



Agenda
Meeting of the Municipal Council
Tuesday, March 28, 2023
SPECIAL MEETING 12:00 PM

I. Regular Meeting - 12:00 p.m.

Call to Order/Roll Call

Silent Prayer/Moment of Reflection

Salute to the Flag

Announcement - Open Public Meetings Act

As to comply with the “Open Public Meetings Act,” Chapter 231, P.L. 1975, adequate Notice of this meeting has been provided in the following manner: The Annual Notice was forwarded to the Asbury Park Press, The Coaster and The Star Ledger on January 3, 2023, and posted on the bulletin board the same date. All notices are on file with the City Clerk.

A. Public Hearing

1. Issues regarding bid submitted by Wallace Bros., Inc for construction of new fire department headquarters

B. Public Participation

C. Council Discussion

II. Adjournment

III. Executive Session - 12:00 p.m.

2023-178 Resolution Authorizing a meeting which excludes the public

A. Attorney-Client Privilege

**RESOLUTION NO. 2023-178****RESOLUTION AUTHORIZING A MEETING WHICH EXCLUDES THE PUBLIC**

BE IT RESOLVED by the Mayor and Council of the City of Asbury Park that this body will hold a meeting on March 28, 2023 at 12:00 PM in the Council Chambers located at 1 Municipal Plaza, Asbury Park, New Jersey, that will be limited only to consideration of an items or items with respect to which the public may be excluded pursuant to section 7b of the Open Public Meetings Act.

The general nature of the subject or subjects to be discussed are as follows:

A. Attorney-Client Privilege:

The public is excluded from said meeting, and further notice is dispensed with, all in accordance with section 8 and 4a of the Open Public Meetings Act.

LISA ESPOSITO
CITY CLERK



Minutes
Meeting of the Municipal Council
Tuesday, March 28, 2023
SPECIAL MEETING

Call to Order/Roll Call

Attendee Name	Title	Status	Arrived
Angela Ahbez-Anderson	Councilmember	Present	
Eileen Chapman	Councilmember	Present	
Yvonne Clayton	Councilmember	Present	
Amy Quinn	Deputy Mayor	Present	
John Moor	Mayor	Present	
Donna Vieiro	City Manager	Present	
Frederick Raffetto	City Attorney	Present	
Lisa Esposito	City Clerk	Present	
Anthony Cucci	Deputy City Clerk	Present	

City Clerk Lisa Esposito called the meeting to order at 12:01 PM.

PUBLIC HEARING

1. Issues regarding bid submitted by Wallace Bros., Inc for construction of new fire department headquarters

City Attorney, Frederick Raffetto stated Good afternoon. My name is Frederick C. Raffetto, Esq., and I am with the law firm of Hill Wallack. I serve as general counsel to the City of Asbury Park, and am also known as the "City Attorney." The Mayor has asked me to take the lead with regard to today's special meeting. The purpose of this meeting is for the Mayor and Council to conduct a public hearing, and potentially to engage in deliberations, concerning issues related to the bidder that was awarded the contract for the new Fire Department Headquarters project on February 27, 2023. By way of background, the City of Asbury Park received and opened sealed bids on Wednesday, February 22, 2023 for the new Fire Department Headquarters. Ten (10) bids were received on that date from interested contractors for this project. On February 27, 2023, the Mayor and Council held a special Council meeting in order to award the bid associated with this matter. The lowest bid had been submitted by **Wallace Bros., Inc.**, with an address of 400 Chambers Ridge Road, Brick, New Jersey 08723. At that meeting, the Mayor and Council adopted Resolution No. 2023-144, which awarded the bid and contract for the project to Wallace Bros., Inc. in the amount of \$18,084,000.00, representing the base bid and deducting alternate #1 (representing training tower) and also deducting alternate #2 (representing community room). Shortly after the special Meeting was held, the City was made aware of certain allegations and information which

may have affected the determination made by the Mayor and Council that Wallace Bros., Inc. represented the lowest “**responsible**” bidder for the project. Pursuant to the New Jersey Local Public Contracts Law, and specifically N.J.S.A. 40A:11-4, every contract for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the contracting unit’s bid threshold must be awarded to the **lowest responsible bidder**. The within contract well exceeds the City’s bid threshold; therefore, it must be awarded to the **lowest responsible bidder**, by law. The Local Public Contracts Law defines the term “**responsible**” as follows: “Responsible” means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, **moral integrity**, operating capacity, financial capacity, credit, workforce, equipment and facilities availability.” [See N.J.S.A. 40A:11-2(32)] That definition was also included as part of the City’s Bid Specifications at Section 5.5.1. With regard to the allegations made concerning Wallace Bros., Inc., the City has heard from other bidders, as well as from labor union representatives, who have filed protests following the award of the bid. The specific issue that was brought forward which caused the Mayor and Council to determine to hold today’s hearing relates to the response provided by Wallace to Question # 7 on the “Statement of Experience and Qualifications” as included in its bid package (at page 73 of 90). That question reads as follows: 7.) “In the past three (3) years, have there been any outstanding debts over sixty days to subcontractors for material and equipment suppliers for work in place on any of your contracts, other than the maximum allowance of two percent (2%) retainage? If so, how much and why?” Wallace answered “**NO**” to that Question. However, the information that has been provided to the City suggests that this response may not have been accurate and/or may have constituted a misrepresentation. The Mayor and Council believe that this issue is material and is relevant to the determination as to whether Wallace constitutes the lowest “**responsible**” bidder pursuant to N.J.S.A. 40A:11-2(27), N.J.S.A. 40A:11-2(32) and N.J.S.A. 40A:11-4, along with Section 5.5.1 of the City’s Bid Specifications. Therefore, before proceeding with contract execution, the Mayor and Council determined to set this matter down for a hearing in order to allow a representative of Wallace to explain, under oath, Wallace’s position as to its response to Question # 7. Importantly, though this hearing was called primarily to review the issue regarding Wallace’s response to Question # 7, since we are conducting a hearing as to Wallace’s “responsibility” as a bidder, there may be questions raised concerning other matters that are relevant to the determination as to whether Wallace Bros., Inc. constitutes the lowest responsible bidder. As to the conduct of the hearing, on behalf of the City, I will take the lead to elicit testimony from **Mr. Steve Wallace**, who is the President of Wallace Bros., Inc., and who executed his company’s bid proposal, through various questions. I will then offer the Council members the opportunity to ask questions of Mr. Wallace, if they so choose. I will then afford Mr. Wallace’s attorney [Stephen Bialkowski, Esq.] the opportunity to ask follow-up questions to Mr. Wallace, if he so chooses. Finally, after the conclusion of the question and answer period, I will afford Mr. Wallace and/or his attorney the opportunity to provide any final or summary comments to the Mayor and Council concerning this matter, if they wish. Once the hearing has closed, the public will then be afforded the opportunity to address the Mayor and Council - either about issues that were raised during the hearing or about any other issue(s) that they may wish to address - as part of the regular open public comment period. Speakers will be reminded that the City affords each speaker with a period of up to three (3) minutes per speaker to address the Mayor and Council. Following the conduct of today’s hearing, the

Council will determine whether to proceed with the contract as awarded to Wallace, or whether to proceed in a different direction. That determination may, or may not, be finally determined today. Specifically, if the Council determines that, in its discretion, Wallace is not the lowest “**responsible**” bidder, then the Council may determine to rescind the award of the bid to Wallace and to award the contract to the next low bidder. In anticipation of today’s hearing, I contacted Mr. Wallace by letter dated March 10, 2023, to advise him that the Mayor and Council wished to hold this hearing. The hearing was originally scheduled to be held on March 17, 2023, but it was adjourned until today. With that, I would like to request Mr. Steve Wallace to come forward so that he may address the Mayor and Council regarding these issues.

Attorney, Stephen Bialkowski and Stephen Wallace responded to a series of questions regarding the bid submitted for construction of the new fire headquarters.

PUBLIC PARTICIPATION

A motion was made by Council member Chapman and seconded by Council member Ahbez-Anderson to open the meeting to the public. All were in favor.

The following members of the public spoke: Juancito Jones made a comment about the award of the firehouse contract & labor unions; Nicole Vickione made a comment about the Wallace Brother's bid for the firehouse project

A motion to close the meeting to the public was made by Deputy Mayor Quinn and seconded by Council member Clayton. All were in favor.

COUNCIL DISCUSSION

Mayor Moor stated, there will be no action taken at this time.

Adjournment

A motion to close the meeting was made by Mayor Moor and seconded Council member Chapman. Regular Meeting adjourned at 1:06 PM.

Executive Session - 12:00 p.m.

2023-178 Resolution Authorizing a meeting which excludes the public

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Moor, Mayor
SECONDER:	Eileen Chapman, Councilmember
AYES:	Ahbez-Anderson, Chapman, Clayton, Quinn, Moor

Respectfully submitted by:

Lisa Esposito, City Clerk