

## Politics, personalities delay Phase II of school modernization

### Phase II

#### THE \$1.3 BILLION BET SPECIAL REPORT

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A web of suspicion and accusation has entangled the start-up of the second phase of Rochester's giant school modernization program, raising questions about the leadership of the \$1.3 billion undertaking.

A six-month *Democrat and Chronicle* investigation has found that even before the first shovelful of dirt was turned on Phase II projects, an internal beef triggered a lawsuit and a request for an investigation by crusading U.S. Attorney Preet Bharara into alleged improprieties.

Bharara, based in Manhattan, has made headlines for rooting out corruption in Albany and in recent weeks has turned his attention to improper lobbying, attempts to steer contracts to favored companies and undisclosed conflicts of interest surrounding massive state construction and economic development projects. In private, similar allegations have arisen here.

They center on the process that began more than a year ago to select a company to oversee the second phase of the modernization program, in which \$435 million is to be spent on 13 city schools.

Insiders offer dueling theories on what they allege is contract-steering — either that the selection of program managers was swayed to mask financial mismanagement in the first phase of work, or to give the job to a politically connected startup company.

That company, DeWolff Epic LLC, was at the heart of the controversy.

It was backed by Mayor Lovely Warren, who says she liked the fact that an African-American woman would have helped run it.

Covertly, another politician — state Assemblyman William Nojay — had helped create DeWolff Epic and was to be involved in its operation.

But after the dust settled, the firm that Warren had ferociously criticized for its handling of Phase I — a collaboration of Gilbane Building Co. and Savin Engineers — landed the contract and is on the job today.

Blair Horner, legislative director of the good-government advocate New York Public Interest Research Group, said he was not surprised to hear still more complaints about how a big money contract was awarded.

“Do companies believe they have to have inside connections in order to get government contracts? Sadly, they do think that because of New York's relatively opaque processes,” he said. “And it's not surprising that lobbyists and other hot-wired officials use their contacts to generate business.”

### Selecting a manager

The complex school modernization program is led by the Rochester Joint School Construction Board, a volunteer body of seven members who are appointed by city and school district leaders.

The joint board, as it's called, has precisely one full-time staff member.

It must rely on a hired program manager to act as its eyes and ears, and to help hire, organize and police the architects, construction contractors, movers and many other companies involved in the program.

In the \$325 million first phase of the school modernization program, the task was done by Rhode Island-based Gilbane, assisted by Savin Engineers, a much smaller firm based in Westchester County.

Some, like former mayor Tom Richards, who chairs the joint board, were largely satisfied with the work that Gilbane/ Savin did in Phase I. Others, not so much. Among the naysayers was Mayor Warren, who criticized Gilbane on several fronts.

She publicly and vociferously expressed her desire that a different company be hired for the next phase of work.

With that as a background, the process of selecting a Phase II program manager began early last year. It was supposed to take just a few months.

It took until the end of the year.

From the beginning, the Joint School Construction Board was divided.

On one side were three members appointed by the school superintendent, led by Richards, who was named to the joint board not long after he lost a bitter mayoral primary race to Warren in 2013.

On the other side were three members appointed by Warren, one a city employee and two outside businessmen. Not long after the selection process began, one of the outsiders quit in frustration and the other was removed by Warren. Warren replaced them with city employees.

A seventh person, appointed jointly by the mayor and superintendent, was the swing vote.

### **Guiding document 'tilted'**

The board planned to conduct a nationwide search for a program manager. But the document drafted to guide that process, written by Richards and others in February 2015, was crafted so that only Gilbane and other companies with experience in similar large school projects could qualify.

The language was taken from New York state legislation, and Richards said it was not meant to favor anyone in particular. Warren begs to differ, saying, "To me it was being tilted toward Gilbane."

She demanded that original document be withdrawn, and it was.

Drafts of a new version appeared, sent over from City Hall. They contained new language stating that the program manager applicants didn't need to have experience in major school construction projects so long as their affiliates or subcontractors did. This language had the effect of broadening the field, allowing a wider range of companies to apply.

Even a startup with no track record would qualify if it chose the right partners.

The new drafts also contained language that wasn't consistent with the state authorizing legislation; it read as if it had been cut and pasted from some other source.

Board members asked who had written the drafts and got vague answers. Richards said he and some other joint board members felt something was amiss.

“We can’t have it looking like it’s favoring one company or is influenced by someone who has an interest in the outcome,” Richards said recently.

Unbeknownst to Richards, the drafts had been written or edited by Republican state Assemblyman Bill Nojay. He left digital fingerprints in the document, and he acknowledged his involvement when asked about it by the *Democrat and Chronicle*.

Nojay, a lawyer by profession, said he’d found the original document on the joint board’s website. He, too, had concluded it was out-of-step with the state legislation, giving the program manager too many responsibilities. So he “rewrote the sections they screwed up.”

Nojay said the drafts reached the joint board via other parties to whom he’d given them, including Robert Scott Gaddy, a lobbyist engaged by the school district with whom Nojay was friendly. As the *Democrat and Chronicle* has reported, Gaddy and Nojay collaborated behind the scenes in 2013 to help Lovely Warren get elected mayor.

Warren and Nojay said in separate interviews that the mayor had nothing to do with Nojay’s rewriting of the job specs. And Nojay’s involvement was never disclosed to the joint board, some of whose members were unsettled.

“There’s an integrity issue,” Richards said. “Even though I didn’t know who the hell was proposing it, that was a concern — who the hell *was* proposing it? It was something we had to be careful about.”

### **DeWolff Epic is born**

In mid-April 2015, the joint board finalized a request for proposals and formed a selection committee to review the responses.

Only four were received. One was from a large firm from Buffalo, LPCiminelli — currently embroiled in the Buffalo Billion investigation and a lawsuit over its handling of a \$1.3 billion schools modernization program there. Another bid came from a large Long Island company, LiRo Group. A third was from Savin and Gilbane, the program manager for Phase I of the school modernization program.

The fourth proposal was from an outlier — DeWolff Epic LLC, a newly formed conglomeration of a half-dozen architectural and management companies, including a firm based in New Jersey led by Barbara Armand.

Armand, who is African-American, is prominent in East Coast construction management and minority-business circles.

Carlton “Bud” DeWolff, who is in the latter days of a long, distinguished architectural career in Rochester, said the idea for the company arose when he was approached by “some high-profile members of the community.” He spurned them once, but they returned and convinced him to assemble the new company.

DeWolff, coyly, would only hint that Nojay was among those who approached him. Nojay confirmed it. Frustration with the “debacle of Phase I” and the desire to “do it right” in Phase II drove the idea, he said.

The architect said he was given the impression that Warren supported his efforts. The mayor angrily denied it, saying she had no idea DeWolff Epic was being formed. “People... are trying to lay this mess at my doorstep. It doesn’t belong here.”

DeWolff recruited companies both local and out-of-state to join the team, which he intended to head. “I assembled an orchestra with some great musicians. I was only the conductor. I would organize and keep it going,” he said.

Nojay, who has known DeWolff for many years and done legal work for him, said he helped organize DeWolff Epic and would have served as associate counsel, doing internal legal work. He told the *Democrat and Chronicle* he would have done no program manager work.

### **A surprising selection**

Richards said he and his allies on the joint board had no idea that a member of the state Assembly had an active role in one of the proposing companies. Asked what he would have done had he known, Richards declined to comment.

Richards said he found the DeWolff proposal lacking. Board ally Robert Brown, a retired Laborers Union leader, was more blunt, saying it was “the worst proposal, period.”

Indeed, Warren provided a copy of the rankings to the *Democrat and Chronicle* that the selection committee gave each applicant’s written proposal, and De-Wolff Epic was dead last. The mayor’s appointees rated the company poorly, and the mayor herself had them second.

Warren said it wasn’t until the applicants were interviewed that she realized that Barbara Armand was a leader of the DeWolff team. She’d met Armand months earlier and been impressed.

“I believed in talking to her that she understood the complexities of what was happening here in Rochester, and she had the skills and compassion to do what had been promised (but not delivered) in Phase I,” Warren said.

The mayor said she told her appointees to the joint board that “I think we should give her a chance.”

With that endorsement, the selection committee chose DeWolff Epic for the \$20 million contract.

The five entities required to approve the selection — the mayor, the superintendent, city council, the school board and the joint board itself — began to schedule their votes.

The joint board, the bellwether of the group, cast its ballots Sept. 2. Richards was resigned to the choice. “They vote for who they vote for. That’s the world we live in,” he said.

On the strength of “ayes” from the three city employees and swing voter Joe Brown, DeWolff Epic was ratified as program manager.

Members of the DeWolff team were gobsmacked, DeWolff admitted.

“A little bit to my surprise, we won.”

### **A sudden resignation**

The final approval needed for De-Wolff Epic — sign-off by Rochester’s City Council — was scheduled for the evening of Sept. 16.

But that vote was never taken — because the chairman of the joint board, Tom Richards, had received a stunning email at precisely 10:01 that morning.

Barbara Armand — the linchpin of the DeWolff consortium — had quit, and she largely blamed Nojay for her departure.

“Bill Nojay’s active participation in the process made me increasingly uneasy. To thwart his interference, I pressed for complete control over the Program Management process, which led to such an impasse that I had no option but to resign,” Armand says in an email to Richards obtained by the *Democrat and Chronicle*.

Armand expressed concerns about DeWolff’s health, corporate governance and insurance. She also complained that Nojay was forming a separate company,

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**Armand Corp.'s office in Cherry Hill, New Jersey.**

PHAEDRA TRETHAN/USA TODAY NETWORK



**Bud DeWolff**

FILE PHOTO



**Lovely Warren**

## FILE PHOTO

**Bill Nojay**

## PROVIDED PHOTO

**Preet Bharara**

MARK LENNIHAN/AP

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ROC EDP, “to provide IT, Admin and office space. I was never comfortable with that arrangement.”

DeWolff said Armand was completely off-base with her concerns for his health, and Nojay said he had no intention of meddling. Creation of ROC EDP was simply a way to handle costs efficiently, he said.

He said keeping ultimate control in the hands of DeWolff, his lawyers and his accountants, rather than ceding it to Armand, was a way to guarantee transparency. “It was clear to everyone what the structure was to be,” he said.

DeWolff defended Nojay, saying his motives were altruistic. “He was doing this to really help the children in the schools. I really believe him on that.”

Asked if she had a problem with an Assemblyman working for a company she was backing for the work, Warren noted that state lawmakers are allowed to do outside work.

But she also noted that conflicts involving “outside work” are drawing a great deal of scrutiny these days. “Would I have necessarily done that? Probably not.”

In her email, Armand also complained that Nojay had failed to produce a written opinion that he claimed to have from New York’s Legislative Ethics Commission, stating that his involvement in the company posed no conflict of interest with his legislative post.

A copy of the opinion by the commission’s executive director, Lisa Reid, provided to the *Democrat and*

*Chronicle* by Nojay earlier this week, does state there was no “substantial conflict” between his legislative post and the DeWolff Epic job. Reid wrote that Nojay should keep his name off the proposal to be submitted to the joint board so as not to influence their decision.

She also said he should report his involvement in DeWolff Epic on his annual financial disclosure form. But Nojay told the newspaper he did not include DeWolff Epic on the form, which was filed earlier this month, because it was legal work from which he derived no income.

Blair Horner of NYPIRG said it appears Nojay did the right thing by seeking an ethics opinion “so they can call the balls and strikes. But, we believe allowing lawmakers to moonlight causes problems, I’m sure once competitors for the contract heard his name that sure raised a lot of eyebrows.”

Barbara Armand, meanwhile, is keeping mum. Dewolff, Nojay, Warren and others involved say they have been unable to reach her since she quit. Armand also did not respond to phone messages, emails or postal letters from the *Democrat and Chronicle* or to visits to her Cherry Hill, N.J. office by a reporter.

### **DeWolff Epic disintegrates**

With Barbara Armand gone, Richards and then other group members pulled the plug on De-Wolff Epic. “What was obvious to me ... was that this group we had picked had fallen apart,” Richards said.

Although DeWolff Epic found a replacement for Armand, its pleas to be reconsidered for the role steering Phase II of the program were spurned.

The joint board instead returned to the other original candidates and within a few weeks, it had settled on a choice that was, in some ways, just as surprising as DeWolff Epic

had been. Board members said they found good reasons to avoid picking either of the other two contenders so the job would go to Savin and Gilbane.

The decision was driven by the Richards contingent on the board, who had never had a problem with Gilbane and Savin.

“Gilbane — those people are smarter than anybody in the country when it comes to renovating schools,” Brown said. “But Lovely didn’t like ‘em. She had to eat crow.”

Indeed, the mayor signed off on Gilbane and Savin only grudgingly, “We met with them and I flat out told them ‘Look, you were my last choice,’” Warren recalled. She was assuaged by assurances that Savin, not Gilbane, would take the lead in Phase II. This distinction was lost on the remnants of the DeWolff Epic team. “It’s the same people doing the same functions. There’s not a nickle’s worth of difference,” said C. Allen Reeve, a construction law specialist in Pittsford who would have been DeWolff Epic’s chief counsel. He filed a legal challenge in state Supreme Court to the joint board’s selection of Savin/Gilbane, but lost.

The group eventually was given a contract that could pay them up to \$27 million over six years for Phase II work. Richards said contract terms were tightened to address an issue identified in Phase I by clarifying the group’s responsibilities.

### **Conspiracy theories emerge**

In the wake of the sudden switch from DeWolff to Gilbane, conspiracy theories emerged. Warren threw cold

water on the notion advanced in private by some, that she was trying to help Nojay and his colleagues succeed with DeWolff Epic.

Both deny they were working together and insist they never once spoke about DeWolff Epic or the Phase II program manager job.

“My sole support for the DeWolff Epic team was built around Barbara Armand and what she could bring to the table,” she said. The idea that she backed DeWolff Epic to help out Nojay is flat wrong, the mayor said. “If that was the case ... I would have continued to support the team without Barbara Armand. You see what I mean?”

Meanwhile, the De-Wolff team has pondered why Armand would turn her back on the job in Rochester. The belief is that “someone got to her,” as Nojay put it, and persuaded Armand to drop out.

“She really wanted to do this job, and she needed it,” “Bud” DeWolff said. “I assigned a fee to her of \$4.5 million. That’s nothing to sneeze at. It really shocked all of us.

“There’s a lot of speculation that she was offered a more lucrative position.”

Likewise, the DeWolff team is suspicious of the mayor. “All we know about Lovely Warren’s actions are that she did a 180-degree turn, from being outraged about the mismanagement of the Phase I work to then voting to ensure the same people who were responsible for the mess got the contract for ... Phase II,” Nojay said.

He and others point to extra state aid announced for the city at about the same time the mayor was endorsing Savin/Gilbane. Some in Albany may have arranged the aid to help an ally, the theory goes.

“It smells bad, but welcome to New York politics,” Nojay said. Assembly Majority Leader Joseph Morelle, (D-Irondequoit), said he helped arrange extra aid to the city after the mayor came to Albany and expressed a need for it. He was incredulous at the suggestion that something else motivated him.

“I had no relationship...with Gilbane,” he said. “That is just complete fantasy.”

Warren, almost sputtering, dismissed the notion as “completely inaccurate.”

“I can’t even believe that ... I don’t have anything to say about that,” she said. “It’s so ludicrous.”

Ludicrous or not, the DeWolff Epic team took their suspicions to Bharara, the federal prosecutor in Manhattan, in a 70-page packet sent in November. A cover letter signed by C. Allen Reeve accused the joint board of acting in a “clearly irrational, preferential and improper manner.” That allegation is similar to an ongoing probe by Bharara’s office into claims that carefully crafted bid requests were used in efforts to throw work to politically-connected construction firms in the so-called Buffalo Billion project and in the Albany area. A new round of subpoenas was sent out by Bharara’s office in that probe earlier this month, reaching even as far as someofGov.AndrewCuomo’s most trusted advisers.

The DeWolff Epic letter, however, has drawn no response, Reeve and others say. A Bharara spokesman in Manhattan declined to comment when asked recently if that office is investigating anything connected to the Rochester schools modernization program. If there is a probe, Warren said, bring it on.

“You have a team here that’s upset we put the needs of the children, of the community, ahead of the needs of their individual pockets,” Warren said. “At the end of the day I’ll support any investigation. There was

nothing that was wrong here.”



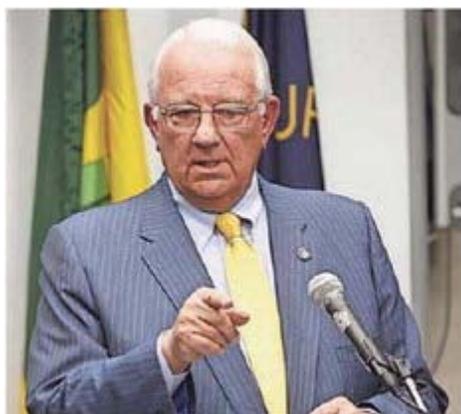
**Workers finishing up in community room at James P. B. Duffy School 12.**

JAMIE GERMANO/@JGERMANO1/STAFF PHOTOGRAPHER



**Students head back to the classroom at School 16. The school is sharing the space in the Freddie Thomas campus.**

JAMIE GERMANO/@JGERMANO1/STAFF PHOTOGRAPHER



**Former Mayor Tom Richards.**

SHAWN DOWD/STAFF PHOTOGRAPHER



**U.S. Attorney Preet Bharara has been asked to investigate Phase II of Rochester's school modernization project.**

KATHY WILLENS/AP