



Council Communication

Office of the City Manager

Date	February 12, 2007
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Agenda Item No.	73
Roll Call No.	07-
Communication No.	07-062
Submitted by:	Jeb E. Brewer, P.E. City Engineer

AGENDA HEADING:

Approving the Summary of Bidding/Contracting Process Changes for Construction of Public Improvements February 2007.

SYNOPSIS:

Recommend City Council approve the revisions to City of Des Moines bidding and contract policies for construction of all City of Des Moines public improvements as included in the Council Communication and detailed in the Summary of Bidding/Contracting Process Changes for Construction of Public Improvements February 2007.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

At the January 24, 2007 City Council Workshop, the City Engineer gave a presentation entitled "Proposed Bidding/Contracting Process Changes for Construction of Public Improvements," which outlined Staff recommendations for revisions to City of Des Moines bidding and contract policies for construction of public improvements. Included in the City Council Members presentation notebook under Tab H was a document entitled Summary of Bidding/Contracting Process Changes for Construction of Public Improvements January 2007, which included detailed information and explanation of the proposed changes. This January 2007 document included policy changes required as a result of the 2006 Iowa Legislature approval of House File 2713. House File 2713 was a comprehensive rewrite of Iowa's competitive bidding laws, is applicable to all contracts entered into by public owners effective January 1, 2007, and created a new Chapter 38 of the Iowa Code, entitled "Iowa Construction Bidding Procedures Act". Since the January 24th Council Workshop, the Legal Department has learned that the Iowa Code editor has changed the code chapter number for the "Iowa Construction Bidding Procedures Act" from "38" to "26". Staff has revised the January 2007 document to change Iowa Code references from "38" to "26"; the revised document entitled "Summary of Bidding/Contracting Process Changes for Construction of Public Improvements February 2007" is attached to the Roll Call.

The City Manager and City Engineer recommend that the City Council approve the following policies and process revisions associated with the Bidding and Contracting Process for construction of all City of Des Moines public improvements:

1. Revisions associated with the new Chapter 26 of the Iowa Code:
 - a. Authorize the City Engineer to publish the Notice to Bidders (which establishes the date for receiving of bids) prior to the City Council meeting at which the Council orders construction and officially sets the date for receiving of bids.

- b. Authorize the City Engineer to continue to utilize the informal bid process outlined in Roll Call No. 00-3525, approved by Council on August 21, 2000, as further modified in proposed Policy Revisions attached to the Roll Call, which shall be administered by the City Engineer and shall be used on all public improvement projects where the estimated construction cost is less than the competitive bid threshold in accordance with Section 314 of the Iowa Code, which is currently \$57,000 for highway, bridge, and culvert projects and \$100,000 for other public improvements also called vertical infrastructure.
 - c. Authorize the City Engineer and Finance Director to release retainage on a public improvement contract in accordance with Chapter 26 and 573, and associated administrative rules, and make payment to the contractor in the same manner as a partial payment for a public improvement contract. Chapter 26 will require the City of Des Moines to release retainage to the contractor with the next partial payment, or within 30 days, if requested by the contractor and the project is “substantially complete” in accordance with certain triggers defined in Chapter 26 instead of being released and paid 30 days after City Council acceptance of the project by roll call, which includes authorization to release the retained funds.
 2. Revisions associated with Staff review to simplify the bidding process:
 - a. Affirm the City Engineer’s action to delete the proposal requirement for the bidder to submit its Public Registration Number, and instead Engineering Staff will verify that the bidder is registered with the Iowa Division of Labor.
 - b. Affirm the City Engineer’s action to delete the proposal requirement for the bidder to provide their company owner, president, or CEO name and title, instead Engineering Staff will contact the low bidder to obtain this name and title information if not known.
 - c. Authorize the City Engineer to delete the proposal requirement to identify subcontractors over \$25,000 on the proposal and replace it with a requirement that the low bidder is required to provide a list of all subcontractors to the City Engineer within 24 hours after notification of apparent low bid. **Based on comments received from City Council Members since the January 24 Workshop, Staff is withdrawing this proposed revision. The current City Council policy on identification of subcontractors over \$25,000 on the proposal will not be changed.**
 3. Revisions to the Safety Standards and Specifications to affirm the City Engineer’s action to include a new Section 4.11E to the Supplemental Specification regarding safety standards and specifications given the recent court decision against the City of Des Moines. The Engineering Department will make available a copy of the City of Des Moines Safety Plan to the Contractor when the contract is awarded. It is the Contractor’s sole responsibility to provide, or make available, this safety information to all its Subcontractors. The City of Des Moines Safety Plan will be made available on the Engineering Department website and is also available upon request from the Engineering Department.
 4. Revisions to the Change Order authority limit of the City Manager from \$10,000 to \$25,000, which accounts for inflation and is consistent with current City Code regarding purchasing of goods and services and current State Code regarding construction of public improvements. Staff recommends the Council adopt the following policy on City of Des Moines or Des Moines International Airport public improvement projects.

The authority of the Des Moines City Manager and the Des Moines City Engineer to approve change orders shall be limited to those change orders which will cost \$25,000 or less. Change orders for work to cost more than \$25,000 shall be approved by the Contracting Authority, being either the Des Moines City Council or the Des Moines International Airport, prior to the payment of the work provided for under the change order.

The City Engineer will continue to submit a report monthly to the City Council listing all change orders executed the previous month regardless of the change order amount.

5. Revisions to the Contract Compliance Program are detailed in the Summary of Bidding/Contracting Process Changes, and the proposed program is attached to the Roll Call. Substantive changes in the proposed Contract Compliance Program include:
 - a. EEO Program – The Engineering Department will no longer solicit workforce make-up from contractors and subcontractors. Complaints of discrimination in violation of the Des Moines Human Rights Ordinance, or corresponding state or federal law, should still be filed with the appropriate city, state, or federal agency. If a Contractor is found by one of these agencies to be engaging in illegal discrimination, the Contractor will be in breach of its contract with the City of Des Moines and appropriate action will be taken.
 - b. DBE Program – The Des Moines Engineering Department will no longer separately certify DBEs. The existing DBE Program will be changed into a DBE/TSB Program, whereby both certified DBEs and certified TSBs are equally eligible under the program. All DBEs shall be certified in accordance with the Iowa Unified Certification Program by the Iowa Department of Transportation (IDOT), and all TSBs shall be certified by the Iowa Department of Inspections and Appeals.
 - c. DBE Program – Annual and Contract Goals – The City has a longstanding Overall Annual DBE Goal of 5.5%. Recently, courts have addressed the process for setting contract goals. The City Overall Annual DBE/TSB Goal shall in the future be based on the IDOT DBE overall annual goal established for the corresponding federal fiscal year as further adjusted and established by the Engineering Department to consider such factors as the current capacity of DBEs/TSBs to perform work, differences in the DBE versus TSB market, etc. This IDOT DBE overall annual goal is currently used as the base figure by the Engineering Department to establish the DBE Goal for projects at the Des Moines International Airport funded by the Federal Aviation Administration in accordance with FAA guidelines. The IDOT overall annual DBE goal for the current fiscal year is 4.5%. The City's 5-year average DBE participation on City construction contracts with DBE goals only was 4.8%, which represents \$9.55 million in work to DBEs. The City's 5-year overall average DBE participation on all City construction contracts with and without DBE goals was 4.04%. Therefore, it is realistic to utilize the current IDOT DBE goal of 4.5% as the City's DBE/TSB goal. By utilizing the IDOT overall annual DBE goal as the City's overall annual DBE/TSB goal, the goal will be independently reviewed annually and updated regarding the availability of the DBEs that are ready, willing, and able to perform work. Many DBEs are also certified as TSBs and the availability is similar.
 - d. DBE Program – Responsibilities of the Contractor – The Contractor's responsibilities have remained basically unchanged from the current DBE program; including the requirement that when required for a particular contract, the Contractor shall complete and submit, as part of its bid, a pre-bid contact sheet identifying DBE/TSB contacts made prior to bid submission. Failure to make and disclose the pre-bid contacts in the proposal shall cause the bid to be non-responsive and shall result in the bid not being read.
 - e. DBE Program – Responsibilities of the DBE/TSB – The DBE/TBS responsibilities have remained basically unchanged from the current DBE program.
 - f. The remainder of the Contract Compliance Program remains very similar to the current Program.

PREVIOUS COUNCIL ACTION(S):

Date: January 22, 2001

Roll Call Number: 01-280

Action: Revised Disadvantaged Business Enterprise Program Adopted Specifically for Projects Funded in Part by the U.S. Department of Transportation and submission of revised program. ([Council Communication No. 01-044](#)). Moved by Vlassis to adopt. Motion Carried 7-0.

Date: August 21, 2000

Roll Call Number: 00-3525

Action: Receipt of communication from City Engineer, outlining process used for award of contract for construction of public improvements when the estimated cost is less than \$25,000. ([Council Communication No. 00-380](#)). Moved by Coleman to receive and file. Motion Carried 5-2. Absent: Flagg and Hensley.

Date: May 21, 1990

Roll Call Number: 90-2245

Action: Approval of Revised Contract Compliance Program. (Council Communication No. 90-302 attached) Moved by Vlassis to adopt. Motion Carried 6-1. Absent: McPherson.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

The City Engineer shall implement and administer the revision.