

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date</b>	August 20, 2007
	<b>Agenda Item No.</b> 69 <b>Roll Call No.</b> 07- <b>Communication No.</b> 07-523 <b>Submitted by:</b> Jeb E. Brewer, P.E. City Engineer	

**AGENDA HEADING:**

Hearing on East Side Neighborhood Skate Park: Resolution approving plans, specifications, form of contract documents, engineer’s estimate, receive and file bids, and designating lowest responsible bidder as Castle Concrete Services Inc., Anthony Castellano, President, \$220,831.

**SYNOPSIS:**

This is a public hearing to allow for public input on the East Side Neighborhood Skate Park and take the necessary actions as required by Iowa Code to authorize a contract for construction of the proposed project. This project provides for the construction of a neighborhood skate park at the Four Mile Community Center. This neighborhood skate park will help meet the demand for skateboarding opportunities for City youth.

**FISCAL IMPACT:**

Amount: \$220,831 Construction Contract (\$176,000 City Engineer's Estimate)

Funding Source: 2007-2008 CIP, Page Park-25, Skate Park, PKS164, Being: G. O. Bonds, with a \$40,000 transfer of G. O. Bonds from Page Parks-13, Neighborhood Park Improvements, PKS137

**ADDITIONAL INFORMATION:**

On July 23, 2007, under Roll Call No. 07-1383, the City Council received and filed plans, specifications, form of contract documents, and City Engineer's estimate for the construction of the East Side Neighborhood Skate Park. 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 the construction of the East Side Neighborhood Skate Park, 11-2007-012. The improvement is construction of a neighborhood skateboard park including earthwork, reinforced concrete slabs, shotcrete, sidewalk construction, and other incidental items; in accordance with the contract documents, including Plan File Nos. 479-152/164 at the East Side Skate Park located west of the Four Mile Community Center, 3711 Easton Boulevard, Des Moines, Iowa.

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

- Proshot Concrete, Inc., Florence, AL. Bid withdrawn by Bidder.
- Castle Concrete Services Inc., Johnston, IA

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 August 7, 2007, and bids were received from Proshot Concrete, Inc., Timothy McDougle, President, 4158 Musgrove Drive, Florence, Alabama, in the amount of \$215,803.82; and Castle Concrete Services Inc., Anthony Castellano, President, P. O. Box 993, Johnston, Iowa in the amount of \$220,831.00.

Mr. Pat Moody, Senior Estimator for Proshot Concrete, Inc. notified the City Engineer on August 17, 2007, that Proshot Concrete, Inc. may not be able to provide insurance as required by the City of Des Moines, and wanted to discuss options. On August 17, 2007, Donald J. Barnes, Secretary/Treasurer of Proshot Concrete, Inc. submitted the letter attached to the roll call to the City Engineer requesting that Proshot Concrete, Inc. bid be withdrawn and bid security returned because they could not provide insurance as required by the City of Des Moines.

In the past, the City Council has allowed bidders to withdraw their bid and return bid security if the bidder has made a significant error in its bid. The rationale is that had the bid been accurately calculated, the City would not have received the low bid amount; but would have instead received a higher bid from the same bidder, or the low bid would have been the second low bidder. As such, the City should not profit from the bidder's mistake and the City should not attempt to recover the difference between the mistaken low bid and the next low bid from the mistaken low bidder's bid security.

Proshot Concrete, Inc has not made a significant calculation error in its proposal, but instead is unable to provide insurance in accordance with the standard specifications. In the past, the City Council has allowed bidders to withdraw their bid and return bid security if the bidder is unable to provide insurance acceptable to the City. The most recent case was January 8, 2007, under Roll Call 07-078, where the City Council allowed Whitewater West Industries from British Columbia, Canada, to withdraw its bid because they could not provide insurance. If the bidder cannot provide acceptable insurance, the bidder should not be considered responsible and the City of Des Moines should not award a contract to a non-responsible bidder.

The City Engineer recommends that since there is only \$4,727.18 additional cost between the bids submitted by Proshot Concrete, Inc. and Castle Concrete Services Inc., the City should proceed with award to Castle Concrete Services Inc. Rebidding would not be necessary and the construction schedule would not be impacted; therefore, the actual damages to the City are minimal, and Proshot Concrete, Inc. bid bond should be returned.

The City Engineer recommends that Proshot Concrete, Inc., be allowed to withdraw its bid and its bid security be returned subject to Castle Concrete Services Inc. entering into contract for this project.

The City Engineer further recommends that Castle Concrete Services Inc., Anthony Castellano, President, P. O. Box 993, Johnston, Iowa be designated as the lowest responsible, responsive bidder with a bid of \$220,831.00. This skate park project contains irregular-shaped, freeform curves that will be constructed by using "shotcrete", which is a field process whereby concrete with fine aggregate is sprayed from a nozzle onto reinforcing steel and shaped to create the irregular curves, which cannot be formed. Proshot Concrete, Inc. is one of the few companies nation-wide that does "shotcrete" work. Castle Concrete Services Inc. on its original proposal had listed Proshot Concrete, Inc. as its "shotcrete" subcontractor on this project. Castle Concrete Services Inc. insurance as the general contractor will cover Proshot as a subcontractor to Castle Concrete Services, Inc. The City Engineer has talked with Anthony Castellano, President of Castle Concrete Services Inc., regarding the above issues, and Mr. Castellano

has agreed to honor his bid and proceed with the contract. By separate resolution, the City Council will be requested to approve Proshot as a subcontractor. The Finance Director has determined that funds are available for said improvement as stated above.

**PREVIOUS COUNCIL ACTION(S):**

Date: July 23, 2007

Roll Call Number: [07-1383](#)

Action: Ordering construction of the following: [East](#) Side Neighborhood Skate Park – Receiving of bids, (8-7-07), and Setting date of hearing, (8-20-07). (Construction Estimate - \$176,000). ([Council Communication No. 07-450](#)) Moved by Vlassis to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Partial payments to the contractor and final acceptance of work.