



**BOARD OF EDUCATION
SPECIAL MEETING**
2309 TULARE STREET
BOARD ROOM, SECOND FLOOR
FRESNO, CA 93721-2287
<https://www.fresnou.org/sites/board>

**MINUTES – BOARD OF EDUCATION SPECIAL MEETING
Fresno Unified School District
March 20, 2017**

**Fresno, California
March 20, 2017**

Office of the Board of Education, Fresno Unified School District Board Room, Education Center, 2309 Tulare Street, Fresno, CA 93721.

At a Special Meeting of the Board of Education of Fresno Unified School District, held on March 20, 2017, there were present Board Members Cazares, Davis, De La Cerda, Johnson, Jonasson Rosas, and Mills. Interim Superintendent Nelson was also present. ABSENT: Board President Ashjian.

Board Clerk Cazares convened the Special Board meeting at 6:20 p.m. in the Board room to discuss Bid Protest regarding Bid 17-14 for Fresno High School-Royce Hall Acoustical Improvements/Remodel and take Action to Deny Bid Protest Consistent with Hearing Officer's Decision and Staff's Recommendation, or Sustain Bid Protest and Reject Hearing Officer's Decision and Recommendation from Staff..

PRESENT and DISCUSS Bid Protest re Bid 17-14 for Fresno High School-Royce Hall Acoustical Improvements/Remodel and take ACTION to Deny Bid Protest Consistent with Hearing Officer's Decision and Staff's Recommendation, or Sustain Bid Protest and Reject Hearing Officer's Decision and Recommendation from Staff.

Prior to both parties speaking Clerk Cazares read the following statement:

We are meeting tonight to hear the arguments for and against the Bid Protest that Lewis C. Nelson & Sons filed regarding Bid 17-14, Fresno High School-Royce Hall Acoustical Improvements and Remodel. Pursuant to Fresno Unified School District's Bid Protest Procedure, this Protest was the subject of an evidentiary hearing held on March 7, 2017. Representatives for both Lewis C. Nelson & Sons and the District participated in that hearing and presented the Hearing Officer with witness testimony, as well as written documentation.

While the Hearing Officer issued a written decision on March 10, 2017, Nelson disputed that decision as failing to resolve the Protest. Accordingly, as required by the District's Bid Protest Procedures, this matter was referred to the Board along with all documentation regarding the protest and the responses at each level.

This Board has had an opportunity to review all of the Bid Protest documentation, including the transcript of the March 7, 2017 hearing and therefore, tonight's meeting is being held for the limited purpose of giving both Nelson and the District an opportunity to present their final arguments for and against the Bid Protest. This is not an evidentiary hearing and therefore, this Board will not entertain witness testimony or allow any further evidence to be presented.

Instead, each party will have 15 minutes to present its arguments and answer any questions from the Board. Once both parties have finished presenting their arguments, Nelson will have 10 minutes for rebuttal, followed by 10 minutes for rebuttal by the District. At the end of the time allotted for rebuttal, I will open the matter for discussion and action by the Board as specified on tonight's agenda, i.e., whether to overrule the Bid Protest consistent with the Hearing Officer's decision and Staff's recommendation or Sustain the Bid Protest and Reject the Hearing Officer's decision and the recommendation from Staff.

Arguments Represented by the District Legal Counsel Mark Creed
Arguments Represented by Lewis C Nelson & Sons Legal Counsel Mike Schoenfeld and
Mr. Nelson

An opportunity was provided to hear questions/concerns from members of the board and staff was available to respond.

For the record, comments/questions were made regarding clarification on the evening's required action of the board, are there cases that have dealt with these issues previously, discussion of the definition of bid and service, Thomson v. Call and pecuniary gain, the risks involved if Board Members award an illegal contract, the difficulty of not accepting the hearing officers decision and the fact that there are no previous cases, why the District specifically solicited Lewis C. Nelson and Sons when there was a conflict, information on Trustee Ashjian's Form 700 and a customer list, the time span and relationship between Lewis C. Nelson and Sons and Trustee Ashjian, difficult decision that could result in future litigation, staff and board members present had no control of the situation, an unfortunate result is we now have to pay more for this project, appreciation for the long-time relationship that the district has had with Lewis C. Nelson and Sons, the responsibility of each board member to complete the Form 700 on time and truthfully, what constitutes the long standing relationship, does the relationship have to be the same owner, the gap in the relationship between Trustee Ashjian and Nelson and Sons, Form 700's are difficult and amendments are sometimes necessary, is there a way we could condition an award, once a validation action is filed is there a deadline to when someone could protest, questions about an e-mail sent from Nelson and Sons to the District regarding no previous financial interest prior to the five years, clarification on the remote financial interest, is the process of going to a hearing officer laid out in our policies for bidding, do both sides need to agree to the hearing officer's decision. Legal Counsel Mary Beth de Goede, Executive Director Paul Rosencrans, Legal Counsel Mike Schoenfeld and Legal Counsel Mark Creed were available to answer questions and provide clarification.

Member Mills moved to deny the bid protest consistent with the hearing officer's decision and staff's recommendation, seconded by Member De La Cerda, which carried a 6-0-0-1 vote. AYES: Board Members: Cazares, Davis, De La Cerda, Johnson, Jonasson Rosas, and Mills. ABSENT: President Ashjian.

Unscheduled Oral Communication

There were no individuals for this portion of the agenda.

ADJOURNMENT With no further business to come before the Board of Education, Board Clerk Cazares declared the meeting adjourned at 8:12 p.m.