

NEW BUSINESS

10-26-15



Allison J. Ferreira
Town Clerk

TOWN OF MIDDLEBOROUGH
Town Clerk's Office

Bank Building, 20 Centre Street
Middleborough, Massachusetts 02346-2250

508-946-2415 phone

508-946-2308 fax

MEMORANDUM

TO: Board of Selectmen

FROM: Allison J. Ferreira, Town Clerk 

DATE: October 21, 2015

RE: Bid Award for New Voting Equipment

Attached please find a bid summary sheet and copies of the bids received from the Invitation for Bids for New Voting Equipment referred to as "Electronic Scanners for Vote Tabulation." The bid opening was held on Friday, October 16, 2015 at 11:00 AM in the Town Manager's Office, 10 Nickerson Avenue, Middleborough, MA.

As outlined in my correspondence dated September 24, 2015 to the Board, there are only two qualified vendors who have completed certification and received "Approval for Use" by the Secretary of the Commonwealth. The funding to purchase seven (7) new voting machines was approved at the May 15, 2008 Annual Town Meeting in the amount of \$45,000. As reflected in the bid summary sheet, we received bids from the two qualified vendors. The bid price received from LHS Associates, Inc. was \$41,755.00 and the bid price received from Election Systems and Software was \$43,596.38.

I am making the recommendation the bid be awarded to LHS Associates, Inc. as the lowest eligible bidder.

Should the Board be in agreement with my recommendation, I have prepared correspondence for the Board's signature to discontinue the use of our existing Optech IIP Eagle voting machines and to begin using the new ImageCast Precinct Tabulators in the next allowable election which we anticipate to be the March 1, 2016 Presidential Primary pursuant to Massachusetts General Laws, Chapter 54, Section 34.

Should you have any questions or concerns, please do not hesitate to contact me.

**BID SUMMARY SHEET
ELECTRONIC SCANNERS FOR VOTE TABULATION
OCTOBER 16, 2015 – 11:00 AM**

BIDDER	WERE ALL BID SPECIFICATION REQUIREMENTS MET? (YES/NO)	TOTAL BID PRICE
Jeffrey Silvestro President LHS Associates, Inc. 10 Manor Parkway Unit B Salem, NH 03079 jeffs@lhsassociates.com (888) 547-8683	YES	\$41,755.00
Matthew E. Nelson Senior Vice President of Corporate Sales Election Systems & Software 11208 John Galt Blvd. Omaha, NE 68137 menelson@essvote.com (402) 938-1417	NO -Did not meet Minimum Equipment Specifications -Did not comply with Vendor Facility Location	\$39,221.38 without complying with minimum equipment specifications \$43,596.38 in compliance with minimum equipment specifications

TO BE RETURNED WITH BID

TOWN OF MIDDLEBOROUGH, MASSACHUSETTS
OFFICE OF THE TOWN CLERK

BID SUBMISSION FORM

**INVITATION FOR BIDS - ELECTRONIC SCANNERS FOR VOTE
TABULATION**

Voting Equipment Bid Price: \$ 46,970.00

(6 Full Bundles & 1 Spare Unit)

Training Bid Price: \$ Included

On-Site Election Assistance Bid Price: \$ Included

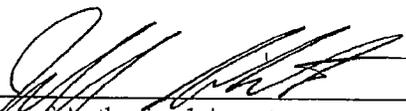
Two Year Hardware & Software Warranty Bid Price: \$ Included

LESS: Eight (8) voting machines trade-in price: (\$ 5,215.00)

TOTAL BID PRICE: \$ 41,755.00

Post Warranty Annual Maintenance Fee: \$ 200 per unit.

(This is the annual fee the Town of Middleborough will pay for maintenance beginning on December 1, 2017, with the final year of the 5 years beginning December 1, 2021).



Signature of Authorized Agent

LHS Associates, Inc.
Company Name (Please Type)

Jeffrey Silvestro, President
Printed Name & Title

October 12, 2015
(Date)

TO BE RETURNED WITH BID SUBMISSION

**TOWN OF MIDDLEBOROUGH, MASSACHUSETTS
OFFICE OF THE TOWN CLERK**

INVITATION FOR BIDS ELECTRONIC SCANNERS FOR VOTE TABULATION

VENDOR'S FACILITY LOCATION

The vendor must maintain a service center located no more than hundred (100) road miles from Middleborough Town Offices, 20 Centre Street, Middleborough, MA 02346. The service center must be stocked with voting equipment repair/replacement parts, as well as adequately staffed with technicians (i.e. minimum of 5 experienced technicians) trained in repairing and servicing all voting equipment. Staffing levels must be such that technicians are available and able to service the Town of Middleborough voting equipment in a timely manner on election days. Bidders must list their facility's physical address below and submit this form with the bid submission.

Facility Name: LHS Associates, Inc.

Facility Street Address: 10 Manor Parkway, Unit B

City: Salem, NH 03079

Number of technicians staffed at this location: 10 Service Technicians available on a daily basis.



Signature of Authorized Agent

Jeffrey Silvestro, President
Printed Name & Title

LHS Associates, Inc.
Company Name (Please Type)

October 12, 2015
(Date)

TO BE RETURNED WITH BID

TOWN OF MIDDLEBOROUGH, MASSACHUSETTS
OFFICE OF THE TOWN CLERK

BID SUBMISSION FORM

INVITATION FOR BIDS - ELECTRONIC SCANNERS FOR VOTE
TABULATION

Voting Equipment Bid Price: \$42,770.00

Training Bid Price: \$0 (Included)

On-Site Election Assistance Bid Price: \$1,575.00

Two Year Hardware & Software Warranty Bid Price: \$0 (Included)

LESS: Eight (8) Optech Eagles voting machines trade-in price: (\$1,200.00)

LESS: Commonwealth of Massachusetts Discount: (\$3,923.62)

TOTAL BID PRICE: \$39,221.38

Steel Ballot Box with Diverter (OPTIONAL): \$8,610.00

Soft-Sided Nylon Case (OPTIONAL): \$770.00

NOTE: If steel ballot box and soft-sided case is selected, deduct \$715.00 per unit for removal of the plastic ballot box from the voting equipment (DS200) from the price of \$42,770.00 shown above.

Equipment Maintenance Options:

Post Warranty Annual Maintenance Fee (Gold Coverage): \$2,059.11

Post Warranty Annual Maintenance Fee (Silver Coverage): \$1,592.89

Post Warranty Annual Maintenance Fee (Bronze Coverage): \$1,282.09

The annual fees the Town of Middleborough will pay for the maintenance program options set forth above apply to the period beginning on December 1, 2017 continuing through November 30, 2022 (five years of post-warranty coverage).



Signature of Authorized Agent

Election Systems & Software, LLC
Company Name (Please Type)

Richard J. Jablonski, VP of Finance
Printed Name & Title

10/13/15
(Date)

TO BE RETURNED WITH BID SUBMISSION

**TOWN OF MIDDLEBOROUGH,
MASSACHUSETTS
OFFICE OF THE TOWN CLERK**

INVITATION FOR BIDS ELECTRONIC SCANNERS FOR VOTE TABULATION

VENDOR'S FACILITY LOCATION

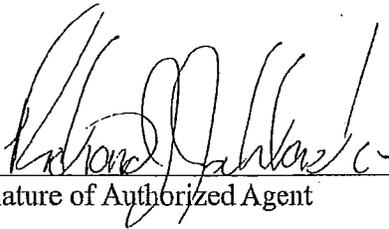
The vendor must maintain a service center located no more than hundred (100) road miles from Middleborough Town Offices, 20 Centre Street, Middleborough, MA 02346. The service center must be stocked with voting equipment repair/replacement parts, as well as adequately staffed with technicians (i.e. minimum of 5 experienced technicians) trained in repairing and servicing all voting equipment. Staffing levels must be such that technicians are available and able to service the Town of Middleborough voting equipment in a timely manner on election days. Bidders must list their facility's physical address below and submit this form with the bid submission.

Facility Name: Election Systems & Software LLC

Facility Street Address: 76 Sherman Ave.

City/Town: North Providence, RI 02911

Number of technicians staffed at this location:



Signature of Authorized Agent

Election Systems & Software, LLC
Company Name (Please Type)

Richard J. Jablonski, VP of Finance
Printed Name & Title

10/12/15
(Date)

CRANBERRY CAPITAL
OF THE WORLD



Phone: 508-946-2405

Fax: 508-946-0058

Town of Middleborough

Massachusetts

Board of Selectmen

Michelle K. Tassinari
Director and Legal Counsel, Elections Division
Office of the Secretary of the Commonwealth
McCormack Building
One Ashburton Place, Room 1705
Boston, MA 02108

October 26, 2015

Dear Attorney Tassinari:

Pursuant to 54, Section 34, the Middleborough Board of Selectmen voted on Monday, October 26, 2015 to discontinue the use of our existing Optech IIIP Eagle voting machines and to begin using new ImageCast Precinct Tabulators in the next allowable election which is anticipated to be the Presidential Primary of March 1, 2016.

Should you have any questions or concerns, please do not hesitate to contact our office.

Respectfully,

Allin Frawley, Chairman

Leilani Dalpe, Vice Chairman

John Knowlton

Diane C. Stewart

Stephen McKinnon

**BOARD OF SELECTMEN
TOWN OF MIDDLEBOROUGH**

Incorporated 1669



CRANBERRY CAPITAL
OF THE WORLD



DIVISIONS

Highway
Sanitation
Insect & Pest Control
Tree Warden
Wastewater
Water

Town of Middleborough

Massachusetts

Department of Public Works

48 Wareham Street

Middleborough, MA 02346

Phone 508-946-2481 Fax 508-946-2484

Christopher Peck
D. P. W. Director

October 21, 2015

Mr. Robert Nunes, Town Manager
Town Hall
10 Nickerson Ave
Middleborough, Ma 02346

Subject: Road Salt, Liquid Magnesium, Liquid Calcium and Ice Ban Bids FY-2016

Dear Mr. Nunes,

I recommend that the Board of Selectmen award the bid for Road Salt for snow and ice control to Eastern Minerals, Inc. 134 Middle Street, Suite 210, Lowell, MA 01852, at their bid price of \$66.86 per ton through the Town of Plymouth Regional Salt Bid #21539. This amount is \$4.86 more than last year's bid amount per ton.

In addition, I recommend that an alternate bid be awarded to Morton Salt Inc., 123 N. Wacker Drive, Chicago, IL 60606, at their bid price of \$79.47 per ton. This amount is \$4.58 more than last year's bid amount per ton. The alternate bid would only be used in the instance that the first bidder cannot provide the service as shown in the bid specifications.

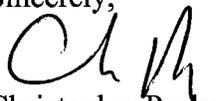
Also, I recommend that the Board of Selectmen award the bid for Liquid Magnesium Chloride to Innovative Municipal Products Inc., DBA Innovative Surface Solutions 454 River Road, Glenmont, NY 12077 at their bid price of \$ 0.89 per gallon through the Town of Plymouth Regional Salt Bid #21539. This amount is the same as last year's bid amount per gallon.

Also, I recommend that the Board of Selectmen award the bid for Liquid Calcium Chloride to Innovative Municipal Products Inc., DBA Innovative Surface Solutions 454 River Road, Glenmont, NY 12077 at their bid price of \$ 0.99 per gallon through the Town of Plymouth Regional Salt Bid #21539. This product was not included in last year's bid documents.

Lastly, we are currently under contract through the Southeastern Regional Services Group (SERSG) to purchase agricultural by-product de-icer. The bid was awarded to Safe Roads Services at a price of \$1.28 per gallon which is \$0.10 more than last year.

Please return the signed contracts to me and I will mail them to the vendors for their signatures.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ch Peck', written in a cursive style.

Christopher Peck
Director of Public Works

Incorporated 1669



CRANBERRY CAPITAL
OF THE WORLD

Town of Middleborough
Massachusetts

Department of Public Works
48 Wareham Street
Middleborough, MA 02346
Phone 508-946-2481 Fax 508-946-2484



DIVISIONS

Highway
Sanitation
Insect & Pest Control
Tree Warden
Wastewater
Water

Christopher Peck
D. P. W. Director

CONTRACT

Contractor Name and Address

Morton Salt, Inc.
123 N. Wacker Drive
Chicago, IL 60606-1743

Department Name and Address

Middleborough DPW
48 Wareham Street
Middleborough, MA 02346

Contract Dates: November 1, 2015 to October 31, 2016

Morton Salt Inc. agrees to supply the Middleborough DPW with Road Salt per bid submitted to the Town of Plymouth Regional Salt Bid #21539 as follows:

\$79.47 per ton

For the Contractor:

Signature

Name

Title

Date

For the Department

Signature

Name

Title

Date

SouthCoast Media Group

Fed ID#

25 Elm Street
New Bedford, MA 02740

1 BILLING PERIOD		4 PAGE#		1 of 1
08/31/2015 - 09/27/2015		2 ADVERTISER/CLIENT NAME		
MIDDLEBORO SELECTMEN				
23 TOTAL AMOUNT DUE		* UNAPPLIED PAYMENT	3 TERMS OF PAYMENT	
\$4,315.51		\$0.00	UPON RECEIPT	
5 BILLING DATE	6 BILLED ACCOUNT NUMBER	7 STATEMENT NUMBER	AMOUNT PAID	
09/27/2015	500111770	0000072142		

ADVERTISING INVOICE and STATEMENT

8 BILLING ACCOUNT NAME AND ADDRESS	9 REMITTANCE ADDRESS
MIDDLEBORO SELECTMEN 10 NICKERSON AVE MIDDLEBORO, MA 02346	The Standard-Times PO Box 223546 Pittsburgh, Pa. 15251-2546

0500111770 0500111770 0000072142 000431551 9

Please return top portion with payment

10 START	11 STOP	11 NEWSPAPER REFERENCE	12 14 DESCRIPTION	13 PRODUCT	15 SIZE	17 TIMES RUN	18 GROSS	19 NET AMOUNT
09/17		0000284720	Balance Forward					1,477.51
			warrant	NB Middleboro Gazette	6 x 21.50	1	2,838.00	2,838.00
Total Discounts							264.45	

* Private Dealers
Miles + Regs
Publication

* STM Warrant
Publication

Date: 10/26/15 WARRANT _____
invoice _____
Acct No. 01122.534300
Acct. NAME Advertising
VENDOR _____ VOUCHER _____
AMOUNT \$4,237.02
APPROVED BY _____

\$4,237.02

INVOICE AND STATEMENT OF ACCOUNT

AGING OF PAST DUE ACCOUNTS

* UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE

21 CURRENT NET AMOUNT	22 30 DAYS	80 DAYS	Over 90 DAYS	* UNAPPLIED PAYMENT	23 TOTAL AMOUNT DUE
\$2,838.00	\$806.05	\$0.00	\$671.46	\$0.00	\$4,315.51
SALES REP/PHONE #					
24 ADVERTISER INFORMATION					
Kerry Silvia 508-979-4408	1 BILLING PERIOD	6 BILLED ACCOUNT NUMBER	7 Statement/Invoice Number	2 ADVERTISER/CLIENT NAME	
	08/31/2015 - 09/27/2015	500111770	0000072142	MIDDLEBORO SELECTMEN	

MAKE CHECKS PAYABLE TO

The Standard-Times
PO Box 223546
Pittsburgh, Pa. 15251-2546

Payable Upon Receipt

Finance charge of 1 1/2% per month (18%) on past due

Jacqueline Shanley

From: Robert G. Nunes
Sent: Friday, October 23, 2015 1:06 PM
To: Board of Selectmen; Derek Adamiec (dadamiec@nercc.org); Fran Cass
Subject: FW: Weston Forest

Here it is.

From: decas.murray.decas@verizon.net [mailto:decas.murray.decas@verizon.net]
Sent: Friday, October 23, 2015 12:07 PM
To: Robert G. Nunes
Subject: Weston Forest

October 23, 2015

Robert G. Nunes, Town Manager (*via email*)

RE: Weston Forest / Weston Forest Committee

Dear Bob:

You asked for comments on the following matters:

- Whether the Weston Forest Committee has any control of the Weston Forest, or whether its role is advisory to the Board of Selectmen.
- What town agency controls the Weston Forest.
- What town agency may expend income received by the Town from the Weston Trust.
- Whether a zoning special permit is required in order to construct/operate a disc golf course at Weston Forest.
- Whether the Planning Board has a role in the disc golf course proposal process.
- Whether a disc golf course is a use allowed under the Frederick S. Weston will.

ROLE OF COMMITTEE:

The Frederick Weston Forest Committee, sometimes called the Frederick Weston Memorial Committee or Fred Weston Memorial Committee, appears to have been established by the Board of Selectmen in the second half of 1967 following a Town Meeting vote to accept the property known as the Frederick Weston Memorial which was devised to the Town under the will of Frederick S. Weston. The vote by the Selectmen to appoint a committee indicated that the committee purpose was "to organize the development of the Weston property". A later Board vote to appoint the specific members of the committee indicated the committee "was for the Coordinating and Developing of the Weston property."

I reviewed a letter dated July 29, 2003 from the Board of Selectmen's Secretary to Gary Russell notifying Mr. Russell that the Board had reappointed him as a member of the Fred Weston Memorial Committee. The letter recites that the Committee is advisory to the Board of Selectmen and is charged by the Board to study and report their recommendations to the Board concerning:

1. Needed maintenance and improvements to the property including completion of a perimeter survey;
2. Development of plans for trails and wetlands crossings;
3. Competing potential uses of the property; and
4. Ways to encourage use of the property for approved purposes.

My opinion is that the Committee does not have any control of the Weston Forest. Its role appears to be advisory to the Board of Selectmen. This conclusion is supported by the fact that the Board controls the forest pursuant to a statute as discussed in the following point. If the Committee did have any control, this would be inconsistent with Chapter 40, Section 3. My opinion is that an agency which has control of a property pursuant to Section 3 may not delegate or grant any part of that control to another agency, board or committee.

CONTROL OF WESTON FOREST:

The Town Meeting vote which accepted the devise of the Weston Forest (Frederick Weston Memorial) did not identify what town agency was to control the property. I am unaware of any vote of Town Meeting or statute, except General Laws Chapter 40, Section 3, which provides that a specific town agency shall control the property.

General Laws Chapter 40, Section 3 provides that all real estate of the town, not by law or by vote of the town placed in the charge of a particular town agency, shall be under the control of the Board of Selectmen. There is a town by-law which gives the Board of Selectmen control of all town properties except properties under the control of town boards or officers pursuant to a specific provision of law.

My opinion is that the Board of Selectmen controls the Weston Forest.

EXPENDITURE OF INCOME RECEIVED BY THE TOWN UNDER THE WESTON TRUST:

I consider that the income received by the town from the Weston Trust from time to time to be monetary gifts governed by General Laws Chapter 44, Section 53A. The funds appear to be accepted by an agency of the town, probably the Board of Selectmen. Section 53A provides that the officer or department which accepts a monetary gift may expend the gift for the purposes of the gift without any appropriation, with the approval of the Board of Selectmen.

My opinion is that the Board of Selectmen is empowered to expend the gift funds received. This assumes that the Board approves of any expenditures which it makes.

ZONING:

I understand that the current Weston Forest use is as a forest/park, used for walking, horse riding and bird watching. My opinion is that the current use is a nonconforming use under the Zoning By-Law.

The property is in the Residence Rural District. Park uses (and municipal uses) require a special permit under the by-law. The current use of the property is grandfathered under zoning because the use was in existence when the by-law imposed the special permit requirements for park (and municipal) uses. The use may therefore lawfully continue. However, the proposed disc golf course is a change or alteration of the

grandfathered nonconforming use. The by-law prohibits a change or alteration of a nonconforming use unless the change or alteration is authorized by special permit from the Board of Appeals.

My opinion is that the addition of a disc golf course facility to the Weston Forest requires a special permit from the Board of Appeals pursuant to the Zoning By-Law.

PLANNING BOARD:

My opinion is that the Planning Board has no permitting or other regulatory role in the disc golf course proposal process. I have assumed that the disc golf course proposal process does not involve any Form A plan or subdivision plan.

If you assume the proposal process includes getting a special permit from the Board of Appeals, the Planning Board may but is not required to make recommendations/comments to the Board of Appeals with respect to the project which is the subject of an application for special permit submitted to the Board of Appeals.

USE OF WESTON FOREST FOR DISC GOLF COURSE

The Will of Frederick S. Weston devised the Weston Forest (Frederick Weston Memorial) to the Town. The devise in the will directed the Town to use the property for:

- Park and playground purposes;
- For a bird and animal refuge or sanctuary;
- For a town forest; or
- For work in connection with forestry by the Middleborough schools.
- Use of the property for any or all of said purposes (set forth above) as the (Town) from time to time deems best.

My opinion is that the use of the property is limited to uses which are set forth in the will. I think that the Town is required to use the property consistent with the terms of the devise. The Town may not use the property for a use which is not within the scope of the uses specified in the will. Generally, a devisee of property is required to adhere to the terms, conditions and directions of the devise.

As for the proposed use of the Weston Forest as the site of a disc golf course, the Town may not use the Weston Forest for a disc golf course if it is not within the scope of one or more of the uses directed under the will. It seems clear that the proposed use is not within the scope of three of the uses, to wit, bird/animal refuge sanctuary, town forest, and forestry work school purposes. This leaves park and playground as potential uses to accommodate the proposed use.

A park is defined to be:

- A piece of ground, in or near a city or town, kept for ornament and recreation; also an area maintained in its natural state as a public property. Webster's New Collegiate Dictionary.

A playground is defined to be:

- An area used by children for outdoor recreation, usually containing play equipment such as slides and swings. Random House Webster's College Dictionary.
- A piece of land used for and usually equipped with facilities for recreation, especially for children. Webster's Ninth New Collegiate Dictionary.

My opinion is that a disc golf course is not a park or playground under the Weston will. I conclude that a disc golf course is not a use allowed under the Weston will.

Very truly yours,

Daniel F. Murray

Town Counsel

DFM/s

15-103-1