



# *Town of Winchester*

Town Manager's Office  
71 Mt. Vernon Street  
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Board of Selectmen Meeting  
Monday, September 12, 2016

## TOWN MANAGER REPORT AND COMMENTS

- Docket Item **B-1:** Lead Neck Pipe Replacement Update
- Docket Item **B-2:** Skillings Road west bound traffic – WHS
- Docket Item **B-3:** Flood Mitigation Project Update

### Supporting Documents:

- B - 1:** Draft article / motion
- B - 2:** Email from Jim Dowd
- B - 3:** Email from Meg White, Project Engineer; Letter to Downtown businesses / residents

### Action Required:

- B - 1:**
- B - 2:**

Community Lead Service Line Replacement Program (MWRA)

DRAFT

Article

To see if the Town will vote to appropriate a sum of money for a community lead service water line replacement program to reduce the potential for elevated lead levels at customer taps and to maintain high water quality conditions, including the replacement of lead neck connections, and the replacement or rehabilitation of public and privately-owned water service lines containing lead, including all design, engineering and other costs incidental or related thereto; to determine whether this appropriation shall be raised by borrowing from the Massachusetts Resources Authority or otherwise; and to take any other action relative thereto.

Motion

That \$600,000 is appropriated for a community lead service water line replacement program to reduce the potential for elevated lead levels at customer taps and to maintain high water quality conditions, including the replacement of lead neck connections, and the replacement or rehabilitation of public and privately-owned water service lines containing lead, including all design, engineering and other costs incidental or related thereto; and that the Treasurer with the approval of the Board of Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Resources Authority ("MWRA") and in connection therewith to enter into a loan agreement and financial assistance agreement with the Authority and to accept any grants for the project from the MWRA, provided that the amount of the authorized borrowing shall be reduced by the amount of any such grants received from the MWRA; that the Town Manager is authorized to have oversight of said project; and that in accordance with Section 4-2 of the Winchester Home Rule Charter, the Town Manager shall have the authority to enter into contracts and approve payments with respect to said project."

**Mawn, Patti**

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**From:** Dowd, Jim <Jim.Dowd@skanska.com>  
**Sent:** Thursday, September 08, 2016 3:09 PM  
**To:** Howard, Richard  
**Cc:** Robert Deering; Gill, James; Rudolph, Beth; White, Margaret; Mawn, Patti; tgroux@winchesterpd.org; Burrows, Jim  
**Subject:** Skillings Traffic Pattern Revisions - Update

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Richard

Following up on our meeting on Skillings Rd. today, I am working with SMMA to get an updated drawing of the EFPBC selected alternate for revisions to the Skillings Rd West bound traffic markings. SMMA is working to get the drawing by end of day today, but I was just informed it may issue tomorrow. Just wanted to make sure the topic is on the agenda for Monday night. I will also forward the alternate options/designs that were not selected last evening.

Thanks  
Jim

**Jim Dowd**  
Senior Program Manager

Skanska USA  
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**Howard, Richard**

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**From:** White, Margaret  
**Sent:** Wednesday, September 07, 2016 1:31 PM  
**To:** Twogood, Mark; Howard, Richard  
**Subject:** FW: Bid Protest Decision: Kenefick v Winchester  
**Attachments:** 2016\_09\_07\_Winchester\_Kenefick.pdf



**Margaret T. White**  
Project Engineer

Office of the Town Engineer  
71 Mount Vernon Street Winchester, MA 01890  
Phone (781) 721-7165 | [mwhite@winchester.us](mailto:mwhite@winchester.us)

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**From:** Bergman, Bruce (AGO) [<mailto:Bruce.Bergman@MassMail.State.MA.US>]  
**Sent:** Wednesday, September 07, 2016 1:25 PM  
**To:** White, Margaret <[mwhite@winchester.us](mailto:mwhite@winchester.us)>; [wwelch@welchdonohoe.com](mailto:wwelch@welchdonohoe.com); [kenefick.corp@gmail.com](mailto:kenefick.corp@gmail.com)  
**Cc:** Anderson, Deborah (AGO) <[deborah.anderson@state.ma.us](mailto:deborah.anderson@state.ma.us)>  
**Subject:** Bid Protest Decision: Kenefick v Winchester



meet the minimum qualifications for the project, and that the specifications were not overly restrictive of competition. The Protest is therefore Denied

### STATEMENT OF THE FACTS

The bids for the project were opened in August 2016. The two lowest bidders were Kenefick at \$441,000 and Ford at \$447,100. There were six other bidders, including Sumco Construction ("Sumco") and New England Infrastructure ("New England").

There were minimum experience requirements for bidders, which included projects within the last five years that included:

1. at least five projects where the bidder or subcontractor successfully used cofferdams and diverted surface water to perform earthwork within a river or other surface water body;
2. at least five projects where the bidder or subcontractor successfully implemented a water management system to reduce the hydrostatic pressure and lower the groundwater to perform earthwork in dry conditions;
3. at least three projects where the bidder or subcontractor completed cast in place concrete work associated with the outlet structure of a dam and included the installation of prefabricated slide gates; and
4. at least five projects where the bidder or subcontractor completed earthwork as part of the repair or reconstruction of an earthen dam embankment.

The specifications required the bidder to include the name of the Superintendent who would be used in the project, and his/her experience. The bidder was also required to include a list of all projects worked on in the past three years; a Proposal Form and a list of the total

number of supervisors and workers to be assigned to the project. The Town reserved the right to receive additional information from the bidders after the opening of the bids.

Kenefick failed to demonstrate to the Town that it met the Town's experience requirements; failed to provide the name and resume of the proposed Superintendent; failed to provide a list of projects completed in the last three years; failed to provide a list of the total number of supervisors and workers to be assigned to the project; and failed to include a Proposal Form. When the Town sought additional information from Kenefick post-bid, Kenefick admitted that it did not meet qualifications 3 and 4, *supra*. Kenefick argued that its work on the Swansea Dam Repairs project had an identical scope of work as the Scalley project. The Town's design engineer contacted the design engineer for the Swansea project who confirmed that the two projects were not identical.

Kenefick argues that the Town's experience requirements were too restrictive of competition, and only Ford could meet them. Kenefick submitted evidence of some other projects that did not include equivalent requirements. The Town rebutted this argument by stating that Sumco and New England could meet the requirements.

### ANALYSIS

There are two issues in this case. The first issue is whether Kenefick met the project's experience requirement. Kenefick admitted that it did not meet qualifications 3 and 4, *supra*. These experience requirements cannot be waived by the Town. Even though experience requirements are not statutorily-mandated but rather are requirements imposed by the bidding specifications, the principles of "equal footing" and "fair and open competition" would prohibit noncompliance with such experience specifications.

Although this Office has often upheld the discretion of awarding authorities to waive their own imposed non-statutory bidding requirements, such a waiver cannot fairly include abandoning significant experience qualifications which influence which bidders choose to submit a bid and the bidders' assessment of the costs and conditions of performing the contract. It is assumed that prospective bidders review such qualification requirements and make appropriate determinations as to whether they are eligible to submit a bid. Waiving the public bidding experience requirement after the fact would raise issues of fairness to the pool of potential bidders, some of whom may have opted not to bid on account of their own experience deficiencies. Nor is it fair to those bidders who submitted bids in compliance with the experience requirements of the bid solicitation.

The second issue is whether the Town's experience requirements were overly restrictive of competition. In order to prove that the Town's specifications were overly restrictive, Kenefick would have to prove that only one bidder could meet them. See *Pavement Maintenance Systems v. Lynn*, Attorney General Bid Protest Decision (September 29, 2011) (the evidence proved that only one bidder could meet the specifications.) Kenefick has not met this heavy burden. The burden of proof is on the protestor. See *Cardarelli Construction Co., Inc. v. Groton-Dunstable Regional School District*, 4 Mass.App.Ct. 823 (1976). The Town argued that Sumco and New England could meet the experience requirements.

The fact that other awarding authorities have imposed less stringent requirements for similar projects does not change the outcome of this Protest. See *Builders Realty Corp. of Mass. v. Newton*, 348 Mass. 64 (1964) (awarding authorities have the right to impose their own quality requirements beyond those found in the bidding statutes.)

For the foregoing reasons, the Protest is Denied.

Respectfully submitted,

*Deborah A. Anderson*

Deborah A. Anderson 616  
Assistant Attorney General.

cc: Barry McCabe (Kenefick)  
Meg White (Town)



# Town of Winchester

Richard C. Howard,  
Town Manager

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September 7, 2016

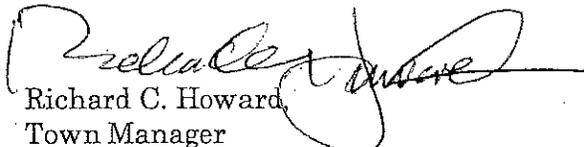
Dear Local Business Owner / Resident:

We have written in the past about the fact that the Mt. Vernon Street Bridge flood mitigation project would result in traffic and parking disruption for a portion of Mt. Vernon Street near the Bridge. This project is scheduled to begin on September 19<sup>th</sup> when the contractor will begin to mobilize in and around the Bridge.

We will have an informational meeting for any interested parties on **Thursday, September 15, 2016, at 5:00 PM** in the Board of Selectmen meeting chamber, second floor, Town Hall. The information about the project will also be posted on the Town's website at [www.winchester.us](http://www.winchester.us) on the front page.

If you have any questions, please do not hesitate to contact me at 781-721-7133. I look forward to seeing you on the 15<sup>th</sup>.

Very truly yours,

  
Richard C. Howard,  
Town Manager

RCH:pcm

cc: P. MacDonnell, Chief of Police  
J. Nash, Fire Chief  
B. Rudolph, Town Engineer  
J. Gill, DPW Director