction manager will be conducting inspections of the project. FSG will have daily oversight with a superintendent that manages the project on a day-to-day basis, and Mr. Singh will act as the senior project manager.

President Famulener asked Mr. Singh if a part-time construction manager would work for this project. Mr. Singh stated it would work – daily oversight is completely up to the District.

Director Jorgens asked if FSG would be able to work with the District to give their opinion on the industry norms and to come up with a plan. Mr. Singh stated that most projects normally have weekly inspections but they could help the District come up with a plan.

Director Jorgens asked what percentage of FSG's historical contracts have been on budget and on time. Mr. Singh stated that the federal government/military works a little different in how they award contracts. They award contractors a 5-year multiple award task or contract, which means there are three or four selected key general contractors within a general geographical area to do all their work for a specific federal basis. In order to continue retaining work and continue being awarded the next year onto the contract, you have to make sure your project is completed on time and on budget. At this point, 10-15% (+-) for a budget is standard in the industry. As for timing, FSG makes sure to complete within the timeframe required, and if they don't, their option years are not awarded on federal projects.

Director Barber inquired on the range in dollar value of the contracts FSG has worked on. Mr. Singh stated that their whole premise is based on their bonding capability, which defines what size projects contractors can go after in the public works, with federal and state local entities. FSG's bonding capacity has a \$30M aggregate capacity, and they can go up to \$15M per project. They do anything from a few hundred thousand dollars up to \$5M-\$10M per project.

Director Jex inquired why MOFD's fire station project is so attractive to FSG. He also asked if the project will come in at what it has been bid for or if there will be a lot of change orders.

Mr. Singh stated that although FSG has not done a fire station in the past, their business is to build similar buildings, which is what they do and know how to do. Change orders do arise in construction, and one has to account for them for about 10%-20%. Grounds-up construction does not normally have too many major change orders unless they are owner requested changes. Mr. Singh stated that in any project he has worked on, there have been change orders or discrepancies in design, and they do not come up until you mobilize and start doing the work that is shown on the prints.

President Famulener stated that if the Board approves the contract, they would like 48-hours to verify FSG's references. The Board asked for a minimum of four references. Mr. Singh stated that he will send Chief Healy their references.

Motion by Director Jorgens and seconded by Director Barber to award completion of competitively bid contract originally awarded to Pacific Mountain Contractors, Inc. to Federal Solutions Group, Inc.,

subject to 48-hours to check references, for \$3,341,939.71. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

Director Jorgens stated that there is more work that the Board still has to do. He would like items to be presented to the Board more often for approval, including monthly reports from the contractor, project manager and the Fire Chief. Director Jorgens stated that he does not feel comfortable approving all the items in in the proposed budget change, especially the \$334,000 contingency amount, which needed to be discussed further at a future meeting along with several other estimated items.

ASD Sasser stated that she needs appropriations to pay the invoices because the contract will begin. She recommended approving the \$3,341,939.71 budget adjustment. The 2016/17 Fiscal Year Budget included \$4.4M for this project. The budgets lapses on June 30 unless the District has a contract in place. She can then encumber the money, which carries it over to the new year. In July, when she closed the books for June 30, 2017, she knew that the PMC contract had fallen apart at that point. ASD Sasser did not know how much to encumber because she knew the contract was not going to be honored. At that point, ASD Sasser thought the best thing to do was to not encumber any money for the project, since it was unknown, and she did not carry over any money. For transparency and clarity, and so that the Board is comfortable for exactly what is budgeted, exactly what the plan is and exactly how much the staff projects that this project is going to cost from July 1 to completion, ASD Sasser recommend to start with a fresh new budget and not do it as an adjustment because it would be too confusing. She recommended \$4.2M, which is her projection at the time of how much it will cost to finish the station.

Director Jorgens stated that he is reluctant to approve something that he does not feel comfortable with. He asked why the Board could not just approve \$3,341,939.71 to pay the new contractor.

ASD Sasser stated that the first budget line is for the temporary station, which has ongoing expenses of about \$5K a month to operate. There will be more permit costs over the next few weeks for grading and building, which is included. There are costs that are happening right now – costs for the biologist, ongoing legal costs, appropriations for the claim to PMC which was approved tonight for \$110K, and costs for the surveyor to certify the grade.

Director Barber asked if the Board could approve the budget with the exception of the four items – construction manager, two items for the architect, and the contingency, which can be considered at a subsequent meeting.

ASD Sasser stated that the revised budget adjustment increase amount, with the four items removed, will now be \$3,697,364.

Motion by Director Barber and seconded by Director Famulener to approve a Capital Projects Fund Expenditure Budget increase in the amount of \$3,697.364. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8.4 Resolution 17-13 Authorizing Investment of Monies in Local Agency Investment Fund

The District uses the State of California Local Agency Investment Fund (LAIF) for the investment of District funds. One of the requirements of participation in LAIF is for the Board to confirm the authority of District officers to order the deposit or withdrawal of funds in LAIF. Due to the new interim fire chief appointment, it is necessary to update the officers authorized to deposit or withdraw monies.

Motion by Director Barber and seconded by Director Jorgens to adopt Resolution No. 17-13 authorizing District officials to order the deposit and withdrawal of monies in the Local Agency Investment Fund. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8.5 Resolution No. 17-14 Authorizing an Agreement that Designates Citibank, N.A. as a Provider of District Banking Services and the Interim Fire Chief, Administrative Services Director and/or Fire Marshal to Execute District Checks, Drafts, Notes or Other Instruments for the Payment of Money

The District uses Citibank for banking services. Currently the Fire Chief, Administrative Services Director and the Fire Marshal are authorized signers on the Citibank accounts.

Due to the appointment of an interim fire chief, it is necessary to update authorized signers with Citibank. The following positions are recommended to be authorized signers:

- Interim Fire Chief
- Administrative Services Director
- Fire Marshal

Motion by Director Jex and seconded by Director Barber to adopt Resolution No. 17-14 Authorizing an Agreement that Designates Citibank, N.A. as a Provider of District Banking Services and the Interim Fire Chief, Administrative Services Director and/or Fire Marshal to Execute. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

8.6 Authorization to Purchase Four Stryker Gurney Systems in the Amount Not to Exceed \$193,294.38

In the summer of 2017, MOFD accepted a FEMA Assistance to Firefighter's Grant (AFG) to purchase four self-loading gurney systems. Staff submitted and was granted an amendment request for an additional \$23,144 to assist with an unanticipated cost adjustment from the manufacturer. Approval for a sole source purchase was also approved in a second amendment request by FEMA. Total grant award is now \$199,040 with a 10% cost-share of \$18,094 from the District.

Motion by Director Jex and seconded by Director Jorgens to authorize the purchase of four Stryker gurney systems in the amount not to exceed \$193,294.38. Said motion carried a unanimous 5-0 roll-call vote (Ayes: Anderson, Barber, Famulener, Jex, and Jorgens).

President Famulener announced that the Board would like to hold a public workshop on September 27, 2017 to discuss what they are looking for in the new Fire Chief. Invitations will be extended to the public, elected officials and Managers of Moraga and Orinda, the Firefighters Association and others. Director Barber will draft a letter.

ASD Sasser announced that she, along with Directors Jex and Jorgens, met with the auditors. They are moving forward with bringing the CAFR to the Board. The goal is to bring the final CAFR for approval at the October meeting, and in order to meet that deadline, the Draft CAFR needs to come to the full Board for approval. She asked the Finance Committee if they would first like for the Draft CAFR to come to the Finance Committee for review and approval, or if they would like to skip the Finance Committee and be presented to the full Board instead.

Directors Anderson and Barber directed staff to bring the Draft CAFR to the full Board for approval.

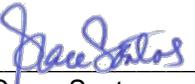
ASD Sasser stated that the Draft CAFR has to go to the full Board before the Regular Board meeting in October, which is when the Final CAFR will be presented.

ASD Sasser stated that the Actuary also needs to present an updated actuarial valuation, have the Board adopt a funding policy and provide direction on the discount rate that is to be used. She asked for direction from the Board on how to handle it.

The Board directed staff to present all the items to the Board at a Special Meeting on September 27, 2017. They will begin at 5:30 for Closed Session, Open Session at 6:15pm and the Public Workshop at 7:00pm. They directed staff to post the Public Workshop notice as soon as possible.

9. Adjournment

At 8:45 p.m., President Famulener called for adjournment of the regular meeting.



Grace Santos
Secretary to the Board

For an audio recording of this and other Board meetings, please visit the MOFD District Board Meeting webpage <http://www.mofd.org/board/meetings>