



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 29, 2020

Tom Osmond, Chairman
Broken Bow Public Schools
323 North 7th Ave.
Broken Bow, NE 68822

Dear Mr. Osmond:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the Broken Bow Public Schools (District) Board approving a track replacement without offering that work for public bid. Responding thereto, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. In doing so, the APA requested certain information from the District. Based upon the outcome of that preliminary planning work, including a review of the information received, the APA has determined it to be unnecessary for this office to perform a separate financial audit or attestation of the District at this time.

Nevertheless, during the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational matters within the District, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

Comment and Recommendation

In reviewing the Board's meeting minutes for May 18, 2020, we noted that the track replacement project was awarded to Fisher Tracks, Inc., an Iowa company specializing in track installation. As shown below, that award was made contingent upon the company's "meeting or beating a \$600,000 limit."

XI.J. Track

Agenda Item Type: Action Item

Action(s):


Motion Passed:

Motion made to approve the track replacement by post tension with the synthetic Poly Mat Structural Spray with Sam Fisher, certified track builder with Fisher Track provided the bid meeting or beating a \$600,000 limit Passed with a motion by Tim Chancellor and a second by Pam Holcomb.

- Mary Shaw: Yes
- JB Atkins: No
- Tim Chancellor: Yes
- Pam Holcomb: Yes
- Tom Osmond: No
- Gerald Pirnie: Yes

Discussion: Tim Chancellor brought an updated bid from Fisher Tracks. Board did go out to look at the track.

Attachments:

 Broken Bow email of 4-11-19 (2)

5/18/2020 at 6:04 PM

The meeting minutes above provide no indication of any discussion about competitive bidding or the need to advertise for bids from other companies. Had such conversation taken place, the meeting minutes should reflect as much. Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2018) of the Open Meetings Act, which is set out at Neb Rev. Stat. § 84-1407 (Reissue 2014) et seq., requires the following:

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

Consequently, on September 22, 2020, the APA sent an email message to the District, asking if bids had been sought for the track replacement project. On September 25, 2020, the District Superintendent responded to our inquiry by stating, “[T]he district accepted the bid from Fisher Tracks without advertising or obtaining other bids.”

Neb. Rev. Stat. § 73-106(1) (Reissue 2018) requires the following for any school-owned building or site improvement project costing more than \$100,000:

Whenever any public school district in the state expends public funds for the construction, remodeling, or repair of any school-owned building or for site improvements, other than those expenditures authorized by section 81-829.51 for emergency expenditures or section 79-10,104 for facilities which are not to be owned by the district following their completion, the school board or its representative shall advertise for bids in the regular manner established by the board and accept or reject bids pursuant to section 73-101.

As referenced in the above statutory language, Neb. Rev. Stat. § 73-101 (Cum. Supp. 2018) provides the following:

Whenever the State of Nebraska, or any department or any agency thereof, any county board, county clerk, county highway superintendent, the mayor and city council or commissioner of any municipality, any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, or the officers of any school district, township, or other governmental subdivision, shall advertise for bids in pursuance of any statutes of the State of Nebraska, on any road contract work or any public improvements work, or for supplies, construction, repairs, and improvements, and in all other cases where bids for supplies or work, of any character whatsoever, are received for the various departments and agencies of the state, and other subdivisions and agencies enumerated in this section, they shall fix not only the day upon which such bids shall be returned, received, or opened, as provided by other statutes, but shall also fix the hour at which such bids shall close, or be received or opened, and they shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close. If bids are being opened on more than one contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened. Sections 73-101 to 73-106 shall not apply to the State Park System Construction Alternatives Act or sections 39-2808 to 39-2823.

Moreover, particularly when costly projects are involved, good internal control requires procedures to ensure that the District advertises for bids, so that that the best goods or services may be obtained at a reasonable price.

Without such procedures, there is an increased risk for not only loss or misuse of public funds but also noncompliance with State statute.

We recommend the District implement procedures to ensure compliance with State law requiring the advertisement for bids on projects costing more than \$100,000. Because the present comment addresses a possible statutory violation, we are forwarding this information to both the Custer County Attorney and the Nebraska Attorney General for further review.

District Response: The district takes this matter very seriously. After being alerted to the questions raised in this matter, the district examined the bidding procedure for this contract. The district is confident that the policies that it has in place comply with state law. Here, however, there was a misunderstanding of what had occurred and what further action was required prior to the execution of the contract on behalf of the district. The district's superintendent was of the understanding that Fischer Track was the successful bidder following a competitive bid process that had preceded his tenure with the district. Unfortunately, after closer examination, the district now

realizes that it fell short of the requirements for a competitive bid process and submission that are imposed by the district's own policies. The district will promptly rectify this shortcoming so that it does not happen again and to ensure that future similar contracts comply with its own policies and state law.

* * * * *

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the District's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the District.

Draft copies of this letter were furnished to the District to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the District and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Assistant Deputy Auditor

Sincerely,



Mary Avery
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cc: Custer County Attorney
Nebraska Attorney General
Broken Bow Public Schools Superintendent