

MASSACHUSETTS ASSOCIATION OF PUBLIC PURCHASING OFFICIALS (MAPPO)

MEETING MINUTES

Wednesday, February 12, 2014

Kowloon Restaurant, Saugus, MA

Officers Present

Mary Delaney, President
Tom Watkins, Vice President
David Gelineau & Sarah Stanton, Co-Treasurers
Sandra Marquis, Co-Secretary

New Members Attending

None

Guests Attending

XXXXXX, Office of the Inspector General

Lunch

A buffet lunch was served at 11:30 a.m. The food was excellent.

Welcome

Michele Wendell, Purchasing Agent, Town of Saugus

Michele introduced Scot Crabtree, Town Manager of Saugus. Scot welcomed the MAPPO members to Saugus. Scot spoke about the financial climate of the town when he assumed office in April 2012. At that time the town was undergoing a forensic audit regarding procurement issues. In the time since the audit the town has worked with the auditors and legal counsel to establish "best practices". After the town revised its procurement documentation and bidding and began bidding its contracts they found that the new process saved a considerable amount of money. Scot acknowledged that the procurement statutes and procedures are valuable and the procurement officers have a difficult job.

He thanked the membership for their work and dedication to their jobs.

At 12:30 p.m., Angela Allen, Speaker Committee Chair, welcomed Ray Masek, OPM, Brookline Building Department and Josh Morse, Commissioner of Public Buildings, Town of Newton.

Speaker

Ray Maske is a licensed professional engineer. As an OPM for the Brookline Building Department he has been involved in many construction projects, specifically with contract administration. Ray has been with the town for 15 years and has completed 12 major projects and many small projects.

Ray explained that the standardized contracts written by the EJ (Engineers Joint Council) and the AIA (Architects Institute Association) are written to protect the engineers and the architects not necessarily the owner (municipality). Brookline has developed their own contracts to better preserve their rights.

When developing a contract one of the first considerations is schedule. The municipality should consider the following requirements.

- When are the submittal due?
- How long should it take to review the submittal?
- How long does it take to get delivery of the equipment?

- How long does it take to get the inspections?
- What are the closeout requirements?

There are several areas in the contract relating to the schedule that should be reviewed and agreed to before the contract is signed. The first is how the resources are loaded. It is important to know how many people are scheduled and how much equipment is needed for any given task. If the allocated resources do not meet the actual need for the task then the project will be delayed. A second area is whether or not there are penalties for not completing the project on time. If the contract is not completed by the scheduled date who will be penalized and how? A third concerns the subcontractors responsibility. The subcontractors need to be familiar with the schedule and the resources they need to complete their tasks. The subcontractors should state in writing that they have reviewed the contract and agree to its terms. Fourth, the municipality's project representative needs to understand the baseline with the critical path. Changes in logic and delays should be agreed upon in the schedule and the "float" shared by both parties. Fifth, there should be a recovery plan to get back on schedule. Lastly, it is important that the architect buy-in to the schedule and agree to turn submittals around in a timely fashion.

Change Orders, architects and engineers are not perfect. Before the contract begins there must be a discussion of "established exclusions", items not allowed to be changed by the contract. Any change must be justified by time and done through the approved schedule. For tracking purposes each change order must have an assigned number. Document, document, document. Everything needs to be dated, documented and filed in case of a claim. If a Request for Information results in change it must be documented. To keep cost down and the project on schedule the owner must keep owner initiated changes to a minimum.

When reviewing applications for payment you must review the cash flow projections projected vs. the actuals. Before releasing payment you need sign lien wavers from the contractor and releases by the subcontractors in order to minimize requests for direct payments. You also need to review the schedule of values in detail. Stored materials can be an issue. You need to know what is stored, has it been bonded and insured, whether or not it is stored correctly. If the materials have not been stored correctly that could have an impact on your warranty. Also in the Payment Application there should be a schedule update.

The contract should state the "owner's duties" that have been assigned by the architect. Testing services can be expensive, especially if stockpiled materials must be tested before they can be used. Another duty may be the rental/purchase of proprietary equipment/products .

Ray explained that one possible clause in a construction contract could be "liquidated damages". He went on to say that liquidated damages are used to recoup reasonable costs if a project does not meet the scheduled deadline. In case of a school project that would include any costs the community would incur for renting classroom space, bussing, architectural fees, etc. Liquidated damages can only be collected if they are specified and documented in the contract.

Ray discussed many items that need to be resolved in Division 1 requirements before a contract is signed: assignment of superintendent, hierarchy of contract, time to money clause, delays, supplemental conditions, differing site conditions, existing conditions information. How these items will be resolved during a dispute need to be clear. Another item in this arena are filed sub-bidders. It needs to be clear what is owned by the sub-bidder and what is owned by the contractor: fire watching, temporary heat, electrical, demolition, rigging, cranes, warranty, closeout, etc.

Dispute resolution is another important topic. Ray stated that you should not sign a contract that mandates mediation/arbitration only. You should not give up your rights to litigation. The notice requirements and document timing should also be stated clearly in the contract.

Quality Assurance and Quality Control should be required in a written plan with a rolling punch list using the architects field reports. The municipality should also consider architectural and mep commissioning as part of the project.

Project Closeout is ready to begin when the project has reached 90% substantial completion and is ready for its intended use, there is an approved balancing report, commissioning has been done, training has taken place, there is an occupancy permit, and the space has been cleaned. Warranties should begin at substantial completion. As-builts, finishes manual, paint schedule and light bulb schedule should be in hand before close-outs.

Question: Is it necessary to have the community vote every year on proprietary materials? Yes, it is a state regulation.

Question: When do you let architects know your contracts have a standard front end? During designer selection.

Josh Morse began his talk emphasizing the importance of the technical specifications. Contractors are bidding against risk so they need to fully understand what they are bidding. It is just as important to have specifications that are easily understood as it is to insure that they are adequately stated. Josh suggests that several different departments (or groups) review the specification to insure that the document is readable.

Hazardous material is another area that needs to be well documented. In some situations it is difficult to quantify the amount of hazardous materials (unsuitable soils, fill, etc.). In these circumstances the bidder generally carries an allowance. Josh suggests in addition to the allowance there should be unit prices for these situations. He also cautions that the specifications and the plans need to read the same way. An independent auditor could help insure that these areas are well understood and the documents do not contradict one another.

Josh discussed the impact of the recent recession. In order to secure projects during the recession some contractors bid a job with a profit margin as low as 1%. After they were awarded the project their staff would look to justify change orders to make up for the low bid. To stop this practice the municipalities need to push contractors to ask clarifying questions. Ask the contractor if they are comfortable with their numbers. The town needs to make sure the contractor understands the scope of the bid and can perform the job for the price they submitted. If the contractor is not questioned thoroughly this could lead to too many change orders. Another practice contractors used was the 2 envelope bid. Contractors would create two bids. One set of pricing would be used for a competitive bid the other (lower priced bid) if there were no other bidders (or few). If the town is not getting a sufficient number of bids for a competitive process they need to ask the contractors why they will not bid and/or conduct a pre-bid walk-through to answer any concerns. If the smaller companies will not bid because of cash flow issues the town needs to understand that the invoices need to be paid quickly.

Josh explained that if you insist on liquidated damages for not meeting the schedule you should also have an incentive for early completion. The municipality should try to put themselves in the shoes of the contractor. Consider the cost impact of seasonal changes. Give extra time around holidays when contractors are short staffed.

Question: Can you submit a powerpoint to MAPPO for the website? Yes

Question: How do you monetize incentives compared to liquidated damages? Set levels, the earlier the job is completed the more incentive is given. Tie incentive to costs or set a flat amount are two other suggestions. The liquidated damages need to be realistic, they will never cover the entire cost of your losses.

Question: Do you have a checklist you can share? Josh, yes. Ray, doesn't have a checklist but it is a good idea.

Question: Is there an estimated cost of construction discrepancy between estimate and actual? Yes, could be between 8-10%. Two reasons, the filed sub-bids are higher than estimated and some material costs have gone up as much as 32%

Business Meeting

Mary Delaney, MAPPO President, opened the meeting at 1:30 p.m., following lunch and the speakers. Mary thanked Michele Wendell for hosting the meeting.

Co-Secretaries Report

Mary asked for approval of the November, 2013, December, 2013 and January, 2014 meeting minutes. A motion was made for each report, seconded and then approved.

Co-Treasurers Report

Dave Gelineau reported that the month's beginning balance was \$39,520.49 and after additional dues and expenses the ending balance is \$39,206.16. There were no questions or comments on the treasurer's report. A motion was made to accept the report and duly seconded. Motion passed.

Web-site Committee Report

Tom reported that he posted the membership list to the listserv. The list can be found under the "Others Category – e-library". The list can be downloaded. Tom asked that the list not be shared, especially with vendors. Tom stated that there were still a few municipalities having trouble receiving the e-mail notifications from the website. He believes that some of the problems are due to the effected town's spam setting. He suggests that the city/town's IT Department contact him for instructions.

The web-site has been receiving questions regarding problems with the Inspector General's office and the Attorney General's office. The web-site committee and Mary Delaney respectfully requested that the listserv be used only to ask and discuss issues related directly to MAPPO business. Questions regarding the IG's office or the AG's should be addressed with those parties directly.

Legislative Affairs Committee Report

Nothing to report.

Speaker Committee Report

Angela reported that the committee has booked speakers for the remainder of this year's meetings.

David Turk, Beacon Hill Institute, will speak in March. David will speak on the economy and what goes into prevailing wage law.

Tammy Rhymes, CPO, from San Diego will be speaking at the April meeting.

The Conference Committee is looking for speakers and topics for the May Conference.

Deb Anderson, Attorney General's office, will be discussing "Bid Protest Issues" at the June meeting.

Working Group Committee

No Report

Good & Welfare Committee

No Report.

Seminar Committee

Cheryl Levinson and the members of the Conference Committee (Tania, Raylean, and Barbara Miller) have booked the Wiley Inn and Conference Center, Beverly, for the Spring Conference to be held on May 29th and 30th. The Conference Center is on the water. The dates for the conference were moved because the earlier dates conflicted with many schools May graduation ceremonies. The Conference Center is located on the Endicott College Campus. Profits for the Conference Center are used for scholarships and school projects.

At the conference, Brain O'Donnell, Director of Labor Relations, for Associated General Contractors, will be discussing the difference between public and private construction. Also at the conference will be a presentation by XXXXX, on CommBuys.

The Conference Committee is still working on the agenda, speakers and breakout sessions. Any thoughts or ideas will be welcomed.

The cost of a hotel room will be \$119 per night and includes continental breakfast and parking. There are some rooms blocked for Wednesday and Thursday nights. When you make reservations please mention the reservation is for a MAPPO member. The costs for these rooms typically run over \$200 per night.

After discussing the cost of the conference the MAPPO members voted to charge the membership the following rates:

\$70 per day for guests

\$50 per day for associate members

\$35 per day for full members

Thursday night there will be a social get together and a cash bar for those who would like to participate.

Announcements

The next meeting will be on March 19, 2014, at the Hilton Garden Inn in Burlington, hosed by Debra Harvey of Lexington.

The April meeting will be held on April 16, 2014, at Assabet Valley Regional Technical High School, hosed by Beverly Sleeper of Marlborough.

Recognitions

None

Old Business

None

New Business and Member's Agenda Items

CommBuys

Elaine XXXX, project developer for CommBuys stated that CommBuys will be replacing Comm-Pass on March 4, 2014. Commbuys readiness documents will be ready next week. Elaine discussed the value of CommBuys to the municipalities.

Her first example was the ease of purchasing. Currently the FAC-77 contract that deals with landscaping, tree trimming, etc., is a perennial favorite. More than 60% of the users of this contract come from cities and town. There are 41 vendors on this contract. CommBuys will allow you to select vendors, request a quote from vendors on the list, the system will regenerate the request, send the request to vendors, let you know when there is a response and generate a requisition.

Elaine, then spoke about catalog shopping. She referenced the GRO 31 contract. Currently there are three vendors on this contract. Each of the vendors will have their price sheets on the site. The contracts will be searchable. You will be able to compare prices by item.

Question

One of the members asked if the purchasing agents will be allowed to pick up the telephone and request a quote. Elaine stated that all registered statewide vendors are required to be on-line and she is encouraging the cities/towns to use CommBuys rather than calling the individual vendors directly.

Dan Doucette asked if user guides will be available. Elaine will get Dan the information.

Meeting Adjourned

President Mary Delaney closed the meeting at 2:15 p.m.

Respectfully submitted,
Sandra L. Marquis, MAPPO Co-Secretary