

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: February 28, 2011
	Agenda Item No. 65A Roll Call No. [_____] Communication No. <u>11-131</u> Submitted by: Jeb E. Brewer, P.E. City Engineer

AGENDA HEADING:

Approving 2011 revisions to the Des Moines Construction Bidding Policy.

SYNOPSIS:

Recommend approval of the City Engineer’s recommended 2011 revisions to the Des Moines Construction Bidding Policy, as included in this Council Communication.

On February 12, 2007, under Roll Call Number 07-291, the Des Moines City Council approved the “Summary of Bidding/Contracting Process Changes for Construction for Public Improvements, February 2007” referenced in the Council Communication as “Des Moines Construction Bidding Policy”, which included revisions to the City of Des Moines bidding and contract policies, and directed that the policy be administered by the City Engineer. These policy revisions were required as a result of the 2006 Iowa Legislature approval of House File 2713, which ultimately became Iowa Code Chapter 26, Public Construction Bidding, also known as the “Iowa Bidding Procedures Act”.

City of Des Moines construction projects have been bid and contracts awarded in compliance with this Des Moines Construction Bidding Policy. The City Engineer is recommending that certain revisions be made to supplement, clarify, and improve implementation of this 2007 policy including:

- New process for repair or maintenance work less than the competitive bid threshold to be bid by the City’s Procurement Administrator.
- Revised policy regarding retainage under Chapter 573 of the Iowa Code to reduce retainage withheld on contract payments 5% to 3%.
- Revised policy regarding disputed claims for extra compensation.
- Minor revisions to the Municipal Code to reflect revisions in the Iowa Code.
- Administrative rules by the City Engineer.
- Emergency repair process resulting from 2009 Code revisions.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

Iowa Code Bidding Requirements

Iowa Code Chapter 26 established the procedures for both competitive bids and competitive quotations, as follows with the dollar amounts effective as of January 1, 2011:

- **Competitive bids** are generally defined as formal bids where the City Council authorizes the bid date and sets a date for a public hearing on the plans, specifications, form of contract, and engineers estimate. A Notice to Bidders and a Notice of Public Hearing are required to be published by the Iowa Code.
- **Competitive bids** are required on highway, bridge, and culvert projects (also known as horizontal infrastructure) when the estimated cost exceeds \$67,000.
- **Competitive bids** are also required when the estimated cost exceeds \$100,000 on public improvements (also known as vertical infrastructure), which generally include all projects except highway, bridge, and culvert projects.
- **Competitive quotations** are required on all public improvements (vertical infrastructure) having an estimated cost that exceeds \$67,000, but is less than the \$100,000 competitive bid threshold. The City may at its option also use competitive bids instead of competitive quotations for these projects.
- Iowa Code is silent on bidding and contract procedures to be used when the estimated cost is less than **competitive bid** threshold on horizontal infrastructure (currently \$67,000) and the **competitive quotation** threshold on vertical infrastructure (currently \$67,000).

City of Des Moines Competitive Quotation Procedures

On February 12, 2007, under Roll Call Number 07-291, the Des Moines City Council approved the “Summary of Bidding/Contracting Process Changes for Construction for Public Improvements, February 2007”, which included revisions to the City of Des Moines bidding and contract policies. Additionally, under said Roll Call 07-291, the City Council approved the City of Des Moines Competitive Quotation Process and directed that the City Engineer administer the process. As approved by City Council, this City of Des Moines Competitive Quotation Process would be used on projects where the estimated construction cost is less than the competitive bid threshold (currently \$67,000 for horizontal infrastructure and \$100,000 for vertical infrastructure). The competitive quotation process approved by the City Council is as follows:

1. The Engineering Department shall prepare plans, specifications, contract documents, and engineer’s estimate for the construction of the public improvement.
2. Said plans, specifications, proposal, and contract documents will be issued to contractors that normally bid on City of Des Moines projects of similar nature.
3. Contractors shall be required to submit written proposals on or before a stated time, date, and location, as established by the City Engineer. Proposals may be submitted as sealed bids, mail, fax, or e-mail as stated in the instruction to bidders for work.
4. The bid time, date, and location, as established by the City Engineer, will be posted on the Engineering Department website in the same location where bid information for other public improvements is posted.
5. Notice to bidders and notice of public hearing will not be published in the Des Moines Register, as neither is required by Iowa Code.
6. The City Engineer will post a list of plan holders for the project on the Engineering Department website in the same location where plan holder information for other public improvements is posted.
7. Bids received will be opened by the City Engineer (or designee) at the specified time, date, and place.
8. Said bids and the tabulation of bids will be presented to the City Council, or the Airport, Library, or Des Moines Metropolitan Wastewater Reclamation Authority Board (hereinafter “Board”), to receive and file.
9. The City Engineer will determine the lowest responsible, responsive bidder and recommend to the City Council, or the Board, that said bid be accepted or all bids rejected.

10. If the City Engineer recommends acceptance of the lowest bid, Engineering staff will secure execution of the contract, as well as the performance, payment, and maintenance bond, for the public improvement by the lowest responsible, responsive bidder for presentation to the City Council, or Board, for approval and authorization by the Mayor, or Board Chairperson, to sign on behalf of the City of Des Moines. Funding for the improvement will be identified and the method of financing will be presented for approval.
11. Engineering Department staff will provide inspection and contract administration for the work, similar to other public improvement projects, including partial payments, change orders, and final acceptance by the City Council, or Board.

This process envisioned following the Chapter 26 competitive quotation process on projects less than the State thresholds, so that the City had only two bid processes. At that time there were few projects being bid that were less than the thresholds. However, recent budget and staff reductions in other departments have resulted in work that was previously done by City employees now needing to be done by contract. The City's current competitive quotation process does not have any flexibility to allow other, possibly simpler and more economical, bidding processes for public improvement and maintenance work. The Council policy specifically states that the work must be bid by the City Engineer and does not allow an option to allow the Procurement Administrator to bid this repair or maintenance work previously done by City forces. Staff recommends the following revisions to the Bidding and Contracting Process to allow the Procurement Administrator to receive competitive quotations and award contract, in accordance with the procurement regulations of the Municipal Code of the City of Des Moines.

Process for Repair or Maintenance Work less than the Competitive Bid Threshold to be bid by the City's Procurement Administrator

The Procurement Administrator is authorized and directed to receive competitive quotations and award contracts, in accordance with the procurement regulations of the Municipal Code of the City of Des Moines and associated procurement policies, on public improvement projects (defined in Iowa Code Section 26.2), as well as highway, bridge, or culvert projects (defined in Iowa Code Section 321.1 or 309.1), hereinafter also referred to as "work", under the following conditions:

1. The City Engineer (or designee) has determined that construction plans, prepared by an Iowa-licensed engineer or architect, are not necessary for bidding and construction of work.
2. The City Engineer (or designee) has determined that the work requested is repair or maintenance work as defined in Iowa Code Section 26.2. *"Repair or maintenance work" means the preservation of a building, storm sewer, sanitary sewer, or other public facility or structure so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility or structure to its original condition with the same design.*
3. The estimated cost of the work is less than the competitive quotation threshold for public improvement projects (vertical infrastructure threshold is currently \$67,000), or the competitive bid threshold for highway, bridge, and culvert projects (horizontal infrastructure threshold is currently \$67,000), as established by the horizontal and vertical bid threshold subcommittees pursuant to Iowa Code Section 314.1B.
4. Pursuant to Iowa Code Section 26.14, the Procurement Administrator shall provide the Engineering Department a copy of its Notice to Bidders, which shall be forwarded to companies that have indicated an interest in work with the Engineering Department.
5. Contracts shall be in compliance with Iowa Code Chapter 573, when applicable. Currently, Chapter 573 states that contracts for work, when the contract equals or exceeds \$25,000, shall be accompanied by a bond, with surety, conditioned of the faithful performance of the contract and for the fulfillment of other requirements as provided by law; and also requires retainage to be withheld from each contract payment.

6. The City's Risk Manager shall determine if insurance is necessary, the appropriate limits, and approve the contractor's certificate of insurance prior to award of the contract.
7. Alternate Sales and Use Tax (Sales Tax Exemption Certificate): The City of Des Moines, as a designated exempt entity awarding construction contracts, may issue Sales Tax Exemption Certificates to contractors and subcontractors, allowing them to purchase or withdraw from inventory, with materials for the contract free from sales tax, pursuant to Iowa Code Sections 423.2 and 423.45. This Sales Tax Exemption Certificate may also allow a manufacturer of building materials to consume materials in the performance of a construction contract without owing tax on the fabricated cost of those materials. The Roll Call appoints the Procurement Administrator, or designee, as a Designated Exempt Entity Authorized Agent (DEEAA) under the Iowa Code regarding sales tax and issuance of the Sales Tax Exemption Certificates on behalf of the City of Des Moines, in addition to the City Engineer, or designee, who was appointed DEEAA on July 28, 2003, under Roll Call 03-1725.

Revised Policy regarding retainage under Chapter 573 of the Iowa Code, reducing retainage withheld on contract payments 5% to 3%.

Chapter 573 of the Iowa Code, Labor and Material on Public Improvements in part details the requirements for bonds, payment to contractors, and claims for materials furnished and labor performed on an improvement, and includes the following sections:

573.12 PAYMENTS AND RETENTION FROM PAYMENTS ON CONTRACTS.

1. *Retention.* Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer. The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor.

573.13 INVIOABILITY AND DISPOSITION OF FUND.

A public corporation shall not be permitted to plead non-compliance with section 573.12 and the retained percentage of the contract price, of no more than five percent, which constitutes a fund for the payment of claims for materials furnished and labor performed on the improvement, and shall be held and disposed of by the public corporation as provided in this chapter.

These two code sections in effect state that the City of Des Moines shall:

1. Retain funds from each payment to a contractor on a construction contract.
2. These retained funds cannot be more than 5% of the payment amount due to the contractor.
3. These retained funds constitute a fund for the payment of claims for materials furnished and labor performed on the improvement.

The City of Des Moines complies with the requirements of Chapter 573 on city-funded construction contracts and withholds the maximum 5% from each payment due to the contractor.

The Iowa Department of Transportation (IDOT) is also required to comply with the requirements of Iowa Code Chapter 573; however, the IDOT has adopted policy in its standard specifications to retain less than

the maximum 5% retainage allowable under Sections 573.12 and 573.13. The IDOT Standard Specifications under Section 1109.05 Partial Payments, Paragraph C, Retainage, states the following:

C. Retainage.

1. Three percent of each progress estimate will be deducted and held as retainage on the first \$1,000,000 paid on a contract. Additional retainage will be withheld to a maximum of \$30,000 following retainage release, if subsequent work is performed.

The IDOT first changed its policy from 5% retainage to 3% retainage in its 1997 Standard Specifications. On construction projects partially funded by the Federal Highway Administration (FHWA), or the IDOT, where the IDOT Standard Specifications are required, the City of Des Moines cannot retain more than 3% from each payment due to the contractor, and the total retainage withheld cannot exceed \$30,000. In other words, on these projects the City of Des Moines can only retain 3% of the first \$1,000,000 paid to the contractor.

Engineering and Legal Department staff have reviewed the City's practices and policies regarding retainage on construction contracts and are recommending only one policy change, being:

- Staff will no longer retain the maximum 5% allowable under Sections 573.12 and 573.13 from each payment to the contractor on construction contracts and instead will retain 3% of the payment due to the contractor.

Staff is recommending this change to reduce the retainage withheld by the City from 5% to 3% of each payment due to the contractor on construction contracts for several reasons:

1. There is no legal requirement under Chapter 573 of the Iowa Code for the public corporation to withhold the maximum 5% retainage. The Iowa Code is mandatory in that the City must withhold from each payment due to the contractor; however, the Code only states that the amount withheld cannot be more than 5% of the payment due.
2. The retainage funds withheld by the City constitute a fund for the payment of claims for materials furnished and labor performed on the improvement by subcontractors and suppliers. Under Iowa Code, these retained funds are not available to the City for any other use under the contract.
3. The maximum 5% retained funds may be an incentive for the contractor to complete the project, including final clean-up items, so that the project can be accepted; however, the City cannot invade the retainage and utilize it for any purpose.
4. The City currently has both 5% (city-funded projects) and 3% (IDOT-funded projects) retainage requirements. This policy revision would make retainage consistent at 3% on all construction projects; however, the City projects would not have a maximum retainage, unlike the IDOT which has a maximum \$30,000 retainage.
5. Contractors are concerned about the retainage amount for obvious reasons. Reduction of retainage from 5% to 3% would reduce the amount of the contract that the contractor must finance. This would also get money to the contractors, as well as their subcontractors and suppliers, quicker in these current economic conditions.
6. Contractors are concerned about the retainage, and convinced the Iowa Legislature to include provisions for early release of retained funds in Iowa Code Chapter 26, which became effective January 1, 2007. These provisions require the City to release all or part of the retainage when certain conditions are met. The City can continue to retain double the amount of work remaining to be completed and double the amount of any claims filed; however, the City must release the remainder of the retainage. Reduction of the retainage amount by the City would be in the spirit of this legislation.

7. The contractor is required to provide a performance, payment, and maintenance bond in the full amount of the construction contract. Under the payment portion of this bond, the contractor and its surety agree to pay all just claims by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the contract. This payment bond protects the City from claims, and provides the subcontractors and suppliers a second payment method in addition to filing a claim under Chapter 573.
8. During calendar years 2007, 2008, and 2009, the Engineering Department processed a total of 215 construction contracts totaling \$207,431,268 for improvements that were awarded by the City Council, Airport Board, Library Board, or the WRA Board. During these same three years, there were only 35 claims filed on 17 contracts under Chapter 573 totaling \$973,869. These 35 claims filed represent only 0.47% of the contract dollars awarded, and the 17 contracts with claims are only 7.9% of the 215 contracts awarded. Claims are normally filed near the end of the project, and some of the 35 claims discussed above may have been filed against projects that were awarded in 2006 or before; however, the percentages are reflective of the relatively small amount of claims that are filed with the City of Des Moines. On average, the 5% contract retainage is approximately 10 times the 0.47% calculated as the percentage of claim dollars verses contract dollars awarded. This data would also indicate that approximately 92% of the contracts awarded would not have any claims filed against retainage. Statistics would indicate that the retainage could be reduced from 5% to 3%.
9. Of the 17 contracts that had Chapter 573 claims filed during calendar years 2007, 2008, and 2009, the percentage of claims verses construction cost is as follows:
 - 9 projects had claims less than the proposed 3% of construction cost. Since these claims were less than the proposed 3% retainage, there would have been no affect on these 9 projects that represent 53% of the projects with claims. The percentages of claims on these 9 projects ranged from 0.1% to 2.5%, with an average of 0.8% of construction cost.
 - 4 projects had claims greater than the proposed 3%, but less than the maximum 5% of construction cost. These 4 projects would have been affected by the proposed change because there would no longer be retainage to cover all the claims; this represents 24% of the projects with claims. The percentages of claims on these 4 projects ranged from 3.2% to 4.2%, with an average of 3.6% of construction cost.
 - 4 projects had claims greater than the maximum 5% of construction cost. These 4 projects would have been affected by the proposed change because there would be 2% less money available to cover all the claims; this represents 24% of the projects with claims. The percentages of claims on these 4 projects ranged from 6.6% to 9%, with an average of 8% of construction cost.
10. Of the 17 contracts that had Chapter 573 claims filed during calendar years 2007, 2008, and 2009, there was only one project where the contractor and the subcontractor/supplier that filed the claim could not resolve the claim, and resulted in the claim being resolved in District Court. This claim was not about the contractor's failure to pay a subcontractor for work or material incorporated into the project; but was a dispute about the subcontract itself.
11. Given the discussion above, there should not be significant adverse conditions encountered if the retainage is reduced from 5% to 3%.
12. Staff recommends approval and has incorporated revised Section 1090, 1.05 Progress Payments, B. Retainage, into the proposed General Supplemental Specification to the State-wide Urban Design and Specifications (SUDAS) Standard Specification. If this policy is approved by the City Council, Progress Payments, B. Retainage, would be effective on projects authorized for bids by the City Council after May 1, 2011.

Disputed Claims for Extra Compensation

The WRA Board recently decided to change its dispute resolution process from traditional litigation to binding arbitration. This decision was based on recent experience the WRA had on two large claims for extra compensation from two different contractors. The WRA and the contractors agreed to join the claims and resolve the dispute under binding arbitration. Ultimately, the arbitrator agreed with the WRA position and denied the contractors claims for additional compensation. The WRA Board felt that this dispute was resolved more quickly and economically than the traditional court litigation process, and ultimately approved the February 2010 revision, prepared by City Engineering and Legal staff with outside legal counsel, to SUDAS Standard Specification Section 1030, 4.21 Disputed Claims for Extra Compensation, changing the dispute resolution process from traditional litigation to binding arbitration.

Engineering and Legal staff are now recommending to the City Council that the City adopt a specification similar to the WRA Section 1030, 4.21 Disputed Claims for Extra Compensation, that requires binding arbitration on WRA projects. City Legal staff has revised the WRA binding arbitration specification for City Council approval and use that allows the City, at its sole discretion, to determine if a claim will be resolved by traditional court litigation or by binding arbitration. Staff recommends approval and has incorporated the revised Section 1040, 1.10 Disputed Claims for Extra Compensation, into the proposed General Supplemental Specification to the SUDAS Standard Specification. If this policy is approved by the City Council, Disputed Claims for Extra Compensation would be effective on projects authorized for bids by the City Council after May 1, 2011.

Minor revisions to the Municipal Code to reflect revisions in the Iowa Code.

Legal staff has drafted an ordinance to revise various Municipal Code Sections to reflect the revisions in the Iowa Code as follows:

- Revisions to Section 2-63, Orders for Public Works, are proposed to incorporate Iowa Code definition revisions into the Municipal Code. Section 2-63 currently states: “The Council shall make all orders for the doing of work or the making or construction of any improvement, bridge, or building.” Staff recommends the language be updated to comply with the current Iowa Code requirements for public improvements and be changed to the following: “The Council shall make all orders for the doing of work, or the making or construction of any public improvement, including highway, bridge, or culvert improvements, except those below the thresholds set forth in Chapter 26, or 314 of the Iowa Code.”
- Revisions to Section 2-728, Annual purchase agreements and contracts for demolition and repair services are proposed to increase the \$50,000 dollar limit authorized under annual demolition contracts to be consistent with the dollar limit allowable under Section 26.15 of the Iowa Code, which states that the governmental entity may enter into annual contracts with multiple contractors for structural demolition projects, with each project having a total estimated cost of \$100,000 or less, or each project having a total estimate cost equal to or less than the competitive bid threshold as established in Section 314.1B. These thresholds were discussed on Page 5 of this Council Communication.

A Roll Call is included on this agenda for City Council consideration for the first reading of the ordinance.

Administrative Rules by the City Engineer

On February 12, 2007, under Roll Call Number 07-291, the Des Moines City Council approved the “Summary of Bidding/Contracting Process Changes for Construction for Public Improvements, February 2007”, which included revisions to the City of Des Moines bidding and contract policies and directed the policy be administered by the City Engineer. The City Engineer is hereby authorized to issue

Administrative Rules as necessary to supplement, clarify, and implement the 2007 policy, as well as the 2011 policy.

Emergency Repairs and City Procedures Background

Iowa Code Section 384.103 (2) provides guidance for emergency repairs. Prior to the 2009 legislative session, Section 384.103 (2) provided as follows:

384.103 BONDS AUTHORIZED -- EMERGENCY REPAIRS.

2. When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the governing body shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent professional engineer or registered architect, not in the regular employ of the City, certifying that emergency repairs are necessary.

In the event, the governing body may contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of Chapter 26 do not apply.

Under this code section, the Council was required to make a finding of necessity to institute the emergency repairs by resolution. This Council approval was impractical, if not impossible, when the City is faced with an emergency repair. Historically, the City Manager has declared an emergency and authorized the City Engineer to proceed with the work. At the next scheduled City Council meeting, staff would present a resolution for City Council consideration to ratify and confirm the actions of the City Manager and the City Engineer to make a finding of necessity to institute the emergency repairs by resolution, and authorize the Mayor to sign contract for the emergency repair work.

The 2009 session of the Iowa Legislature adopted Senate File 457, which revised the emergency repair provisions of the Iowa Code found in Section 384.103. The Code states as follows:

2. When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the chief officer or official of the governing body of the City, or the governing body, shall make a finding of necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent licensed professional engineer or registered architect, certifying that emergency repairs are necessary.

In the event, the chief officer or official of the governing body or the governing body may accept, enter into, and make payment under a contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of Chapter 26 do not apply.

By Ordinance No. 14,867, Municipal Code Section 94-360 was revised to reflect the changes to Iowa Code Section 384.103. Section 94-360 states the following:

Section 94-360 – Contracts for emergency repair of public improvements.

When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the Mayor, as chief official of the City, or the City Manager, as the chief officer of the City, shall each have authority to make a finding of necessity to institute emergency proceedings under I.C. § 384.103, and shall procure a certificate from a competent licensed professional engineer or registered architect, certifying that emergency repairs are necessary. The Mayor and City Manager shall each have authority to

accept, enter into, and make payment under a contract for emergency repairs without holding a public hearing and advertising for bids in accordance with I.C. § 384.103.

Pursuant to this code section when the following three conditions are met:

- The delay of advertising and a public letting might cause serious loss or injury to the city.
- The City Engineer certifies that emergency repairs are necessary.
- The City Manager or the Mayor makes a finding of necessity to institute emergency proceedings.

The City Manager or the Mayor is authorized to sign the contract on behalf of the City of Des Moines, and pay the contractor without any further City Council action.

Legal staff has drafted an ordinance to revise Municipal Code Section 2-168 (b) (2) to resolve conflicts with Section 94-360. A Roll Call is included on this agenda for City Council consideration for first reading of the ordinance.

Emergency Repair Process

Section 384.103 of the Iowa Code authorizes either the Mayor or City Manager to make a finding of necessity to institute emergency proceedings, enter into a contract, and make payment under the contract. For simplicity, the following process has been written stating the City Manager; however, the Mayor is equally authorized and “Mayor” could be substituted for “City Manager” throughout this process. Staff has developed and utilized the following process to authorize emergency repair of a public improvement:

1. Upon notification of a problem requiring repair, the Engineer Department staff shall evaluate the problem and ultimately determine if the *“emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city”*.
2. If the decision is made that an emergency repair is necessary, staff will prepare the letter from the City Engineer to the City Manager entitled, “City Engineer’s Certification Emergency Repairs Required and City Manager’s Finding of Necessity to Institute Emergency Proceedings”. The City Engineer’s certification shall detail and describe the problem, generally outline the repair, and clearly state how/why *“the delay of advertising and a public letting might cause serious loss or injury to the city”*. This certification would be in compliance with the Iowa Code regarding the emergency repair project and to institute emergency proceedings.
3. If the City Engineer agrees and signs the certification, the City Engineer shall submit the certification to the City Manager for discussion and consideration.
4. If the City Manager makes the Finding of Necessity to Institute Emergency Proceedings and signs the document, the City Engineer is authorized to proceed with emergency bids without a public hearing, and the provisions of Chapter 26 of the Iowa Code do not apply. The City Manager may forward the document to the Mayor and City Council as notification of the Finding of Necessity to Institute Emergency Proceedings.
5. The Engineering Department will prepare the necessary plans and specifications in order to bid the emergency repair and contact contractors that typically do the required work. The project engineer shall attempt to contact at least three contractors that normally do the type of work for the City of Des Moines that is required under the emergency repair.
6. At the date and time scheduled for receipt of bids, the bids will be opened/read and tabulated. The proposals may be submitted as a sealed bid or submitted electronically by facsimile or electronic mail.
7. After review of the bids, the City Engineer will prepare a letter to the City Manager entitled “City Engineer’s designation of lowest responsible, responsive bidder and City Manager’s authorization to enter into contract”. This letter is the City Manager’s direction to the City

- Engineer to secure execution by the contractor and its surety of the emergency contract and bond as soon as possible and return it for the City Manager's signature, with direction to the City Engineer that the contractor is authorized to begin the emergency repair work as soon as possible. No City Council action is required to authorize the contract.
8. After the "City Engineer's designation of lowest responsible, responsive bidder and City Manager's authorization to enter into contract" is signed by the City Manger:
 - a. The City Engineer shall notify the contractor that the City Manager has authorized the emergency contract and that the contractor is authorized to begin the emergency repair work as soon as possible.
 - b. The City Manager may notify the Mayor and City Council of the bid results and that the contractor has been authorized to begin the emergency repair work as soon as possible.
 - c. The City Engineer will prepare the contracts and bonds for execution by the contractor.
 9. When the contractor returns the executed contracts and bonds, the Legal Department will review and approve as to form, and the City Engineer will coordinate execution by the City Manager. No further City Council action is required to authorize/approve the contract.
 10. Section 384.103 of the Iowa Code authorizes the City Manager to make a finding of necessity to institute emergency proceedings, enter into a contract, and make payment under the contract. Section 384.103 therefore authorizes the City Manager to execute necessary change orders to affect the emergency repair on behalf of the City of Des Moines. After the emergency contract is executed by the City Manager, the contract is handled the same as any other construction contract for partial payment and final acceptance.

PREVIOUS COUNCIL ACTION(S):

Date: February 12, 2007

Roll Call Number: [07-291](#)

Action: [Summary](#) of Bidding/Contracting Process Changes for construction of public improvements, February 2007. ([Council Communication No. 07-062](#)) Moved by Kiernan to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Development of administrative rules by the City Engineer, as necessary.

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