

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b>	November 3, 2014
	<b>Agenda Item No.</b>	<b>46</b>
	<b>Roll Call No.</b>	<b><u>14-1744</u></b>
	<b>Communication No.</b>	<b><u>14-532</u></b>
	<b>Submitted by:</b>	<b>Pamela S. Cooksey, P.E., Interim City Engineer</b>

**AGENDA HEADING:**

Approving and directing staff to include Certification on Compliance with Wage Payment Laws in written solicitations for City construction projects.

**SYNOPSIS:**

Staff has reviewed the Council request regarding wage protection on City construction projects and prepared a response and recommendation that consists of contractor’s completing the proposed “Certification on Compliance with Wage Payment Laws” when responding to written solicitations for City construction contracts, excluding emergency solicitations or solicitations where such inclusion would be a violation of any federal or state laws or regulations.

**FISCAL IMPACT: NONE**

Amount: No additional estimated project cost in accordance with the criteria on the Policy due to limited staff time to investigate.

Funding Source: No additional estimated expenses to be charged to projects.

**ADDITIONAL INFORMATION:**

On September 8, 2014, by Roll Call No. 14-1418, City Council referred their discussion regarding wage protection on City construction projects to the City Manager and Legal for review and recommendation.

Wage payment enforcement arises under state and federal law. The state law is called the Iowa Wage Payment Collection Law, enforced by the Iowa Workforce Development Division of Labor Services (Division), under The Fair Labor Standards Act and authority of the United States Department of Labor. The Division also enforces the Iowa Minimum Wage Laws. The Division is under the leadership of Michael Mauro, Labor Commissioner. The Division will accept for review and investigate compensation/wage issue claims such as under-compensation, no-compensation, and 1099 claim issues. Regarding a 1099 wage issue for work performed, the Division will also investigate and determine a finding; part of the 1099 investigation will determine if the claim is an employee issue or if the claim involves an independent contractor. The Division also reviews and investigates Minimum Wage claims. A worker who believes he or she has not received full compensation, may file a wage claim with the Division, and the Division will investigate and determine if a filed wage claim is valid.

In developing a recommendation in response to the request from City Council, an effort was made to provide a recommendation where City staff did not duplicate the services and enforcement responsibilities of the Iowa Workforce Development Division of Labor Services, nor increase City cost by placing the responsibility on staff to request and verify the applicable information on contractors. Given the extent of construction projects performed by the City, there is not sufficient staff to request and verify this information for all projects.

Based on the existing state and federal departments' responsibility and process, staff recommends that a certification be used to require contractors disclose information on any found violations of wage payment laws in the past three (3) years. The City written solicitations for construction projects will include "Certification on Compliance with Wage Payment Laws". The proposed certification states that a contractor is certifying that they have not been found to have violated the Iowa Wage Payment Collection Law or the Fair Labor Standards Act in the past three (3) years. For contractors that have been found in violation in the past three (3) years, the contractor is required to check the appropriate box and provide details on the violation. Violation information obtained from contractors will be presented to Council when award of the contract is recommended by staff.

Staff intends to rely on the certification and information provided by the contractor, unless staff questions the certification or information provided by the apparent low bidder. In that circumstance staff will request information from the Iowa Workforce Development Division of Labor Services and United States Department of Labor. To obtain violation information for a specific company from the Iowa Workforce Development Division of Labor Services a written request must be submitted in accordance with Iowa Open Records Law. The response time for a request depends on the Division's workload; the response time may vary from a few working days to 10 working days. A request for such information to the United States Department of Labor would have to be made as a request under the Freedom of Information Act. Staff was unable to get a projected response time on such a request. Depending upon response times from the Division and the Department of Labor, there may be delays in awarding contracts. Staff may not be able to obtain valid information when a contractor operates under more than one (1) business name.

The Certification on Compliance with Wage Payment Laws would be included in written solicitations for construction contracts, excluding emergency solicitations or solicitations where such inclusion would be a violation of any federal or state laws or regulations. For emergency repair solicitations pursuant to 384.103 of the Iowa Code, there is normally an abbreviated process with bids from a limited number of contractors experienced in the type of emergency repair necessary. Many federal and state agencies have requirements that dictate the content of project bid documents. In these cases, the City will not be able to include the proposed certification.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: September 8, 2014

Roll Call Number: [14-1417](#) and [14-1418](#)

Action: [City](#) of Des Moines Taxpayer Quality Assurance Policy. ([Council Communication No. 14-446](#)) Moved by Moore to adopt. Motion Carried 6-1. Nays: Hensley.

(A) Discussion regarding wage protection. Moved by Moore to refer to the City Manager and Legal for review and recommendation. Motion Carried 7-0.

Date: July 28, 2014

Roll Call Number: [14-1156](#)

Action: [Request](#) from Council Member Joe Gatto to discuss Taxpayer Quality Assurance. Moved by Gatto to refer to the City Attorney and City Manager to create a draft Council policy regarding use of a Taxpayer Quality Assurance questionnaire similar to what Polk County uses for any vertical project in excess of \$1,000,000 and to provide Council information regarding the following questions (report back to Council at the September 8<sup>th</sup> Council meeting): 1. What problems has the City of Des Moines experienced on City construction projects? 2. What will the cost and process be to enforce/administer this program? 3. What will the impact be on projects where we receive only one bid? 4. How many projects will this affect? 5. Provide information and statistics regarding use of national training apprenticeship programs. Motion Carried 7-0.

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

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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