

Message from the President

As we approach the end of another year and look to a new, the dynamics in the procurement profession continually change whether they are related to economics, natural disaster, political global/local or philosophical. Some of our members will or have been impacted as a result of decisions. Our challenge is to educate the stakeholders to the value and benefits of a sound procurement process and promote innovations which result in the most favorable outcome to the taxpayers. As members we have this unique opportunity to network with each other to share knowledge and experience and attend Chapter and NIGP classes to further educate ourselves. The Association is also looking into options for additional financial support toward education. Stay tuned.

I thank Denise Charkowski and the Expo committee for their work on a successful Vendor Expo. Also, my thanks to the Friday morning panel members for their contribution to the program. I have received many comments from vendors on the quality of contacts and information they received and to which they are looking forward next year.

The committee has already begun plans for the 14th expo (2006) with new ideas to make it even better.

The response at the WCA Conference was very positive from County officials after they understood the focus of WAPP. There will be follow-up contacts with them in hopes of bringing in new members. Look for an update in December.

We have a full agenda for the December meeting including a the business meeting with items such as election of officers, 2005 committee reports, approving the 2006 budget, hosts for 2007 meetings, logo items, web site and much more. I encourage all of you to suggest topics of interest to further the goals of education, cooperative purchasing and professional growth. If you have any suggestions, contact me or a member of the executive board. You don't want to miss this one.

The Cooperative Purchasing Teams have been busy this past year and will be reporting their progress. Since this is the first year they have been really organized, we will hear of the struggles and successes.

Just a reminder - Jim the web guy has been busy placing items on the web site so visit often and don't hesitate to send an inquiry (IFC) to him for help.

See you all in Madison.

Dean

**GRAND CENTRAL STATION
COOPERATIVE
PURCHASING COMMITTEE**

**COUNTRY SPRINGS HOTEL
SEPTEMBER 16, 2005, 8:00 AM
MINUTES**

Present: Lee Johnson, Laura Forbes, Judy Teune, Ed Bushman, Don LaFontaine, Monette McGuire, Phil Gilbert, Linda Gnerlich, Natalie Dixon, Francisco Silva

Absent: Kathy Jaglin, Deborah Gake, Dean Helwig, Ron Jenne, Geri Slager, Ed Stachowiak, Ken Tronnier, Chris Wilmot

The following actions were discussed and the Committee agreed to pursue each of them:

I. Present a letter from WAPP to the Directors of Purchasing for State of Wisconsin (Helen McCain) and UW (Mike Harteman) requesting administrative and technical support for enhancing bid sites and expanding search engine capabilities to include local government activities. e.g., Google search of local government archives, addition of state one-time purchase tabulations to VendorNet archives.

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**Wisconsin Association of
Public Purchasers Minutes
September 16, 2005
Waukesha, WI**

Meeting was called to order at 12:28 PM by President **Dean Helwig** and followed by the Pledge of Allegiance and introductions.

Minutes: A motion was m/s/p to approve the June 2005 quarterly minutes.

Treasurers Report: **Scott Noffke** for **Linda Dupius**. As of August 31, 2005, the checking account balance is \$19,482.42, the CD balance is \$6,423.40, and Savings account balance is \$5,000.80 for a total of \$30,906.62. The 11-month CD that expired in August was rolled over into a 12-month CD paying 3.92% and a new savings account was opened with an initial deposit of \$5,000.

Committee Reports

EXPO: **Denise Charkowski** stated that there were many positive comments from the vendors this year and a good response to the Friday morning vendor meeting which the committee intends to continue in the future. **Denise** also suggested that we may need to establish set fees for attendance of the Expo meeting.

Education: **Scott Noffke** reported at the request of **Frank Draxler** that they need at least 8 attendees for the "Sourcing in the Public Sector" seminar being held in WI Dells on Oct. 8th. There are currently only two people signed up.

Finance: **Kim Verhelst** indicated he would be sending budget requests for next year's meetings to the meeting hosts shortly. The 2006 budget will be approved at the December meeting.

Past Presidents Council: **Cynda Solberg** indicated that they are looking for nominees for the secretary position for next year.

In response to a member request, the

council checked into why 24 members did not renew their membership this year. **Cynda** reported that they found these non-renewals were due to retirements, finding new employment and lay-offs, not due to any dissatisfaction with the organization.

Cynda also made a suggestion to hold the Expo in May and have a regular meeting in September in 2007. NAPM will be hosting an Expo in September 2007 so WAPP would be competing for attendance of some of the same vendors.

Cynda also requested that the business meeting be held after lunch at the December meeting. There have been many requests to add items to the Friday morning agenda and there will not be time to accommodate them all. **Kim Verhelst** stated that there was a resolution that had been passed stating that the business meeting be held in the morning on Fridays so approval of the membership would be needed for this change. A motion was m/s/p to hold the meeting after lunch at the December meeting this year.

Old Business: **Dean Helwig** stated that WAPP will have a booth at the Wisconsin County Association Expo September 19-20. WCA gave us a discounted rate of \$250 (normally \$400). Dean and other members will be there and will have post-it notes printed with the WAPP logo along with flyers and membership forms to hand out. Please let Dean know if you have administrators from your organization that will be attending.

Tom Wasley who had previously "volunteered" to host the March '06 meeting said he will not be able to host as he will be out of town at the time. Dean asked **Sam Aiello** (City of Racine) to host the March meeting. Sam agreed but requested the help of Racine County. **Susan Connelly** indicated the VALUE meeting will be held separate from the March meeting this year. **Dean Helwig** indicated that the Tech schools will likely host the May/June '06 meeting.

New Business: Dean Helwig reported that Sharon Weeks will be retiring as

our editor and Mary Hensler will be taking over those duties.

Dean Helwig asked if there was interest in WAPP shirts and other logo wear and also suggested offering gifts to speakers who cannot accept cash. There is a selection for both in the Vista catalog. After a brief discussion it was decided that the Executive committee will look into it.

Dean also mentioned that there is now management software available which was developed for NIGP chapters. **Jim Fering** offered to check into it.

Dean reported that as of 12/31/05, the rates for certification and re-certification will increase by \$50 and \$25, respectively.

Dean received notice from NIGP that we need to submit information so we can claim non-profit status under 501 (c3). **Dean** also indicated that there is information on Hurricane Katrina available on the NIGP website.

Monet McGuire wondered that since WAPP contributes funds toward NIGP programs, if money could be contributed to members to attend the NIGP forum? This was referred to the Education committee.

In regard to the updates to state contracts that were discussed in the morning session, **Jim Fering** indicated that he receives updates every Monday and posts them to the WAPP website. When asked if he could email the updates to members as available, **Jim** responded that present ISP limitations make it difficult to email everyone. He will check into the cost of a commercial account to enable him to email everyone at once or find another way to satisfy this need.

Future Meetings - 2005

Dec. 1-2 Madison - Sheraton Madison, Cynda Solberg

Motion was m/s/p to adjourn at 1:13 pm.

Respectfully submitted by: Laura Forbes - Secretary

**Minutes of the SPECTacular
Committee**
September 16, 2005

These are the minutes of the SPECTaculars meeting held on September 16, 2005 as part of the WAPP Business Agenda.

Reports of the three lead agencies were provided - the City of Milwaukee on light bars, Waukesha on ammunition and Washington County on road paint and glass beads.

The City of Milwaukee was not present for the meeting. However, Cheryl Oliva informed the group that Janine is still working with the State of Wisconsin Rep to incorporate the light bar specifications into the bid.

Regarding the ammunition bid, Cindy reported that she has not been able to contact the State of Wisconsin Rep regarding the ammunition bid. The State however, has extended the contract through December 2005.

Washington County prepared a brief announcement to all WAPP and Value members for Jim Fering to distribute regarding the upcoming joint bid of road paint and glass beads. Along with the announcement was a template for all agencies to fill in their 2006 estimated quantities of road paint and glass beads. All estimates are to be returned to Ned Schmitt by November 15, 2005.

Other items discussed:

1. The group reported difficulty in reaching the appropriate State people for collaborating on joint bids. This problem mainly stems from the large amount of turnover occurring at the State. Consensus was for our group to do what could be done with or without the State's involvement for now.

2. The group discussed options for finding out what new contracts the State has available. Nadine Malm from the Department of Corrections indicted she receives a weekly update. Nadine has agreed to forward the weekly State contract update to Jim

Fering for him to pass on to all WAAP and Value member.

3. The group discussed options of doing a joint solicitation for a commodity that was more tailored to Schools. However, a contact person from a school is needed to take on the role of getting volumes and working with a contact person from the State.

Submitted by:
Roy Hartmann, C.P.P.B.
Buyer-Washington County

Approved by Committee Chairperson:
Bill Kurer, Purchasing Agent
Washington County 9/26/05

**GRAND CENTRAL STATION
MINUTES**

Continued from page 1

II. Meet with representatives from State and UW administration and their IT technical staff to inform them of existing practices and capabilities, present our vision of future structures, and discuss opportunities and commitments for development of advanced contract research tools. The tentative date for the meeting is the full day of October 27. Monette will coordinate time, location and attendees.

III. Design a process flow diagram to document our idealized access capabilities. Natalie will request design support from the Madison Metro Transit IT staff.

IV. Contact local government agencies without capabilities of posting procurement/bid information on their web sites to explore their interest in using VendorNet for posting competitive solicitations.

V. Present Google search simulation as an agenda item for the December WAPP meeting.

Prepared by: Lee Johnson

**BIDDING ERROR RULING
COULD IMPACT PUBLIC
CONTRACTING
PROCEDURES**

Wisconsin municipalities confronted with the submission of mistaken bids in the public contracting process have a legal obligation to act in a quasi-judicial manner in determining whether to permit withdrawal of a bid. At the same time, bidders have a statutorily prescribed cause of action to recover forfeiture of a bid bond when a public works contract is awarded but not performed. Such is the dual holding of a recent Wisconsin Supreme Court decision intended to review and clarify section 66.0901(5), Wis. Stats., which governs the correction of errors in public works contract bids. Because the holding appears to modify precedent with respect to the correctability of bidder errors and sets out a potentially cumbersome process of reviewing bidder requests for withdrawal and bid bond release, the decision should prompt municipal officials to revisit and possibly revise their own public bidding practices and procedures.

The case, *James Cape & Sons v. Mulcahy*, 2005 WI 128 (July 15, 2005), involved a bid to the Wisconsin Department of Transportation (DOT) for construction work on the Milwaukee Zoo Interchange. After bids on the project were opened, Cape realized that it had failed to incorporate a last-minute change from one of its subcontractors into the bid. The change would have resulted in a \$450,000 increase in the submitted bid. Upon discovering the error on the same day of the bid selection, Cape sent a hand delivered letter to the DOT project engineer explaining what had happened. The letter requested an opportunity to correct the bid, or in the alternative, that the bid be returned without forfeiture of Cape's \$100,000 bid bond. DOT rejected the request, indicating first that section 66.0901 did not permit such a correction after opening of the bids and second, that DOT would permit withdrawal only upon condition of forfeiture, which forfeiture Cape would not be allowed

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to recover unless it proved that the error had been made "free from carelessness, negligence or inexcusable neglect," pursuant to 66.0901(5). After DOT proceeded to award the contract to Cape as the lowest bidder, Cape refused to perform because of the error. DOT rescinded the contract and declared a forfeiture of the \$100,000 proposal guaranty, prompting the original lawsuit by Cape seeking either the ability to correct its bid or recovery of its bid bond.

Affirming both the Circuit Court and the Court of Appeals, the Supreme Court held that DOT had been correct in preventing Cape from changing the bid, notwithstanding the fact that previous Wisconsin Supreme Court decisions had suggested that bid amendment is an acceptable remedy under some circumstances. Otherwise, the Court reasoned, the integrity of the public bidding process would be compromised and bidders would have an incentive to delay notification of error until after the opening of a bid, since section 66.0901(5) precludes correction of bids prior to bid opening. The holding in *Cape* thus makes it unequivocally clear that section 66.0901(5) "does not permit amendment of a bid as relief for mistakes, errors, or omissions under any set of circumstances. It only authorizes a municipality to allow withdrawal" emphasis added). (¶49)

Where DOT went astray, according to the Court's decision, was in improperly conditioning withdrawal upon forfeiture. According to the Court, the proper adjudicatory role of a municipality receiving notice of a bidder's error after bid opening is to apply a three-part test to determine whether a bidder should be permitted to withdraw a mistaken bid. In accordance with this test, derived from the third sentence of section 66.0901(5), withdrawal can be permitted only if the bidder (i) demonstrates good faith through prompt notification of the error; (ii) pinpoints the exact nature of the mistake and its material impact on the bidder; and (iii) presents clear and satisfactory evidence that the error was not due to negligence in either

examining the plans or specifications of the bid request or conforming to the requirements of the statute itself. This last component of the test is designed to ascertain whether the bidder made an honest error while acting conscientiously, or acted as part of a consistent pattern of neglect and carelessness.

In authorizing the municipality to undertake such a quasi-judicial role, the statute, according to the *Cape* ruling, recognizes that a municipality must weigh the bidder's interest in withdrawal against the municipality's own interest in awarding the contract and retaining the bid bond upon non-performance. The *Cape* decision thus expressly recognizes that prejudice to the municipality is a factor entitling a municipality to go forward and award a bid submitted in error.

However, the decision makes it clear that the process of evaluating a bidder's request for withdrawal is separate from, though related to, the process for determining whether forfeiture of a bond bid is permissible. As the Court states, section 66.0901(5) explicitly "subjects the municipality's conduct to scrutiny when the municipality awards a contract knowing of the bidder's error and then seeks forfeiture of a bidder's guaranty bond" (¶63). Specifically, the statute contemplates a de novo court proceeding to determine whether a bid bond has been inappropriately retained by a municipality. Thus, if a bidder meets the withdrawal standards contemplated by section 66.0901(5) but a municipality denies withdrawal on the grounds that it would be prejudiced by such withdrawal, the bidder still has an opportunity to demonstrate as part of a fact-finding judicial procedure that it was "free from carelessness, negligence, or inexcusable neglect" in making the error, in which case the municipality will be required to return the bid bond.

Based on this analysis, the error made by DOT in *Cape* was in failing to recognize the possibility that Cape could be permitted to withdraw without forfeiture. Because Cape was able to establish in the evidentiary hearing be-

fore the Circuit Court judge that it had made an honest mistake akin to a mere clerical or mathematical error as opposed to an error in judgment or multiple miscalculations, forfeiture was ruled to be inappropriate, a decision which the Supreme Court could find no basis to reverse.

Cape thus makes it clear that, while municipalities have the authority to reject a bidder's withdrawal request upon discovery of an error after bid opening, they must do so with the awareness that their own actions in rejecting such a request will be subject to non-deferential judicial scrutiny. The decision recognizes that, if a bidder fails to meet the three-part test for determining whether withdrawal may be permitted, it will not be able to make the required showing for recovering a forfeited bid bond. However, in the event that a bidder does meet the three-part withdrawal test but undergoes a forfeiture on the grounds that withdrawal would prejudice the municipality, the statute affords the bidder a procedural remedy.

In light of this ruling, municipalities would be well advised to review their public bidding procedures. Under no circumstances should a bidder be allowed to amend a mistaken bid, whether before or after bids are opened. In the event that the municipality becomes aware of a bidder error after bids are opened, assuming that it is promptly notified and the bidder can make a good faith case that the mistake was an honest error, the municipality is likely better off permitting withdrawal or, if the material consequences of permitting withdrawal are sufficiently great, rebidding the project outright. In any event, the municipality must be careful to ensure that it affords the mistaken bidder due process before rejecting a withdrawal request and that it does not condition withdrawal on forfeiture of the bid bond.

Heinemann, Richard A. - Boardman Municipal Law Newsletter. October 2005: 1-2.

Submitted by Frank Draxler



WISCONSIN ASSOCIATION OF PUBLIC PURCHASERS
4th QUARTER MEETING - December 1 - 2, 2005
Sheraton Madison Hotel
706 John Nolen Drive, Madison, WI



AGENDA

Thursday, December 1 – South Ballroom

- 8:00 - 8:25 AM** **Registration and Continental Breakfast**
- 8:25 - 8:30 AM** **Introductions and Welcome**
- 8:30 - Noon** **Ethics Decisions Socrates Wouldn't Make But You Must**
 Presented by **Al Guyant**, President, Guyant and Associates.
 This fun-filled session will show that you may not know what you think you know about ethics. Yet it may also cause you to find out . . . and then act . . . for your sake and that of the organization. Be ready for a challenge.
- Noon - 1:00 PM** **Lunch – North Ballroom**
- 1:00 - 1:45 PM** **Update from the Bureau of Procurement**
 Presented by **Helen McCain**, Director, DOA Bureau of Procurement.
 Current update from DOA.
- 1:45 - 3:15 PM** **Highway Safety Is No Accident**
 Presented by **Major Daniel W. Londsorf**, Director of Highway Safety, Wisconsin State Patrol – DOT.
 Tips on how to avoid becoming a statistic. We have the power to stop the tragedies on our highways.
- 3:15 - 3:30 PM** **Break**
- 3:30 - 4:30 PM** **Cooperative Purchasing Team Meetings.**
- 7:00 PM** **Dinner – Coliseum Bar.**

Friday, December 2ND – South Ballroom

- 8:00 - 8:30 AM** **Registration and Breakfast**
- 8:30 - 9:15 AM** **Financial Statements**
 Presented by **Tim Meeusen**, Office of Strategic Finance, DHFS.
 Looking for financial stability in vendors' financial statements.
- 9:15 - 10:15 AM** **"Grand Central Station" Committee Presentation**
 Presented by the "Grand Central Station" Cooperative Purchasing Sub-Committee.

The "Grand Central Station" sub-committee members are working with the State DOA VendorNet staff and the UW Wisconsin-Madison Communications Specialists to explore the possibility of developing a new search system. The new system would facilitate quick, easy and comprehensive access to the historical archives of competitive procurements made by state and local governmental and educational agencies throughout Wisconsin. The ideal solution will make all bid, quote and RFP tabulations available through a search engine with a key word or commodity code. All member web sites, including city, county, state and educational, would be searched.

- 10:15 - 10:30 AM** **Break**
- 10:30 - Noon** **Cooperative Purchasing Presentations.**
Moderated by **Carolyn Clow** (City of Madison) and
Linda Dupuis (City of Green Bay).
- Noon – 1:00 PM** **Lunch – North Ballroom**
- 1:00 – 2:30 PM** **WAPP Business Meeting**

HOTEL INFORMATION
Sheraton Madison Hotel
 706 John Nolen Drive, Madison, WI 53713
 Phone: 608-251-2300 Fax: 608-251-1189
 Website: www.sheratonmadison.com

Rooms will be reserved at the Sheraton through **Thursday, November 10th, 2005**. Room rates, with tax exempt certificate, are \$62/single and \$74/double.

Driving Directions

From the East:

Exit from I-94 West onto I-90 East. Follow I-90 East to Highway 12/18 West. Continue west on Highway 12/18 West for 4.5 miles to Exit 263 (John Nolen Drive exit). The hotel is immediately on your right as you exit.

From the North:

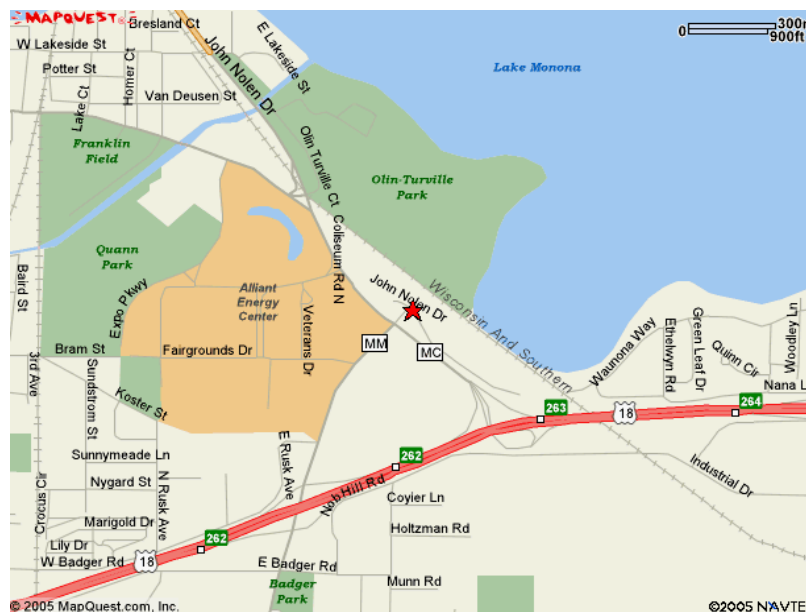
Take I-90 East or I-94 East and exit onto Highway 12/18 West. Continue on Highway 12/18 West for 4.5 miles to Exit 263 (John Nolen Drive exit). The hotel is immediately on your right as you exit.

From the West:

Take Highway 12/18 East and continue to Exit 263 (John Nolen Drive exit). The hotel is immediately on your right as you exit.

From the South:

Exit from I-90 onto Highway 12/18 West. Continue west on Highway 12/18 West for 4.5 miles to Exit 263 (John Nolen Drive exit). The hotel is immediately on your right as you exit.



<p>Dean Helwig, President</p> <p>Scott Noffke, Vice President</p> <p>Linda Dupuis, Treasurer</p> <p>Laura Forbes, Secretary</p> <hr/> <p>Past Presidents: Louis Bonneau, Andy Lehbraummer, Bill Mohaupt, Chuck Hintze, Clinton Warwick, Bill Holmberg, Bill Prodoehl, Jim Fering, Gary Nelson, Jack Hodak, Lee Johnson, Ed Witkowski, Ben Sowaske, Frank Draxler, Tom Wasley, Marie Hass, Alphonso Cooper, Susan Connelly, Ken Tronnier, Wallis Roberts, June Buchanan, Kim Verhelst, Iris Ost, Mary Lynn Seidl, Chris Wilmot, Sharon Weeks, Cynda Solberg, Steve Martinelli and others previous to 1970 .</p> <p>Committee Chairs</p> <p>Education Frank Draxler</p> <p>Conference & Product Expo Wallis Roberts</p> <p>Program Planning Scott Noffke</p>	<p>Presidents' Council Dean Helwig</p> <p>Membership/Public Relations, Co-Chairs Monica Gannon Kathy Jaglin</p> <p>Environmentally Preferable Purch. Eric Thornton</p> <p>Audit Kim Nelson</p> <p>Historian Kim Nelson</p> <p>Photographer Kim Verhelst</p> <p>Finance Mary Hensler</p> <p>Newsletter Editor Barb Weller</p> <p>Newsletter Publisher Jim Fering</p> <p>Webmaster</p>	<p><i>Newsletter information may be sent to:</i></p> <p>Mary Hensler 4802 Sheboygan Av., #751 PO Box 7396, Madison, WI 53707-7396</p> <p><i>or e-mail:</i></p> <p>mary.hensler@dot.state.wi.us</p> <hr/> <p style="text-align: center;">WAPP VALUE VIEWS</p> <p>WAPP Value Views is published quarterly by the Wisconsin Association of Public Purchasers (established in 1947) and is free to its members. The Association's mission is to serve its members and governmental purchasing in general through quarterly conferences and seminars, education, professional certification assistance, procurement communication and technical and professional interchange.</p>
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WAPP VALUE VIEWS

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