

OFFICE OF THE CITY MANAGER  
DES MOINES, IOWA

ITEM 105

CITY COUNCIL COMMUNICATION 97-023  
JANUARY 20, 1997 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
POLICY FOR WAIVER OF BID AND PERFORMANCE BOND FOR TARGETED SMALL BUSINESSES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	HAROLD E. SMITH CITY ENGINEER

**SYNOPSIS —**

The City of Des Moines should waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small business only under the following guidelines.

1. The work for which the waiver is being requested is funded all or in part through the Iowa Department of Transportation (IDOT), by agreement with the City of Des Moines, and should include the IDOT normal letting requirements.
2. The IDOT has included the Targeted Small Business (TSB) Program requirements in the bidding requirements and also included a listing of TSBs that would qualify for such a waiver as certified by the Iowa Department of Inspections and Appeals.
3. The waiver should be applied only to a project or individual transaction amounting to \$50,000 or less, notwithstanding Section 573.2, Code of Iowa.
4. The granting of the waiver should in no way relieve the business from its contractual obligations and should not preclude the City of Des Moines from pursuing any remedies under law upon default or breach of contract.
5. All requirements of Section 12.43 and 12.44, Code of Iowa, should be met along with all administrative rules established by the State of Iowa regarding their Targeted Small Business Programs.

**FISCAL IMPACT —**

There will be no impact to the City as the costs to the removal and the court action, in the amount of \$6,830.63, have been paid.

**RECOMMENDATION —**

Approval of the above waiver policy.

**BACKGROUND —**

On September 25, 1995, under Roll Call No. 95-3687, the City Council approved an agreement between the City of Des Moines and the IDOT for the Saylorville Bike and Recreation Trail Lighting Project. Said agreement included the requirement that the projects will be let by the IDOT in accordance with its normal letting procedures. As part of its normal letting procedures, the IDOT issues a Notice to All

Bidders which includes a listing of Disadvantaged Business Enterprises (DBEs) which also identifies TSB certification.

Sections 12.43 and 12.44 of the Iowa Code address the Targeted Small Business Programs. Section 12.44 provides in its entirety as follows:

"12.44 Iowa satisfaction and performance bond program.

Agencies of state government shall be required to waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of lack of experience, lack of net worth, or lack of capital. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract.

The department of inspections and appeals shall certify targeted small businesses for eligibility and participation in this program and shall make this information available to other state agencies.

Subdivisions of state government may also grant such a waiver under similar circumstances."

Although Section 12.44 of the Iowa Code requires state agencies to waive bid and performance bond requirements for TSBs, it authorizes—but does not require—subdivisions of state government (cities, counties, school districts) to grant such waivers under similar circumstances. However, until such a program is formally implemented, the City will not be able to waive the requirement for bid bonds. (Chapter 384.97 Code of Iowa) and performance bonds (Chapter 384.100 Code of Iowa).

The lowest responsive, responsible bidder as determined by the IDOT on the Saylorville Recreational Trail Lighting near the Botanical Center, W.O. No. 0211-96-007, Project No. STP-E-1945(16)--8V-77, is:

Bailey Construction Company  
P.O. Box 4471  
Davenport, Iowa 52808  
Charles Bailey, Owner

with the bid of \$40,223.55. The Engineering Department sent Mr. Bailey a Performance and Payment Bond for execution on the above-referenced project, and Mr. Bailey submitted the attached January 3, 1997, letter stating the Bailey Construction Company is a TSB and qualifies for the waiver of bond requirement.

Since the contract amount is \$40,223.55, this contract would meet the TSB requirements of said Section 12.44 which states that the waiver shall be applied only to a project or individual transaction amounting to \$50,000 or less with agencies of the state government. The TSB information was included in the bidding information issued by the IDOT, and the IDOT accepted Bailey Construction Company's bid without any bid security. Therefore, Bailey Construction Company assumed it would not need a Performance and Payment Bond for this project.

The TSB Code requirement of said Section 12.44 has been applicable for some time; however, it has not been an issue because very rarely does the City of Des Moines enter into a construction agreement with the IDOT for a project of \$50,000 or less. The City of Des Moines should adopt a program to waive the bond requirements as provided in said Section 12.44 only for those projects let by the IDOT, thus eliminating the specification conflict.

Received 2:05 pm By  
Fax. 244 1/31/97

# Bailey Construction Company

PO Box 4471

Davenport, Iowa 52808

Telephone 319-391-4776 Fax 309-755-0397

January 3, 1997

Mr. John F. McKee, P.E.  
City of Des Moines Engineering Department  
400 east First Street  
Des Moines, Iowa 50309

Re: Saylorville Recreational Trail Lighting  
STP-E-1945(16) - 8V-77

Dear Mr. McKee:

Enclosed please find a copy of a letter qualifying Bailey Construction Company for Targeted Small Business bond waiver program. This letter was accepted by the Iowa Department of Transportation to waive the requirements of the proposal guarantee. It is my intention to use it to waive the requirements of the Performance and Payment Bonds.

I have personally used this waiver on several projects administered by the Iowa Department of Transportation and one project administered by the City of Clinton. If you need more information concerning the bond waiver program please contact Ms. Janis L. Curtis, Targeted Small Business Manager, 515-281-5686 or Mr. Roger Bierbaum, Contracts Engineer, Iowa Department of Transportation, 515-239-1414.

I submitted this bond waiver in good faith and believe it is in compliance with the Iowa DOT specifications. Please contact me if you have any questions concerning this letter.

Sincerely,

**BAILEY CONSTRUCTION COMPANY**

Charles Bailey

enclosure

cc: Janis Curtis  
Roger Bierbaum