



Chautauqua, Cattaraugus, Allegany & Steuben Counties

Southern Tier Extension Railroad Authority

Center for Regional Excellence, 4039 Route 219, Suite 200, Salamanca, New York 14779

Tel 716-945-5301 Fax 716-945-5550 Tdd 716-945-5301

"This institution is an equal opportunity organization"

Gerard Fitzpatrick, Chairman

STERA Executive Committee Meeting August 18, 2006

Minutes

Present: John Margeson (Chairman, presiding), Joseph Eade, James Griffin, Robert Walrod

Others Present: William Burt (WNYP)

Staff: Richard Zink

The STERA Executive Committee met by telephone conference call at 11:30 AM on August 18, 2006.

1. Call to Order

Mr. Margeson called the meeting to order at 11:30 AM.

2. Construction Funding Administrative Expenses

Mr. Zink noted that the agreement was that WNYP would agree to a 2% of total project cost for administrative expense, payable to Southern Tier West by STERA.

3. NYS Bond Act Resolution

The STERA Board adopted a resolution authorizing the \$2,000,000 NYS Bond Act money, the local share from WNYP, any overage from WNYP, and authorizing going forward with the entire project (Eade, Griffin, passing unanimously).

4. Construction Bid Review and Selection

Mr. Zink noted that as a consequence of the bids being rather high, WNYP had proposed that the crop and weld work be deleted from the contract and accomplished by WNYP through force account. NYS DOT had indicated that this strategy might not be acceptable, as this work was approximately 25% of the total contract work and was too large to delete. NYS DOT suggested that an alternative was to re-bid the contract work without the crop and weld work in it. After discussions with WNYP, Mr. Margeson authorized transmitting an email to NYS DOT asking NYS DOT to approve the deletion of the crop and weld work from the existing contract and

asking for NYS DOT's approval of the selection of the low bidder for the contraction project, G. W. Peoples. The email suggested that this was the best possible way to get this work done in a timely fashion (i.e., this calendar year) and also the best possible way to get the most work done for the money available, especially in the dynamic escalating cost environment that we are in.

On the morning of August 18, 2006, NYS DOT informed STERA that should STERA decide to award the contract to G.W. Peoples, it would concur with the award under the following conditions:

- The formal request to NYS DOT for its concurrence with the award to G.W. Peoples includes a letter from G.W. Peoples indicating that it is aware of the intent to remove the crop and weld work and perform the work via force account.
- Notification and coordination between WNYP forces performing crop and weld and G.W. Peoples is established in accordance with Article 7 of the General Conditions.
- G.W. Peoples is not required to specifically waive their rights of claim under Section 7 or Section 11.9.3 of the General Conditions as a prerequisite to award (their letter can be silent on this issue).
- Should G.W. Peoples bring a claim against STERA and WNYP under Section 7 or Section 11.9.3 for elimination of the crop and weld, NYSDOT will not participate in the payment of any damages awarded to G.W. Peoples.
- WNYP will provide a separate accounting of force account costs for crop and weld operations from any other force account work associated with the project. The Department will not participate in force account costs for crop and weld in excess of \$505,525.00 (excluding material)

G.W. Peoples had indicated to WNYP that it would send a letter indicating this it would be relieved, not disturbed, if the crop and weld were deleted from this contract, and indicating that it has no experience doing crop and weld work.

The Executive Committee adopted a resolution deleting the crop and weld work from the contract, selecting low bidder G.W. Peoples as the contractor for the work under the contract, and authorizing the notice to proceed, all contingent on the receipt of a letter from G. W. Peoples consistent with the above conditions (Eade, Griffin, passing unanimously). The deletion of the crop and weld work will be Change Order #1.

A pre-construction conference was scheduled for August 30, 2006 at 9:00 AM in Salamanca.

5. Randolph Foundry Brownfield Remediation Project

Previously, Mr. Griffin had suggested doing a title search to determine whether there was a lease on the portion of the STERA property on which a portion of the Randolph foundry building was located, that would outline the rights and relationships of the parties. He had

suggested that perhaps such a lease might provide that the title owner could tell the building owner, whose building is encroaching on the railroad property, to get building off the owner's property within 90 days. A title search was done, and it showed no such lease.

Mr. Burt suggested that he believed that the STERA and WNYP agreements with NS require prompt notification to NS if any environmental contamination is found or suspected, and that this notification triggers certain rights on Norfolk Southern's part to determine and/or approve what happens following such notification. Mr. Margeson indicated that STERA would contact NS in this regard.

6. Adjournment

The meeting was adjourned at 9:50 AM (Eade, Griffin, passing unanimously).