

EPHRATA BOROUGH AUTHORITY
MINUTES – August 26, 2021

A special meeting of the Ephrata Borough Authority was held on Monday, August 26, 2021, at 11:00 AM in the Council Chambers of Borough Hall, 124 South State Street, to discuss and vote on a Letter of Directive of Payment Agreement by Bioforcetech on their pre-procurement proposal conditionally approved at the Board's June 14, 2021, meeting. In attendance were Chairman Ralph Mowen; Vice Chairman Gary Snavely; and Member Gregory Zimmerman. Absent were Treasurer Gil Ochs and Assistant Treasurer Gail Bare.

Also present were James R. McManus, III, Solicitor; Dan Becker, Becker Engineering; D. Robert Thompson, Secretary; Charlie Nigrelli, Utilities Manager; Jamie Willwerth, Water and Wastewater Manager; and Stephanie Fasnacht, Recorder.

The following visitor(s) were present:

Teresa Caruthers, 229 Railroad Avenue, Ephrata
Michael Walter, McGriff Insurance Services, Inc., Columbia, MD

The following visitor(s) participated via video conferencing:

Matthew Beernaert, Tokio Marine America
Scott Crosswell, GHD, Harrisburg, PA
Tyler Cuffler, Tokio Marine America
Valentino Villa, Bioforcetech Corporation, San Francisco, CA
Charles Winslow, GHD, Harrisburg, PA
Aurora, Tokio Marine America

Chairman Mowen called the meeting to order at 11:00 AM.

Bioforcetech: Letter of Directive

Dan Becker, Becker Engineering, reminded the Board at their June meeting, they approved execution of a contract with Bioforcetech for the pre-procurement of equipment. Mr. Becker advised the only item outstanding to move forward with the pre-procurement of the equipment is a signed Letter of Directive of Payment Agreement by the Board.

Valentino Villa, Bioforcetech Corporation, advised he was in agreement with Mr. Becker's comments and clarified that while the payment(s) are to be made payable to Bioforcetech Corporation, they are to be mailed to the care of U.S. Specialty Insurance Company, Attn: Funds Disbursement, Dept., 801 S. Figueroa Street, Suite 700, Los Angeles, CA 90017.

Matthew Beernaert, Tokio Marine, informed the Board Sureties, from time to time, utilize "funds control" which is a tool to protect both the Authority and the Surety and will be implemented for use in this particular project. Mr. Beernaert noted that the funds received from the Authority will not be comingled and used for other projects. Mr. Beernaert advised the Board to view this process as a positive development for risk mitigation which serves in "all of our best interests."

Michael Walter, McGriff Insurance Services, Inc., informed the Board that he serves as an agent for both Bioforcetech and Tokio Marine and advised that “funds control” is a normal process used within the industry for specific projects.

Both Chairman Mowen and Mr. Snavelly expressed their concerns of utilizing a third party to disperse the Authority’s payment(s) for the project; in which, Mr. Beernaert provided clarification that “funds control” is a viable tool for the Surety to use “... for a very specific project with a very specific goal ...” and “... it just makes sense.”

Solicitor McManus, in referencing the payment process, inquired as to what triggers the Surety for payment(s) to be made to Bioforcetech; in which, Mr. Beernaert advised that both the Surety and Bioforcetech have “... everything in line” for vendors/contractors to receive their payments. Mr. Beernaert clarified that the process works as if Bioforcetech is making the actual payment with the only difference being the check is being issued by the Surety. Aurora, Tokio Marine, further advised that a bank account will be set up specifically for Bioforcetech which they will use to pay vendors their payments.

Mr. Thompson inquired as to what point does the Authority get credited for their payment to Bioforcetech; in which, Aurora clarified that occurs once the payment is received from the Authority to Tokio Marine. Aurora advised that after monies are received from the Authority and requests for payments are submitted from vendors, they (Tokio Marine) will request cost information from Mr. Villa to compare the numbers which should match.

In response to Solicitor McManus’ inquiry regarding what kind, if any, of a dispute resolution is in place; Aurora advised that they (Tokio Marine) would make contact with Mr. Villa and review the cost information with him to resolve any disputes. In response to Solicitor McManus’ statement of the lack of clarity of contractual duties and his concern if this would open the door for future issues, Mr. Beernaert advised that those arrangements have been made between the Surety and Bioforcetech and he will not be providing those details to the Board. Mr. Becker clarified that while he understands the arrangement is between Tokio Marine and Bioforcetech, he would appreciate a response as to why the Authority is getting involved in this process. Mr. Mr. Beernaert clarified the purpose of the Authority signing the Letter of Directive is simply to acknowledge the payment arrangement and “that is all.”

Mr. Becker then expressed that the Authority is uncomfortable with the “funds control” by a third party and again inquired as to why the Authority has to be involved as this is an agreement between the Surety and Bioforcetech. Mr. Beernaert clarified that he, serving as their underwriter, initiated the requirement of the “funds control” as a term for approval which offers additional protection for both the Authority and the Surety. In response to Mr. Snavelly’s inquiry as to why “funds control” is being required for this particular project; Mr. Walter clarified it is due to the equipment purchase piece being quite large to the point that the Surety wants to ensure that vendors are paid.

Mr. Villa advised he is willing to sign whatever the Authority feels necessary to make them comfortable with the request stating, “... we’re here because we want to be part of the same team ... and I’m very confident that this will be a great project.”

Mr. Becker advised there are a total of five (5) payments to be paid with those timelines being outlined in the contract documents to Bioforcetech covering the costs of this project and provided an overview of process:

- Bioforcetech will submit a payment application to GHD
- GHD will then review the payment application and recommend the Authority make a payment to Bioforcetech
- Authority to take action at upcoming Board Meeting to process payment to Bioforcetech

In response to Solicitor McManus' inquiry regarding the payment process for vendors to be paid by the Surety, Aurora advised after the invoice amount is confirmed by both the Surety and Bioforcetech, the vendors will be issued a check in the name of Bioforcetech by the Surety from their dedicated account. Aurora further advised that after the payments/checks are issued, they will then be sent to Mr. Villa, Bioforcetech, who will, in turn, disburse them to the vendors for resolution of the payment.

Solicitor McManus inquired if all parties, including Bioforcetech and Surety, are in agreement for the Letter of Directive to be revised to include their signatures; in which, Mr. Beernaert responded he believes it to be appropriate for Bioforcetech to sign the letter, however, due to the Surety not being a direct party, he is not in agreement to have them listed.

It should be noted at 11:55 AM, the following attendees disconnected and/or departed the meeting:

Michael Walter, McGriff Insurance Services, Inc., Columbia, MD
Matthew Beernaert, Tokio Marine America, New York, NY
Tyler Cuffler, Tokio Marine American, New York, NY
Valentino Villa, Bioforcetech Corporation, San Francisco, CA
Aurora, Tokio Marine America, New York, NY

A brief discussion then occurred amongst Board Members, Mr. Becker, Solicitor McManus, and Staff to review the pros and cons regarding moving forward with the project resulting in their agreement to amend the letter to include the following conditions for approval:

- The amendment of the signature block to include signatures for both the Chairman and Treasurer of the Authority;
- The addition of a signature block to include signatures for Bioforcetech officials;
- The addition of verbiage relating to the payment when received by the Surety (via electronic funds) results in Authority's obligation deemed as satisfied; as well as,
- The addition of verbiage relating to the letter being in a form acceptable to the Authority's Solicitor.

Motion by Mr. Snavely, seconded by Mr. Zimmerman, to conditionally approve execution of the revised Letter of Directive of Payment Agreement with the noted additions and/or changes as listed above. Motion passed unanimously via roll call vote.

Adjournment

Motion by Mr. Zimmerman, seconded by Mr. Snavelly, to adjourn the meeting. The meeting was adjourned at 12:09 PM.

Respectfully submitted,

D. Robert Thompson
Secretary