#### BUILDING COMMITTEE Joint with BOARD OF SELECTMEN MINUTES January 4, 2013 UN-APPROVED

Building Committee: Jeremy Januskiewicz, Chairman; Susan Daly; Mike Bouchard, Clerk; Halsey Platt; Don Black; Steve Webber; Val Prest;

Selectmen: John G. Petropoulos; Peter Cunningham; Stuart Schulman; Joshua Degen; Anna Eliot Also Present: Mark W. Haddad, Town Manager; Chief Joseph Bosselait; Patrice Garvin, Executive Assistant; Don Walter and Allan Brown Dore and Whittier; Mike Josefek and Peter Kozcera, Architectural Consulting Group

#### Mr. Januskiewicz and Mr. Schulman called the meeting to order at 9:00am.

#### DCAM REPORT FROM THE OPM ON TLT

Mr. Josefek stated that TLT had a very thick file at DCAM. Mr. Josefek began by reviewing some of TLT prior issues found through research at DCAM. TLT was in litigation for fraud but TLT took the Attorney Generals Office to court and through that action was able to be recertified with DCAM in 2011. There are over 100 court cases filed since the inception of TLT, most being the nonpayment of subs. Mr. Josefek stated that there are currently 5 court cases pending as well as Ochoa violations. Mr. Josefek stated the TLT had a very high turnover of Superintendents. When TLT did received good marks it was usually accompanied with a good Superintendent. Mr. Josefek mentioned one community in particular that TLT did a bad job on but still managed to get a good rating. Mr. Josefek read through some comments he received when conducting reference checks.

Mr. Walter stated that if TLT is rejected they will protest. Mr. Schulman pointed out that TLT seemed to do worse with larger projects. Mr. Haddad asked about TLT's bonding capacity. Mr. Josefek stated that they have an amazingly large bonding capacity. Mr. Josefek stated that if TLT was chosen the Town could insist on a certain Superintendent and Project Manager. Mr. Josefek stated that the success of the project will depend on who is there managing day to day.

Mr. Haddad stated that the first and second bid is 130k apart in price. If the Town goes to the second bidder Mr. Haddad was comfortable with the cost. Mr. Cunningham if any of the current litigation with TLT regards bid protests. Mr. Haddad replied that the current TLT litigation did not have to do with bid protests. Mr. Cunningham asked if Town Counsel knew about TLT. Mr. Platt stated that a good case needs to be made for rejection.

#### Mr. Doneski on phone.

Mr. Haddad asked if Mr. Doneski has had any experience with TLT and if the Town rejects them what are the chances they will protest. Mr. Doneski Mr. Doneski was aware f TLT's reputation and needed to see the DCAM file before making an opinion on rejection. Mr. Petropoulos asked about Town Meeting saying no to the bidder. Mr. Doneski stated that Town Meeting only decides on appropriation not who to reward the bids to. Mr. Doneski suspected if rejected TLT would protest. Mr. Haddad asked if TLT could hold up the bid. Mr. Doneski suspected not taking any action and that it could delay the project. Mr. Doneski suspected that if a protest went through the Attorney General's office or Superior Court it could take up to three weeks. Mr. Doneski stated a notice of intent can be sent with the award subject to Town Meeting. There is a thirty day life for the bid that Mr. Doneski stated that you could not take that option. Mr. Doneski stated that if TLT was rejected and they filed litigation they would seek damages as well as litigation costs. Mr. Haddad did not want to move forward until an opinion from counsel is obtained. Mr. Haddad also suggested putting the second bid price in the warrant incase the first bid is rejected. Mr. Walter suggested asking TLT to come in and discuss the Towns concerns. Chief Joe was concerned that Town Meeting will be aware of TL T's reputation. Mr. Haddad stated that the names of the bidders would not go into the warrant only the amount.

Mr. Bouchard moved to adjourn the Building Committee at 10:10am. Ms. Daley seconded the motion. Motion unanimously carried.

The Board of Selectmen continued to meet. Mr. Haddad suggested putting in the warrant a list of Fire Station costs, including the second bidder price. Mr. Degen asked about the amount of money for Fitch's Bridge. Mr. Haddad stated that the demolition money could not be bonded. Mr. Haddad stated that 6.9 million would be bonded and the total Fire Station costs would be 7.7, not with the bridge. Mr. Haddad explained why the CPC could not fund the potential \$500k cost to replace bridge. The CPC cannot go over 80% borrowing of their town portion and borrowing because of Surreden Farm. Mr. Haddad stated that the Town could take down the bridge but to use CPC money it would have to wait 9 years.

# The Board took positions on the Warrant Articles for the Special Town Meeting.

Article 1 Fire Station-The Board recommended unanimously

Article 2 Herbicide- Mr. Haddad stated that 3 bids were received. Mr. Haddad stated that the estimate was \$130k and the low bid range was \$64k-\$88k. Mr. Haddad stated that he would ask Town Meeting for \$95k to cover the spot treatments the following year. The Finance Committee was unanimously in favor. The Board of Selectmen was unanimously in favor.

Article 3- Fitch's Bridge deferred until Town Meeting.

Article 4 Citizens Petition Lost Lake Sewer District. Mr. Haddad explained the difference between establishing a District, a legal entity, and a System. Mr. Haddad is trying to get a straight answer from the USDA if passing the article will help the Town. Mr. Schulman stated that if any action was irrelevant then the Town should just do it and see what occurs. Mr. Degen heard loud and clear at the last Town Meeting and was against this article. Mr. Petropoulos did not believe there was nay conflict and was in support of the article. The Board was 4 in favor and 1 against.

#### ONE DAY LIQUOR

*Mr.* Degen moved to approve a one day wine and beer liquor license for First parish Church for an event on January 19, 2013. Mr. Schulman seconded the motion. Motion unanimously carried.

#### DPW APPOINTMENT

Mr. Haddad asked the Board to ratify his appointment of Stephen Knox. This discussion was held until the HR Director can join the discussion.

Mr. Haddad requested the Board go into Executive Session to discuss litigation.

Mr. Cunningham moved to enter Executive Session at 10:45am M.G.L. c.30A, Sec 21 (3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating of the public body and the chair so declares. Ms. Eliot seconded the motion. Roll Cal- Degen-aye; Eliot-aye-Petropoulos-aye; Schulmanave; Cunningham-aye.

#### 10:50am

DPW Appointment

Ms. Loverin joined the meeting. Mr. Haddad asked if Mr. Knox driving record was checked. Ms. Loverin stated that a record request was conducted through the Police Department and was fine. Ms. Loverin stated that there was no indication of any issues.

#### *Mr. Delany was on the phone.*

Mr. Delaney stated that he spoke to Mr. Shattuck of Pepperell and he indicated no issues with Mr. Knox. Mr. Cunningham asked if there was a history of being rough on equipment. Mr. Delaney stated that he found no

evidence of rough treatment. Mr. Degen suggested starting Mr. Knox out in older trucks. Mr. Petropoulos suggested rechecking. Mr. Delaney stated that there is a 6 month probationary period. Mr. Haddad stated that Mr. Tuttle would be rechecked to assure the Board there are no issues.

Mr. Cunningham moved to ratify the Town Manager's appointment of Stephen Knox to the DPW as Truck Driver/Laborer contingent on his driving record being rechecked. Mr. Petropoulos seconded the motion. Motion unanimously carried.

Mr. Cunningham moved to adjourn the meeting at 10:54am. Mr. Degen seconded the motion. Meeting adjourned.

Meeting adjourned at 11:30am Respectfully submitted, Patrice Garvin, Executive Assistant Architectural Consulting Group, LLC

822 Mt. Pleasant Street New Bedford, MA. 02745 Acg\_llc@ymail.com

### DCAM FILES REVIEW REPORT

December 28, 2012

Mr. Mark Haddad, Town Manager Jeremy Januskiewcz, Building Committee, Chairman Groton, MA

#### **RE: Groton Center Fire Station Project**

As requested, on Thursday December 20, 2012 Peter Koczera and Michael Josefek traveled to the DCAM office at One Ashburton Place Boston, arrived at 9:30 am and proceeded to inspect the DCAM files of the four low GC bidders and fifteen low filed sub-bidders. We were given the room until 1:30 pm. Jim Gaudreau laid out the files for our review. (see photo attached)

The apparent low bidder, TLT Construction Corp., had the most extensive file which was almost 6" thick. The records show they have performed over a billion dollars of construction project contracts.

We examined the entire file and found numerous documents referring to litigation brought by the AG office in 2008, and the subsequent de-certification correspondence initiated by DCAM as a result of the AG action.

TLT was de-certified by DCAM August 20, 2008 and served an 18 month suspension. As a result of the actions by the Office of the Attorney General (AG) and DCAM, TLT sought appeal from the Suffolk Superior Court. At the conclusion of that trial on June 25, 2011, Justice Bonnie H. McCloud vacated the AG decision, resulting in a reversal of the DCAM decertification through a negotiated settlement.

In addition to this action, the files revealed there were over 100 court cases filed in the jurisdictions of Barnstable, Middlesex, Suffolk, Plymouth, and Essex counties naming TLT Construction Corp. either as the plaintiff, or defendant. Most of the cases involved non-payments to subs and or suppliers.

Currently, there are five court cases pending as mentioned in their update statement. These cases all revolve around payments to sub-contractors and suppliers.

The files also showed over fifty requests for direct payment by sub-contractors and or suppliers.

Additionally, there were documents related to OSHA and Environmental violations that were ultimately resolved by way of fines paid or, dismissal after corrective actions by TLT were taken.

The DCAM files also showed a termination of contract but no explanation was attached. The latest update statement provided by TLT confirms a termination with New Hampshire Bureau of Public Works, Design & Construction. This seems to be in some process of negotiation at the present time.

Contractor Evaluations showed many low grades of just 80 which is the lowest passing grade, and several just above passing. The following files had failing grades.

Canton High School	54
Weymouth Public School	69
Reading Memorial High School	52

One common complaint was of excessive turnover of supervisory personnel. The project in Pembroke had 14 superintendents while in Reading they had 15 superintendents over the course of the work. Ultimately Reading had to complete the work themselves according to the record. Canton had 6 superintendents and Swampscott had 3.

The one project that showed a high mark attributed it to the "excellent super" running the job.

Hull Jacobs Elementary School 92 / 87

In spite of the issues surrounding the Falmouth High School, the contractor passed the evaluation with an 80.

The most recent compilation of "Standard Contractor Evaluation Forms" shows an average grade of 88 being achieved on the 12 projects. (See attached).

We also enclose the Contractor Evaluation from Canton as being the worst such example.

ACG staff immediately compiled a list of references and attempted to reach all of the names provided. The following summary of those conversations are as indicated. Due to requests of confidentiality, we are limiting the copies of actual phone call records being available. We have the originals in our office, and are providing one copy to the Town today.

# REFERENCE CHECKS FOR THE GENERAL CONTRACTOR

On December 21, 24, 26, 28, and 31, 2012 and January 2, 2013, three ACG employees worked full time to contact references consisting of Owners and Designers. Because of the holidays many calls were made without successful contact, messages were left, and many follow-up calls had to be made. Many

calls made remain unreturned. Of those that responded the results are as follows:

### TLT Engineering & Construction:

In total ACG personnel spoke with 20 people (Owners and Designers of 10 projects). The results of those reference checks were as follows:

- Many responders commented that TLT's interactions when working with OPMs, Clerk of Works, and Architects seemed to be less than professional.
- A vast majority of responders commented that TLT was excessive with the quantity of change orders; which were typically found to be high in cost.
- A majority of responders said that the amount of qualified workers on a project was not always sufficient to complete the tasks at hand and/or within the project schedule.
- Several responders stated, if it wasn't for Chapter 149 they would have used another GC.
- When asked if they would recommend using TLT for the Groton Center Fire Station project many responders stated they wouldn't, and several stated they preferred not to comment.
- Several responders indicated that there had been payment issues to subcontractors, some resulting in requests for direct payments to be made.
- The quality of work provided has been satisfactory.
- The Superintendent of the some of the projects seemed/seems to be a qualified person.
- It was stated the TLT personnel appeared to be safety conscious; there were no reported safety issues.

### PDS Construction:

In total ACG personnel made 30 calls and received 18 references, the results being:

- A majority of responders commented that PDS's interactions when working with OPMs, Clerk of Works, and Architects were professional.
- A majority of responders informed ACG that PDS was minimal with the quantity of change orders; which were typically found to be valid and cost reasonable.
- A majority of responders said that the amount of qualified workers on a project was sufficient to complete the tasks at hand and/or within the project schedule.
- All responders stated that they would use PDS again on other projects, and several stated they would recommend using them for the Groton Center Fire Station project.

- A vast majority of responders indicated that there had been no payment issues that they were aware of, and one responded there was a prevailing wage issue but it was addressed and corrected.
- The quality of work provided has been satisfactory.
- The Superintendent of the project seemed/seems to be a qualified person.
- It was stated the PDS personnel appear to be safety conscious; there were no reported safety issues.

# FILED SUB CONTRACTOR REFERENCE CHECK SUMMARY

Acoustek, Heckman Masonry, Dandis Painting, Tim's Fabricators, Cenedella Masonry, KMD Mechanical Corp.

The summarized results from speaking with numerous references of the above companies are as follows:

- All Respondents commented interactions in working with OPMs, Clerk of Works, and Architects were professional.
- All Respondents commented that all of the above sub-contractors had qualified understandings of the plans/specifications of the projects.
- All Respondents commented that all of the above sub-contractors tried to adhere to the schedule of work with minimal delays.
- All Respondents commented that all of the above sub-contractors had staffed projects with enough qualified workers to complete their part of the projects in a timely manner.
- All Respondents commented that all of the above sub-contractors had minimal RFI's to no RFI's on the project, and they did not use deficiencies excessively.
- All Respondents commented that all of the above sub-contractors were safety conscious.
- All Respondents commented that all of the above sub-contractors had complied with quality controls.
- All Respondents commented that they would recommend using all of the above sub-contractors again, and would recommend using them for the Groton Fire Station Project.

# West Floor Covering -

We called eleven references and spoke to three about West Floor Covering:

- Said they acted in a professional manner with all parties.
- Stated that West Flooring Covering had a qualified understanding of the plans and specifications.
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ACG experience with West Floor Covering on the Nantucket Operations and Administration building has been unacceptable as they abandoned the project and didn't submit product literature that the General Contractor requested. In fact the General Contractor was forced to take action to augment their staff.

As a result of these interviews and file reviews, we feel we are providing the Committee with an unbiased report stating the facts as we found them. It is up to the committee to use its best judgment in either accepting or rejecting the low bidder. Careful consideration should be given to the potential for litigation if you do not choose the low bidder as well as the potential for litigation at the end of the project if you do choose them.

There is an explanation of your responsibility in this decision stated in the update statement which we enclosed for your review.

Respectfully submitted,

Michael Josefek, OPM

# PRIME/GENERAL NUMERICAL RATING SUMMARY SHEET

#### Certificate Number: 0090

## CONTRACTOR: TLT Construction Corp. REVIEWER: Kosal Sarou

DATE: 5/16/2012

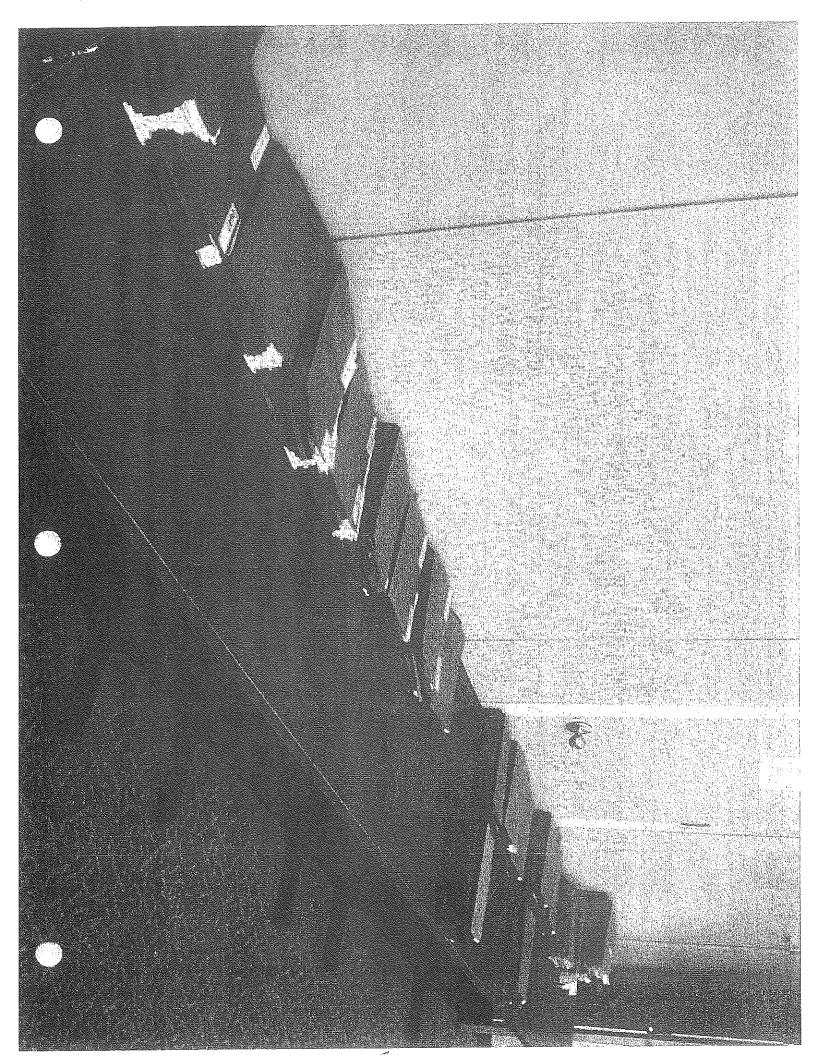
Project Title	Date	Type of Work	Contract \$ Amt.	Rating	Failing Projects
Manchester Essex Regional High School	07/11	General Building Construction	\$38,543,538	87	
Falmouth High School	05/11	General Building Construction	\$60,836,988	80	
Health Education and Academic Center	08/09	General Building Construction	\$6,044,989	100	
Needham High School	03/09	General Building Construction	\$48,779,984	80	
Slab Replacement Classical HS	02/09	General Building Construction/Masonry	\$5,851,621	96	·· ·
Ralph Small Elementary School	09/08	General Building Construction/masonry	\$26,885,939	88	
Fonseca Elementary School (Avg of 2)	09/08	General Building Construction	\$26,847,587	85	
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Total of Ratings: 1050

Average Contract \$ Amt: \$22,704,38

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