

# Long Term Care Contract Finally Passed

Tuesday, 21 May 2013

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Brianna Gibbs/KMXT

It was two times a charm for a legal services contract up for approval during last week's borough assembly meeting. After failing to get assembly approval two weeks ago, the contract with Wholforth Brecht Cartledge and Brooking passed 4-2 Thursday night.

The firm bid for the contract, which includes legal services associated with the sale of revenue bonds for the new long term care facility, in July 2012. The fee amount at that time was for \$17,500, but during the May 2 assembly meeting the assembly faced a contract for \$25,000, with little to no explanation of the increase. Following that meeting, assembly members were sent a memo from borough's attorney, Cheryl Brooking, who explained why the firm was asking for more money.

Brooking also spoke to the assembly during the public comment portion of Thursday's meeting.

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(LTC Contract 1 :35 "When we started out in July, just to kind of summarize what you already know at this point. We had a time frame that was going to take a few months, we had a fixed bond amount and we had a project that was ready to go. The certificate of need application was going to be submitted to the state within a week or two, very short time frame. Everything was moving along. And basically nothing happened as anticipated. And the project continued to change, continued to grow. The documents had to be continued to be revised. The deadline continued to be extended. The bonds were not issued last September; they are going to be issued in June. The closing date is scheduled now for June 19.")

Brooking said if she knew what she knows now, the original agreement from last summer would have looked quite a bit different.

Nothing in borough code says an item can't reappear on an agenda, and Borough Manager Bud Cassidy said he and staff felt the contract needed to be revisited once the fee changes were explained.

-- (LTC Contract 2 :12 "I am comfortable recommending this increase knowing of the time and effort that has gone into getting us to where we are at, and that is to sell the bonds here next month for the long term care facility.")

Assemblywoman Louise Stutes wasn't at the May 2 meeting, but said she was shocked to see the item reappear on the agenda.

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(LTC Contract 3 :19 "And to have staff go to bat for a vendor to increase the fees that this borough pays when we have a contract, as opposed to saying, 'look, we have a contract. You agreed to provide these services to this community for these dollars, we expect you to fulfill your contract.' I really have a problem with that.")

In an effort to clear up whether the firm had the right to up its fees, Assemblyman Aaron Griffin went right to the source &ndash; the contract

that was approved in July.

-- (LTC Contract 4 :39

&ldquo;If I could bring your attention to page 21 of the packet, under the fee section, sub section five. It specifically says that our fee may vary if material changes in the structure or schedule of the financing occur, or if other unusual or unforeseen circumstances arise which require significant change in our time or responsibility. Going back, our fee may vary if material changes in the structure or schedule of the financing occur. So we&rsquo;ve had a material change in the schedule of this contract, a contract that was signed by our borough manager. Which means that the borough, likewise that we think our attorney has responsibilities under this contract, we have responsibilities under this contract. And there have been changes from the original drafting.&rdquo;)

Assemblywoman Carol Austerman said she supports the fee increase, and the fact that it was before the assembly a second time.

-- (LTC

Contract 4 :20 &ldquo;We were not provided good information the last time it was on our agenda and that is why I do feel that it was very valid to put it up in front of us again because now we actually have a complete information packet where it really wasn&rsquo;t possible I think to make a valid decision before lacking that back up information.&rdquo;)

The contract received a majority vote the second time around, with Stutes and Assemblyman Mel Stephens voting against it.

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