



**Council
Communication**
Office of the City Manager

Date

January 8, 2007

Agenda Item No. 54

Roll Call No. 07-

Communication No. 07-013

Submitted by: Jeb E. Brewer, P.E. City Engineer

AGENDA HEADING:

Hearing on Teachout Aquatic Center Slide Replacement: Resolution approving plans, specifications, form of contract documents, engineer's estimate, receive and file bids, and designating lowest responsible bidder as Brocon Services, LLC, Chris Brault, Managing Partner, \$339,800.

SYNOPSIS:

Recommend to hold hearing to allow for public input on the Teachout Aquatic Center Slide Replacement and to take the necessary actions as required by Iowa Code to authorize a contract for construction of the proposed project. The existing slides and approach tower are over 14 years old, and the fiberglass surfaces show significant wear. These surfaces have been repaired several times over the past few years, but they continue to be a safety and maintenance problem. The original manufacturer of the slides is no longer in business, and rather than just replace the slides with the same configuration, the Park and Recreation Department decided to add a tube slide as part of this project. This action is consistent with the Aquatic Study Improvements Plan recommended by Water's Edge, an aquatics design consultant hired by the City in 2004 to evaluate and recommend improvements to the City's aquatics facilities.

FISCAL IMPACT:

Amount: \$339,800 Construction Contract (Construction Estimate - \$350,000)

Funding Source: 2006-2007 CIP, Page Park Improvements -28, Swimming Pools and Aquatic Infrastructure, PKS153, G. O. Bonds.

ADDITIONAL INFORMATION:

On December 4, 2006, by Roll Call No. 06-2351, the City Council received and filed plans, specifications, form of contract documents, and City Engineer's estimate for the construction of the Teachout Aquatic Center Slide Replacement. Before the City Council can enter into a contract, it must hold a public hearing and approve the proposed plans, specifications, and form of contract documents and engineer's estimate for construction of the Teachout Aquatic Center Slide Replacement, 11-2007-001. The improvement includes furnishing and installing an open "U" flume design raft water slide;

furnishing and installing a second enclosed tube design body slide; furnishing and installing a water slide tower and stairway system; furnishing and installing a sun shade structure and cover which protects the entire water slide tower elevated platform as well as the water slide entry sections; extending and connecting the existing water slide riser piping system and new butterfly valves to the two newly installed water slides in order to create a complete and operational water supply system; along with the necessary shop drawings, certifications, operation and maintenance manuals, permits, and safety signage; all in accordance with the contract documents including Plan File Nos. 470-130 at Teachout Family Aquatic Center, 2601 Hubbell Avenue, Des Moines, Iowa.

Sealed bids for this improvement were submitted by the following bidders:

- Whitewater West Industries, Columbus, OH, bid read under advisement – see bid tabulation.
- Brocon Services LLC, Johnston, IA
- Rochon Corporation of Iowa, Inc., Urbandale, IA, bid read under advisement – see bid tabulation.
- Pool Construction, Inc., Eagan, MN

The bids were received and opened at a public meeting presided over by the City Engineer in the City Council Chambers, 2nd Floor, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa at 11:00 a.m. on December 18, 2006, and the bid received from Whitewater West Industries, Geoff Chutter, CEO, 519 S. Fourth Street, Columbus, OH, 43206, was read under advisement for the following reasons:

1. Whitewater West Industries submitted a U.S. Dollar Bank Draft (No. 142035) check in the amount of \$33,800 as bid security, which exceeded 10% of the amount bid and therefore, the amount was adequate; however, Staff needed to verify that the U.S. Dollar Bank Draft check met the requirements of the Bid Security.
2. Whitewater West Industries did not include its Public Registration Number on Proposal Part G – Identity of Bidder as required. Proposal Part G states that failure to provide said number will result in the bid being read under advisement, and a contract will not be executed until the Contractor is registered with the Iowa Department of Labor.
3. Whitewater West Industries submitted additional unsolicited attachments to its proposal and Staff needed verify that these additional attachments did not condition Whitewater West Industries' proposal.

Engineering Department Staff has:

1. Contacted numerous persons associated with HSBC, the parent company of the bank that issued the \$33,800 U.S. Dollar Bank Draft check that Whitewater West Industries submitted as bid security. Anissa Cheung, HSBC Fortuna House, Richmond, British Columbia, Canada, told Staff that HSBC has control of the funds, Whitewater West Industries can not stop payment on the check, and the check will be honored world-wide by HSBC; in addition, the check states that on demand pay to the order of "City Clerk" and further states that the check is to HSBC Bank USA, One HSBC Center, Buffalo, New York, 14203, which Staff has verified is FDIC insured and chartered under laws of the United States. The City Treasurer has also verified with the City's bank that the \$33,800 U.S. Dollar Bank Draft check has the same restrictions as a cashier's check. Therefore, Bank Draft No. 142035 appears to meet the City of Des Moines requirements as bid security.
2. Verified with the Iowa Department of Labor that as of January 3, 2007, Whitewater West Industries is registered and has Public Registration Number 04835-07. However, Whitewater West Industries is not registered with the Iowa Secretary of State. Mr. Will Janzen of Whitewater West Industries has assured Staff that he has applied and paid the registration fee with the Secretary of State; however, registration will not be complete before January 8, 2007 Council Meeting.

3. Reviewed the additional information submitted with the proposal by Whitewater West Industries and determined that said information did not condition the bid or change the project specifications.

During its review and evaluation of the bid submitted by Whitewater West Industries, the Engineering Department has discovered that Whitewater West Industries Corporate Head Office is located at 6700 McMillan Way, Richmond, British Columbia, Canada, V6W 1J7, and that the 519 S. Fourth Street, Columbus, OH, 43206, location is only a sales office. As a result, the contract, bonds, insurance certificates, and all associated documents would be executed and processed by the Canadian Corporate Head Office, and not the Ohio Sales Office.

Engineering Department Staff has worked with Whitewater West Industries staff in both the Canadian Corporate Head Office and the Ohio Sales Office since December 20, 2006, to resolve issues and problems as the result of differences between United States and Canadian laws, bonding requirements, banking regulations, and insurance practices in an attempt to get executed contract, bonds, and insurance certificates acceptable to the City of Des Moines. As of January 5, 2007, major issues still needed to be resolved including:

- Workers Compensation – Whitewater West Industries does not have workers comp as in Canada, it is done through the provincial government; however, in the U.S., it is an insurance issue. Whitewater West Industries pays a premium to the province of British Columbia, Canada; however, it is unsure how that relates to workers in Iowa.
- Owned & non-owned automobile coverage - Whitewater West Industries does not have insurance to meet the City's requirement. British Columbia has a provincial government run automobile program. Whitewater West Industries attempted to purchase insurance in the United States to meet the City's requirement; however, the insurance could not be acquired prior to January 8, and would cost in excess of \$10,000.
- Performance, Payment, and Maintenance Bond - The City requires the contractor to provide executed bond BEFORE the contract is presented to the City Council for approval to verify that the contractor can provide the necessary bond. In Canada, the bond is not executed until AFTER the contract is signed by both parties.

Whitewater West Industries Staff has also indicated to Engineering Department Staff that it made an error in its proposal. Between the Canadian Office and the Ohio Office, the cost for the design and construction of the concrete foundations that support the water slide was not included in Whitewater West Industries bid.

Will Jazen, Project Manager for Whitewater West Industries, has submitted a letter to the City Engineer, which is attached to the Roll Call, requesting that Whitewater West Industries bid be withdrawn and bid security returned because of the issues described above and the project time table, including the great difficulty meeting the insurance and bonding requirements in the allotted time. The letter further states that Whitewater West Industries is one of the world's largest waterslide fabricators/installers; however, Whitewater West Industries generally acts as a subcontractor and has been involved in obtaining the necessary bonds and insurance required of the general contractor in the United States.

The contract documents for this project include the following Public Bid Evaluation Policy that was approved by the City Council on May 17, 2004, under Roll Call No. 04-990:

After bids are opened, if the low bidder claims that it has made a serious error in the preparation of its bid, and can support such a claim with evidence satisfactory to the Jurisdiction, said bidder shall be allowed to withdraw its bid and its bid security shall be returned; provided however, as a condition for return of its bid security, said bidder shall be required to agree that it will not be allowed to again bid on the project, either as a prime bidder or as a subcontractor, if the project, or

a substantial portion of the project, is rebid within six months of the first bid opening. Under no circumstances should said bidder be permitted to alter or adjust its bid, as this would undermine the entire system of competitive bidding and be an open invitation to abuse.

Whitewater West Industries has made a significant error in its proposal by not including the concrete foundations, and in addition, has encountered significant unknown costs associated with the differences in Canadian and U.S. bonding and insurance requirements and laws which would result in significant cost to the company if the contract is executed.

The City Engineer recommends that Whitewater West Industries be allowed to withdraw its bid and its bid security be returned; and further recommends that Brocon Services LLC, Chris Brault, Managing Partner, 6220 NW Beaver Drive, Suite 4, Johnston, IA, 50131, be designated as the lowest responsible, responsive bidder with a bid of \$339,800.00. The Finance Director has determined that funds are available as stated above.

PREVIOUS COUNCIL ACTION(S):

Date: December 4, 2006

Roll Call Number: 06-2351

Action: Ordering construction of Teachout Aquatic Center Slide Replacement – Receiving of bids, (12-19-06), and Setting date of hearing (01-08-07). (Construction Estimate - \$350,000). (Council Communication No. 06-764) Moved by Vlassis to adopt. Motion Carried 6-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Partial payments to the contractor and final acceptance of work.