

DATE January 8, 2007

PUBLIC HEARING, APPROVING PLANS, SPECIFICATIONS, FORM OF CONTRACT
DOCUMENTS, AND ENGINEER'S ESTIMATE ON
TEACHOUT AQUATIC CENTER SLIDE REPLACEMENT;
RECEIVE AND FILE BIDS; AND DESIGNATION OF LOWEST RESPONSIBLE, RESPONSIVE
BIDDER AS BROCON SERVICES LLC, CHRIS BRAULT, MANAGING PARTNER, \$339,800.00

WHEREAS, on December 4, 2006, under Roll Call No. 06-2351, plans, specifications, form of contract documents, and Jurisdictional Engineer's estimate of construction cost were filed with the City Clerk, for the construction of the following improvement:

Teachout Aquatic Center Slide Replacement, 11-2007-001

The improvement includes furnishing and installing an open "U" flume design minimum width 54 inch raft water slide with a minimum centerline length of 184 feet; furnishing and installing a second water slide consisting of an enclosed tube design with a minimum inside diameter of 32 inch body water slide with a minimum centerline length of 148 feet; furnishing and installing a water slide tower and stairway system consisting of an elevated platform with a minimum plan view dimension of 12 feet by 14 feet and a tower elevation of 19.8 feet; 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

WHEREAS, notice of the hearing on the plans, specifications, form of contract documents, and Engineer's estimate of construction cost was published as required by law.

DATE January 8, 2007

WHEREAS, on December 18, 2006, sealed bids for said improvement were received and opened at a public meeting presided over by the City Engineer, 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 \$33,800.00 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.

WHEREAS, Engineering Department Staff has:

1. Contacted numerous persons associated with HSBC, the parent company of the bank that issued the \$33,800.00 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 \$33,800.00 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 with 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.

WHEREAS, during its review and evaluation of the bid submitted by Whitewater West Industries, 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; and

WHEREAS, Engineering Department Staff have 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

DATE January 8, 2007

through 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, that 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.

WHEREAS, 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.

WHEREAS, Will Jazen, Project Manager for Whitewater West Industries has submitted the attached letter to the City Engineer requesting that its 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 standardly acts as a subcontractor and has been involved in obtaining the necessary bonds and insurance required of the general contractor in the United States; and

WHEREAS, 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.

WHEREAS, 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; and

WHEREAS, 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.

DATE January 8, 2007

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the hearing on the plans, specifications, form of contract documents, and Jurisdictional Engineer's estimate of construction cost for said improvement be closed; and that said plans, specifications, form of contract documents, and Jurisdictional Engineer's estimate of construction cost are hereby approved as the plans, specifications, form of contract documents, and Jurisdictional Engineer's estimate of construction cost for said improvement.

BE IT FURTHER RESOLVED: That the City Council concurs in the recommendation of the City Engineer regarding the bid submitted by Whitewater West Industries, and hereby allows Whitewater West Industries to withdraw its bid and also directs the City Clerk to return Whitewater West Industries bid security, and hereby receives the bid submitted by Brocon Services LLC.

BE IT FURTHER RESOLVED: That sealed bids for said improvement were submitted by the following bidders:

Whitewater West Industries	Columbus, OH Bid read under advisement and withdrawn by the bidder
Brocon Services LLC	Johnston, IA
Rochon Corporation of Iowa, Inc.	Urbandale, IA Bid read under advisement
Pool Construction, Inc.	Eagan, MN

which were received and opened at a public meeting presided over by the Jurisdictional 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 19, 2006. Said bids and the attached tabulation of bids for said improvement be and are hereby received and filed.

BE IT FURTHER RESOLVED: That the Jurisdictional Engineer has determined that the lowest responsible, responsive bid for the construction of said improvement was submitted by Brocon Services LLC, Chris Brault, Managing Partner, 6220 NW Beaver Drive, Suite 4, Johnston, IA, 50131 in the amount of \$339,800.00, and said bid be and the same is hereby accepted.

BE IT FURTHER RESOLVED: That the bid security of the unsuccessful bidders be and is hereby authorized and directed to be returned.

★ **Roll Call Number**

Agenda Item Number

54

DATE January 8, 2007

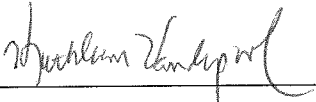
BE IT FURTHER RESOLVED: That the Jurisdictional Engineer is hereby directed to secure execution by the lowest responsible, responsive Bidder and its surety of the contract documents in the form heretofore approved by this Council; that the Jurisdictional Engineer is directed to thereafter present said contract documents to this Council for approval and authorization to the Mayor to sign; and that no contract shall be deemed to exist between the City of Des Moines and said Bidder until said contract has been executed by the Bidder, and shall have been approved by this Council and executed by the Mayor and attested to by the City Clerk.

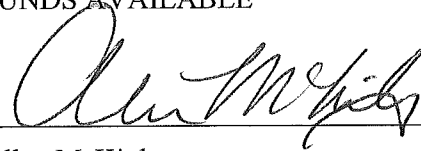
(City Council Communication Number 07-013 attached.)

Moved by _____ to adopt.

FORM APPROVED:

FUNDS AVAILABLE





Kathleen Vanderpool
Deputy City Attorney

Allen McKinley
Des Moines Finance Director

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



COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

TABULATED BY: Eugene J. Schmitt
CHECKED BY: _____

APPROVED BY: *John F. McKee*

CONTRACTOR'S BID TABULATION
PROJECT: TEACHOUT AQUATIC CENTER SLIDE REPLACEMENT

ESTIMATE _____

ITEM	DESCRIPTION	AMOUNT	Whitewater West Ind. Columbus, Ohio	Brocon Services LLC Johnston, Iowa	Rochon Corp. of Iowa Urbandale, Iowa
1	Water Slides and Tower, Complete	\$350,000.00	BID SECURITY Check BID PRICE \$314,768.00	BID SECURITY 10% Bid Bond BID PRICE \$339,800.00	BID SECURITY 10% Bid Bond BID PRICE \$344,000.00
	TOTAL BASE BID	\$350,000.00	\$314,768.00 -10.07%	\$339,800.00 -2.91%	\$344,000.00 -1.71%
			Bid read under advisement 1) To determine if bid security amount is adequate. Bid security is adequate. However, need to verify if bank check meets bid security requirements. 2) Bidder did not submit public registration number. 3) To determine if additional attachments condition bid.		Bid read under advisement. Bidder specified supplier not listed on addendum which per rep. at letting is a supplier for Aqua Recreation.
	TOTAL BASE BID PLUS ALTERNATES SELECTED BY THE CITY PERCENT OF ENGINEER'S ESTIMATE		Bid Withdrawn by Whitewater West Industries	Lowest Responsible, Responsive Bidder	

54

TABULATED BY: Eugene J. Schmitt APPROVED BY: _____
CHECKED BY: _____

CONTRACTOR'S BID TABULATION
PROJECT: TEACHOUT AQUATIC CENTER SLIDE REPLACEMENT

ESTIMATE

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>AMOUNT</u>
1	Water Slides and Tower, Complete	\$350,000.00	
	TOTAL BASE BID	\$350,000.00	
			Pool Construction, Inc. Eagan, Minnesota
			BID SECURITY 10% Bid Bond BID PRICE
			\$388,610.00
			\$388,610.00
			\$388,610.00 +11.03%
		\$350,000.00	

TOTAL BASE BID PLUS ALTERNATES SELECTED BY THE CITY
PERCENT OF ENGINEER'S ESTIMATE

54



Corporate Head Office

Whitewater West Industries Ltd. • 6700 McMillan Way • Richmond • B.C. • Canada • V6W 1J7
Tel (604) 273-1068 • Fax (604) 273-4518 • e-mail: whitewater@whitewaterwest.com

January 4, 2007

Mr. Jeb E. Brewer, P.E. City Engineer
City of Des Moines
Engineering Department
City Hall
400 Robert Ray D. Drive
Des Moines, Iowa 50309-1891

RE: Teachout Aquatic Center Slide Replacement

Dear Mr. Brewer:

The purpose of this letter is to inform you that Whitewater West Industries Ltd. is withdrawing our bid proposal to enter into a contract agreement with the City of Des Moines pertaining to the work for the above-mentioned project.

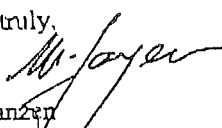
There are a number of issues which forced us to make this decision:

1. First and foremost is that our head office is based in Vancouver, Canada and that makes us not only an out of state but an out of country contractor;
2. Our insurance and performance bonding agents are experiencing great difficulty meeting all requirements in the allotted time;
3. Although our sales office in Columbus, Ohio, received your letter outlining the special provision of bidding requirements before Christmas, we only received it on December 27, 2006. In Canada, most businesses are closed between Christmas and New Years and that only leaves us 3 days this week to meet the Friday January 5, 2007 deadline;
4. We also feel that the Scope of Work on Drawing SP.P1 and the construction timetable are not clear in the contract documents. With the liquidation clause in the contract, we would have preferred to have timetables for drawing review, colour selection and the completion of the demolition of existing facilities;
5. Although Whitewater West Industries Ltd. is one of the world's largest waterslide fabricator/installers, we standardly act as a subtrade. The requirements of the improvements for this project are more directed to a General Contractor.

Your office, in particular, John McKee, has been extremely helpful in the last week with many of our requirement issues. It is not easy for us to turn down work but with the issues sited and discussed with John, we ask that you return our Bid Bond Deposit and award this project to the next lowest bidder.

We do apologize for the inconvenience.

Yours truly,


Will Janzen
Project Manager

WJ/ljm



www.whitewaterwest.com