

COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

October 17, 2023 at 5:15 PM

Chairman T. Sapienza called the meeting to order.

The Clerk called the roll.

Present: Aldermen T. Sapienza, Fajardo, Burkush, Kantor

Absent: Alderman Stewart

Messrs: Alderman Cavanaugh, P. Chiesa, R. Gagne, T. Clougherty

1. Communication from Fuss & O'Neill requesting approval of an air rights lease for building sun shades (window awnings) to be placed on their multi-family developments located at 351 Chestnut Street and 80 Merrimack Street.

Chairman Sapienza stated I noticed it was Fuss & O'Neill that wrote the lease. Has the Solicitor's Office reviewed the lease?

Peter Chiesa, Deputy City Solicitor, stated yes. That is our form. The air rights lease, yes. That is basically our form. It is statutory under RSA 48A and you have to have all of those bells and whistles in there.

Chairman Sapienza stated it was a red flag to me that they wrote their own lease and brought it to us rather than us bringing it to them.

Mr. Chiesa replied they used our form.

*On motion of **Alderman Burkush**, duly seconded by **Alderman Kantor**, it was voted to approve the request.*

2. Communication from the Board of Assessors recommending that no changes be made to the City's current Veterans Tax Credit.

***Alderman Burkush** moved to approve.*

***Alderman Fajardo** duly seconded the motion.*

Alderman Kantor stated I am wondering about the 100%. What about the 80%, 90%, 95%? Disability on someone who is 80% or 90%? Is it only 100%?

Robert Gagne, Board of Assessors Chair, stated yes that is state law. You have to be 100% totally and permanently disabled to get that credit. Most that are 80% or 90% end up right at 100% because they are considered unemployable. I don't think I have seen anyone at that high a rating who wasn't total and permanent.

***Chairman Sapienza** called for a vote. The motion carried unanimously.*

TABLED ITEM

3. Discussion with staff regarding the drafting of an ordinance to incorporate a Project Labor Agreement when the city participates in the financing of a project.
(Note: **Communication from Timothy Clougherty dated 10/3 regarding proposed changes and ordinance amendment attached.** This item was tabled at the 5-16-23 meeting pending further input from the Solicitor's Office.)

On motion of **Alderman Fajardo**, duly seconded by **Alderman Burkush**, it was voted to remove the item from the table.

Chairman Sapienza stated we had some discussions about this in May and some changes have been made in conjunction with the Highway Department. Director Clougherty had worked with the Solicitor's Office.

Alderman Fajardo stated I was looking at the new language in items 12 & 13. I was wondering if there is a definition for a responsible safety policy in item 12. I am wondering is that defined anywhere as to what a responsible safety policy is? Is there known criteria for that?

Tim Clougherty, Public Works Director, replied that would be something that we would ask our Safety and Training Officer to evaluate. We would make that part of the submission of the prequalification package.

Alderman Fajardo stated item 13 I felt a little more particular about. It says whether the applicant's OSHA incident rate for reported injuries is reasonable. I am wondering again what is reasonable here and whose discretion is that up to?

Mr. Clougherty responded that would be our discretion. We consult with our Safety Officer. There are incident rates that are published that we can look at and determine whether it is within a level of reasonableness. It is not objectively defined as your line of questioning is pointing out.

Alderman Fajardo stated I feel that has gotten us in a little bit of a hot spot recently when we are saying it is up to our discretion. Is there an opportunity to define this more directly or to give guidelines or something? It seems problematic to me to say that. I know the city often has rights to do things and change its mind.

Mr. Clougherty answered I did have a discussion with the City Solicitor's Office about OSHA rates and incident rates and reasonableness. Small businesses and large businesses are going to have different rights based on number of employees and volume of business that is being done. I don't know how easy it would be to develop criteria that would provide uniform blanket coverage across all the contractors proposing to do business with the city. In addition, we talked about having some latitude relative to contractors that have had OSHA formal incidents where OSHA has investigated, and perhaps it has been adjudicated and the company has paid a fine. We need to have some latitude in order to allow those contractors that have shown restitution, or whatever decision has been made, allow them to continue along the course of bidding in the proposal process. A lot of it is subjective. A lot of our prequalification is subjective.

That is one of my points. Any time we disqualify a contractor, we are putting the city in a position of potential liability. One way or the other, these additional covenants to our prequalification do help the city to become a more responsible employer. You can look at number four for instance, the quality of performance on previous contracts. That is extremely subjective. We are calling references and we are calling other customers in the event that we have a suspicion that the applicant hasn't performed in a satisfactory manner on previous contracts. A lot of it is subjective. We do have some objective criteria that we employ regarding sufficiency of financial resources. We will look at bondability. We ask for bank statements and things like that. Sometimes we get them and sometimes we don't. Again, I think that a lot of that could be argued against one way or the other without hard line objectively defined criteria that are contained in the current ordinance.

Alderman Fajardo stated I definitely don't disagree with you that the addition of these items makes sense. I was concerned about the open-endedness of some of them, but if that is standard and that is a position that I'm assuming the Solicitor's Office reviewed, then okay.

Mr. Chiesa stated yes, Solicitor Rice and DPW sat down and consulted on these. I believe they are consistent with what the Board had asked for earlier.

Chairman Sapienza stated I assume when you do decide to disqualify a contractor you put together a pretty good case because they are obviously going to ask why they are disqualified. So, every time you disqualify someone you put together a good case as to why.

Mr. Clougherty stated whenever we disqualify a contractor, we have done so with good reason.

Alderman Cavanaugh stated I want to thank Mr. Clougherty and Solicitor Rice. We have been working on this since probably May. The building trades gave us a lot of insight and it helps the city in a lot of ways to know that the federal money or any money coming that we are going to be working with, that we know who the contractors are that we are working with and how they treat their employees. Personally, I would have liked to see a few more but compromise is everything. I think it is a good compromise and it puts the city in a great place to see who we are working with.

Chairman Sapienza stated good contractors build projects that last and give us good value.

*On motion of **Alderman Kantor**, duly seconded by **Alderman Fajardo**, it was voted that the Ordinance Amendment ought to pass and be referred to the Committee on Bills on Second Reading for technical review.*

*There being no further business, on motion of **Alderman Fajardo**, duly seconded by **Alderman Kantor**, it was voted to adjourn.*

A True Record. Attest.

A handwritten signature in black ink, appearing to read "Matthew Normand". The signature is fluid and cursive, with a long horizontal stroke at the end.

Clerk of Committee