DEPT./BOARD: School Committee – SPECIAL MEETING
DATE: July 9, 2019
TIME: 7:00 p.m.
PLACE: School Committee Room, 123 Cambridge Street, Burlington, MA

AGENDA*

1. Potential Executive Session:

   MGL chapter 30A, Section 21(a) Subsection (3) to discuss strategy with respect to threatened potential litigation if an open meeting may have a detrimental effect on the litigation position of the School District and the Chair so declares – school transportation contract;

   M.G.L. c. 30A, Section 21(a): subsection 7 – To comply with any general or special law – General Laws c.30B.

2. School Transportation Contract

*Agenda subject to change
Chair Martha Simon called this special meeting of the School Committee to order at 7:00 p.m. in the School Committee Room, Administration Offices, 123 Cambridge Street, Burlington, Massachusetts. Present: Mr. Thomas F. Murphy, Jr. and Mrs. Christine Monaco. Director of Operations Bob Cunha also present.

PUBLIC SESSION
Chair Simon introduced school district Attorneys Darren Klein and Matthew Feher from the firm of Kopelman & Paige.

EXECUTIVE SESSION
Chair Simon announced the School Committee had need for an executive session: MGL Chapter 30A, Section (3) to discuss strategy with respect to threatened potential litigation if an open meeting may have a detrimental effect on the litigation position of the School District and the Chair so declares – school transportation contract. M.G.L. c. 30A, Section 21(a): subsection 7 – to comply with any general or special law – General Laws c.30B. The School Committee will return to public session. Moved by Mrs. Monaco and seconded by Mr. Murphy at 7:05 p.m. to enter executive session. Mrs. Monaco, aye; Mr. Murphy, aye; Ms. Simon, aye. Motion carried 3-0-0.

School Transportation Contract
The School Committee returned to public session at 7:30 p.m. Chair Simon read the statement on the following pages.
Timeline/Outline of Burlington School District Transportation Bid 2019

1. In January of 2019, the School District hired a professional consultant, Public Management Associates, to administer the bidding process for the school transportation contract. The total cost of the contract is $5,000.

2. In March of 2019, a school transportation bid was posted in the local newspaper, on Town and school bulletin boards, and on the state’s Goods and Services website seeking proposals to provide the School District with school transportation services. Proposals were being sought for a 5 year contract and the deadline for submitting sealed proposals was April 12, 2019. Additionally, notices were sent to 35 different bus companies.

3. A&F Transportation was the only responsive bidder and was, therefore, awarded the bid. It was the third lowest bus contract price in eastern MA. The amount of the bid represented approximately a 37% increase over the current contract, which began 5 years ago. The new contract includes many new state requirements that add to the cost of any bus contract.

4. In May of 2019, Town Meeting authorized the School District to award a transportation contract for a term not exceeding five (5) years.

5. On June 3, 2019, the School District was notified by the Inspector General that the bidding process did not comply with the statutory requirements set forth in General Laws c. 30B, Section 5 because the bid was not also advertised on COMMBUYS, which is the State’s official procurement record system. The Inspector General specifically cited to General Laws c. 30B, Section 17, which states in part as follows:
“a contract made in violation of this chapter shall not be valid, and the governmental body shall make no payment under such contract.”

6. Although A&F has pointed out several other contracts in other districts that they believe did not comply with this requirement, we have been advised by our Counsel that the mere fact that other districts may not have complied with certain statutory requirements does not in any way relieve Burlington School District from having to comply with any and all statutory requirements, especially in light of the Inspector General’s determination and clarification on this issue.

7. As a result of the Inspector General’s determination, the School District re-bid the school bus transportation contract on June 11, 2019, which included also advertising the bid on COMMBUY$S. The bid process was again administered by Public Management Associates. Sealed bids were due to be submitted on June 25, 2019.

8. Although six potential bidders attended the initial bidders meeting for the rebid, only two companies ultimately submitted bids: A&F Transportation and Trombly Motor Coach. It should be noted that the owner of Trombly Motor Coach also owns NRT Bus although they are separate corporations and legal entities.

9. The low bid was by Trombly Motor Coach, which was $1,022,580 less over the term of the 5 year contract or $204,516 less per year.

10. At the School Committee Meeting on June 25, 2019, Richard G. Labrie, Principal of Public Management Associates recommended that Trombly Motor Coach be awarded the school transportation contract “on the basis of their being the lowest responsive and responsible bidder and in the best public interest.” It should be noted that the bid documents in accordance with G.L. c. 30B require that the School Committee award
the contract to the lowest bidder that the School Committee determines to be
"responsive and responsible".

11. Mr. Labrie stated that out of six (6) references that were checked for Trombly Motor
Coach that three (3) were “generally good” and two (2) were excellent. There was
one negative reference against NRT – not Trombly Motor Coach - from over three
years ago, although that contract was never canceled for good cause. It should be
noted that several references described Trombly as being “responsive” or “highly
responsive” to issues that arise.

12. Mr. Labrie noted that there have been no issues reported to the Better Business
Bureau regarding Trombly Motor Coach and that they have received mostly 5 star
ratings on Social Media with several negative comments regarding drivers and the
location of bus stops.

13. After discussion by the School Committee on June 25th, the issue was tabled until our
July 9th meeting.

14. During the interim, several issues have been reviewed and clarified by School
Committee Counsel and/or Mr. Labrie.

15. The bid documents require that all current bus drivers be offered employment by the
successful bidder to continue their routes.

16. Mr. Labrie confirmed that he reviewed the insurance claims history of both bidders
dating back a three years and there was nothing in the claims history that indicated
any type of unusual safety history or anything that would deem either bidder to be a
higher than normal “safety risk”.
17. The bid documents require that the successful bidder obtain annually a 100% performance bond (if requested by the School District) to ensure full performance of the requirements set forth in the bid documents. The performance requirements set forth in the bid documents include, but are not limited, to the following: quality of buses; maintenance of equipment; requirement of safety equipment and bus monitors; submission and approval of bus routes and schedules; training, licensure, CORI checks and drug testing requirements.

18. Additional performance specific requirements include, but are not limited, to the following:
   a. No idling of school buses on school grounds for more than 5 minutes;
   b. Replacement buses available to reach and replace “on road breakdown” within 20 minutes of notification;
   c. Accidents must be reported immediately to the contractor and in writing within 24 hours and the contractor will immediately notify the appropriate school official.
   d. **Option if School Committee Determines to Require Cameras On Buses:**
      Videotapes/recordings will be maintained by the Contractor for a minimum of seven days and will be available to school personnel during that period.
      Videotape/recording copies will be provided to school personnel upon request.
   e. The schedule of route operation shall be maintained in such a manner that students shall be picked up no earlier than 40 minutes before school starts and reach the school no earlier than 10 minutes before classes begin. No bus shall
leave the school at the end of the day until all students are boarded and
properly seated.

f. At the sole discretion of the District, the District reserves the right to develop
routes independent of the Contractor for implementation by the Contractor.
g. Routes shall be developed in conjunction with School District personnel and
requirements and provided to school administrators prior to the start of the
school year. . . . Routes shall be updated and distributed as necessary.

19. School Committee members have received numerous emails expressing concerns, as
well as positive feedback. In addition, the Burlington Patch had an article in which it
noted, with no sources named, three recent alleged incidents and one alleged incident
from 2014 against NRT – not Trombly Motor Coach.

20. We have received additional supporting emails or alleged individual
including about one of the incidents listed in the Burlington Patch.

21. It is important to remember that the School Committee is not allowed to determine
who the better company is but whether the low bidder meets the definition of
“responsive and responsible.” Additionally, it should be pointed out that the School
Committee cannot consider under Chapter 30B whether we believe having to rebid
the initial bid is unfair to A&F.

22. Although each and every incident is taken seriously and considered, we must weigh
these alleged incidents and accounts against the overall history of service and safety
displayed by each bidder, which has been thoroughly reviewed by a professional
consultant, as well as the references that each bidder received. We must also consider
the fact that individual incidents that were reported were against NRT, not Trombly
Motor Coach, while recognizing both companies are owned by the same person. We must also weigh the recommendation of our professional consultant who determined both companies to be “responsive and responsible.” The Burlington School Committee has always had a high level of expectations for safety and service. Based upon the responses to our bid specs, our consultant believes those concerns have been met by both bidders.

23. In weighing these factors, it should be noted that Trombly Motor Coach has been incorporated for approximately 68 years and NRT has been in business for approximately 48 years. NRT has contracts to provide school transportation currently to approximately 17 school districts, regional school districts and/or education collaboratives, while Trombly Motor Coach currently provides school transportation to at least 8 other school districts or public schools.

24. Trombly Motor Coach provides services to approximately 25,000 students daily, which amounts to about 9,000,000 rides per year. NRT provides services to approximately 120,000 students daily, which amounts to about 43,000,000 rides per year.

25. This service history must be taken into consideration when weighed against the other incidents that been reported.

I would like to enter this statement into the minutes.

Ways/Means

John Iler and Sue Harrigan were present.

Chair Simon opened the meeting up for public comment and stated that public participation speakers would be allowed three minutes to present their material on transportation. A very lengthy public comment period ensued. John McCarthy, President Trombly/NRT stated that his company had bid on this transportation contract five years ago and lost the bid due to a technicality. He commented that the company has had some incidents in the past but they work diligently to rectify and provide safe service to communities. Mr. McCarthy will offer positions to all A&F drivers, will have several drivers in training, and hopes that the School
Committee will consider Trombly’s transportation bid. Bob Bent, President of A&F Bus Co., explained they’ve been Burlington’s bus contractor for the past 25 years, their drivers have gone over and above to provide a safe bus ride, they want to be the best, they’ve done the right thing for Burlington all these years and asked for consideration for what A&F has done for the town the past 25 years. A&F drivers and Burlington residents Alicia Murray and Wendy Peterson expressed concern that the transportation consultant should be held accountable and should have known the procurement process. They further expressed concern with Trombly regarding breakdown response times, their safety record, and explained that Burlington parent/students have trust and good relationships with A&F drivers (12 of whom are Burlington residents). Attorney Darren Klein stated that school districts set transportation contract specifications, there are 50 pages of performance requirements, Trombly has agreed to all the requirements and if they do not comply with the requirements their contract could be cancelled. Beth Colburn, parent of a non-verbal student, explained her child feels safe with the current A&F driver and further noted that SEPAC has concerns about bus incidents with Trombly/NRT. Parent Megan Nawaichik explained that it has been a big decision to put her special education students on the bus, they’ve felt happy and safe on A&F, safety of special needs students is a top priority and bus incidents involving Trombly/NRT are very concerning. In response to town meeting member Roger Bell, Attorney Klein replied that the transportation consultant had the opinion that for a contract of this size it didn’t have to be posted on commbus, the Inspector General’s office disagreed (but felt it wasn’t done intentionally), the state understood it was a mistake made by the transportation consultant, and the school district was trying to do the right thing by hiring a professional consultant. Further answering Mr. Bell, Attorney Klein explained that as far as any fiduciary responsibility for the town, it’s possible that either A&F and Trombly has the right to file a claim and the contract will not need to go back to town meeting for approval, as sufficient funds were appropriated and approved to enter into a five-year contract. Parent Renee Adronica has two students and has more trust in A&F to ensure the safety of Burlington’s children. Attorney Klein explained that under the regulations of Chapter 30B for bids, Burlington is required to select the lowest bidder for the transportation contract who is determined to be responsive and responsible, the school district is not allowed the discretion to chose as it’s the law. Town meeting member Millie Nash explained she’d inquired about consolidating the B-line public transportation and school transportation in January; the town needs to get creative to continue to provide B-line service (their budget is $40,000). In response to town meeting member Eileen Sickler, Attorney Klein commented that if the School Committee votes to award the transportation contract, both sides will need to enter into the contract while meeting both sides needs as soon as possible. Parent Jennifer Priest inquired about trusting the transportation consultant’s new recommendation on Trombly considering the mistake he made. Attorney Klein noted that the School Committee takes everything into consideration and town employees have made further information inquiries and verifications. Mr. Cunha explained that he and Mr. LaBrie had checked references; which the company were required to supply. Parent Samantha Hurley commented she understood the predicament legally, that both companies could get students to school safely, however, A&F driver Wendy had a bus stop moved to meet her family’s needs, they make Burlington parents & children comfortable, and speculated that more parents may be driving their children to school if a new company is selected.

The School Committee expressed appreciation to A&F Bus and the services of all their employees. Town employee and former A&F driver Maria Lombardo explained she was aware of legal guidelines and Trombly is already threatening to sue the town, that’s something to think about. Attorney Klein referenced that the school district had received similar legal letters from both Trombly and A&F. Mr. McCarthy, Trombly President commented: NRT has provided special education transportation in Burlington since 2006 with a flawless record, they’d like to offer A&F drivers jobs as they are experienced and trained, the last thing they want to do is upset drivers, parents, or the town with reassigning bus drivers; if his company is chosen they will try their best and they are willing & able to provide Burlington’s transportation. Town meeting member Shari Ellis expressed concern with the school department waiting so long into the last bus contract year and questioned if 6 months was enough time to complete bid specs/etc. Mrs. Monaco replied that the Committee spoke with staff last fall, which was plenty of time, it was discussed again in January, when it was decided to request a five year contract approval from town meeting; if the approval was not received, the School Committee would have opted for a three-year contract. In response to Ms. Ellis, Mr. Cunha replied that the transportation consultant has not been paid yet and Ms. Ellis suggested the Committee should consider holding the consultant responsible. In
response to Ms. Moran, Attorney Klein explained the bid award timeframe: School Committee voted to award the bid in April to A&F Bus, town meeting authorized the School Committee to enter into a 5-year transportation contract and money was appropriated for the contract. In response to Ms. Moran inquiring about the delay of signing a contract with A&F and the Inspector General’s challenge, Attorney Klein said he would not speculate on that, doesn’t know, and the Inspector General issued the directive to rebid in June 3 letter. He further explained that the Inspector General’s office had contacted school counsel 10-14 days prior to the June 3 letter to review the issue so that there would be enough time for the school district to remedy the issue and it doesn’t matter how the Inspector General found out about the inconsistency. Mr. Cunha replied to parent Mary Jo Crawford that special education students will be transported in either 20, 30, or 48 passenger buses and by contract Trombly will have to supply those buses.

Mr. Murphy stated that under the 30B regulations, there is no flexibility for awarding the contract, the bid process requires that the lowest responsible bidder be appointed, explained that under this five-year contract it will save the town over $1 million, and commended Trombly President Mr. McCarthy for attending the meeting. Moved by Mr. Murphy and seconded by Mrs. Monaco that based upon the preceding, it’s our recommendation that the Burlington School Transportation Re Bid, IFB, dated June 11, 2019, representing the Regular in District Transportation, Special Education and Early Childhood Buses, Mid-Day Kindergarten, Special Education Summer Bus Transportation, Bus Monitors, Athletic and Activity Buses, and Late Buses be awarded to Trombly Motor Coach at a bid price of $333.00 for 3 Tier 71 passenger buses, $333.00 for WC Buses, $65.00 per day for Mid-Day Kindergarten, $16.36 per hour for Bus Monitors and $65.00 per day for Late Buses, such total cost not to exceed $2,091,235.00 and on the basis of their being the lowest responsive and responsible bidder and in the best public interest award the bid. In order to ensure high quality performance, we further require that the District require a 100% performance bond for at least the first year of the contract. Motion carried 3-0-0.

Mr. Murphy suggested that in fairness, for the community should give the new company Trombly a chance, and that it’s in everyone’s best interest to try to make this work. Mrs. Monaco thanked all A&F employees for their work for the town of Burlington, thanked all who spoke tonight for coming, wished the law gave the Committee the ability to use our emotional response but the School Committee has a fiduciary responsibility to accept a new contract with Trombly Motor Co. In response to Mr. Bell, Mr. Murphy replied that we don’t have the information to answer if there is remaining money from the bus contract will it go back to the town’s general fund; the question will be answered at the next meeting.

Chair Simon made closing remarks including the School Committee’s: priority is to have safe bus rides along with high service expectations, she has consulted repeatedly with school legal counsel, explaining that correct legal procedures need to be followed, the new transportation company will offer employment to current A&F drivers, the contract reserves the right for Burlington to accept, reject, or change bus drivers (if deemed in the best interest of the school district). She further explained that the School Committee’s hands are tied by state laws regarding bidding, the district cannot make the award based on preference or fairness, and cited the large amount of savings to the town. Chair Simon also noted that the option of putting cameras on the buses may be added, an annual transportation evaluation will be conducted, and a 100% performance bond will be included for at least the first year of the contract.

**Adjournment**

Moved by Mr. Murphy and seconded by Mrs. Monaco at 8:45 p.m. to adjourn the meeting. Motion carried 3-0-0.

Respectfully submitted,

Sharon Gilbert
Recording Secretary

Date submitted: 8/20/19
Date approved: 8/20/19