



## **Council Communication No. 97-307**

### **SYNOPSIS –**

On the June 2, 1997, Council agenda are various actions on the Intermodal Transportation Facility (Park and Ride Project). These actions include: 1) Designating Taylor Ball L.C. as the lowest responsive bidder; 2) Selecting the desired add-alternates; 3) Resolving a formal protest brought by one of the bidders (Penn-Co Construction, Inc.); and 4) Approving a loan agreement with Polk County and designating the loan amount of \$5,565,000. Upon approval of these actions, Polk County will proceed with the sale of bonds and staff will prepare for award of the construction contract at the Council meeting on June 16, 1997. The specific resolutions on the agenda are as follows:

- A. Resolution Approving Submission of Bids
- B. Receive and File Bid Protest Submitted by Penn-Co Construction, Inc.
- C. Concurrence in City Engineer's Denial of Penn-Co Bid Protest, Designation of Lowest Responsible - Responsive Bidder, and Selection of Add-Alternates
- D. Approving MidAmerican Energy Company Agreement for Overhead Primary Relocation required by the Intermodal Transportation Facility
- E. Approving Mid American Energy Company Agreement to provide underground electric service for the Intermodal Transportation Facility
- F. Approving Supplemental Agreement with Herbert Lewis Kruse Blunck for Bid and Construction Phase Services
- G. Hearing on Loan Agreement with Polk County, to borrow funds, payable from net revenues of the Municipal Parking System Enterprise
- H. Resolution to Approve and enter into Loan Agreement with Polk County, at designated loan amount of \$5,565,000

### **FISCAL IMPACT –**

The total cost of the project is estimated at \$23,267,543 which includes construction of the 1,831-space parking structure, land acquisition, design, and shuttle station and buses. The project costs will be paid from three sources– one Federal, and two “ local match” – (i) \$15,223,694 grant from the Federal Transit Administration to the Des Moines Metropolitan Transit Authority

which will, in turn, relay the grant money to the City as needed; (ii) \$2,600,000 of tax increment funds (TIF) which includes about \$1.6 million of currently available funds originally intended for the Hillside Project, and about \$1.0 million of TIF funds which are reflected in the current projections of TIF expenditures for parking purposes; and (iii) \$5,565,000 10-year loan to the City from Polk County, which on June 24, 1997, is scheduled to sell taxable General Obligation Bonds to fund its loan to the City.

Under terms of the loan agreement between the City and the County, the City's Parking System Enterprise Fund will reimburse the County for the annual principal and interest payments of the bonds— approximately \$800,000 (at current interest rates) per year for 10 years. If City parking revenues are insufficient to pay the annual debt service to the County, the City commits in the loan agreement with the County either to increase parking rates or to infuse additional funds (most likely tax increment funds, but other sources would be permitted) sufficient to pay the City's debt to the County, along with normal operating expenses and debt service on the City's 1990 Public Parking System Revenue and Refunding Bonds.

The 1990 bonds, currently outstanding in the amount of \$23,740,000, will need to be refunded and restructured in the next half-year or so in order to “ make room” in the Parking System Enterprise Fund for the additional debt service (approximately \$800,000 annually) to be paid to the County under the new 10-year loan agreement. Currently, the 1990 Parking Revenue Bonds carry annual debt service payments of \$2.6 million each year through fiscal 2003-04, dropping to \$1.9 million from 2004-05 through 2015-16. The contemplated refunding and restructuring of the 1990 Parking Revenue Bonds would extend the final maturity another 18 months, to fiscal 2017-18, and establish an escalating annual debt service structure: from \$1.8 million (at current interest rates) in 1997-98 increasing steadily to \$2.4 million in the final year, 2017-18. The difference between the 1990 Parking Revenue Bonds' current debt service amount (\$2.6 million in 1997-98) and the refunded/restructured debt service amount (\$1.8 million) is just enough to accommodate the first \$800,000 payment to the County on its new loan to the City for part of the local match on the Project. Furthermore, interest rates today are lower than when the Parking Revenue Bonds were originally issued in 1990, so a refunding would generate almost \$900,000 of net present value savings to the City (again at current interest rates) in addition to the cash flow restructuring of the annual debt service amounts.

Staff projects that, even after a refunding/restructuring of the 1990 Parking Revenue Bonds, some combination of increases in parking rates and/or infusions of tax increment funds (perhaps several hundred thousand dollars per year) to the Parking System will be needed around the year 2000. While the current cash balance in the City's parking fund is a healthy amount (nearly \$2 million), capital needs for assets like the Mulberry Parking Garage will require additional resources in the future.

Staff will return to Council with recommendations for refunding and restructuring the 1990 Parking Revenue Bonds. Finally, for budgetary and appropriation purposes, staff will prepare amendments to the 1997-98 Operating Budget and Capital Improvement Program (all such amendments scheduled to be submitted to Council at the end of this calendar year) for a new, \$23,267,543 capital project for the Project, with the funding sources as outlined above.

Meanwhile, the existing tax increment appropriations described above will be used to reimburse the Principal Mutual Life Insurance Company for \$959,803.82 of the \$1.3 million the Company has already spent on the project. (The Company is absorbing the difference.) From the same funding source, the City will also reimburse the Metropolitan Transit Authority for approximately \$90,000 of costs it has incurred for the project. Both these amounts are part of the \$23,267,543 total project cost described above.

Based on anticipated leases with Principal (900 spaces), Graham Investment (150 spaces), and Des Moines Development Corporation (300 spaces), plus the lease of the remaining available spaces, the facility will generate sufficient revenues to pay all operation and maintenance expenses and to contribute toward additional transit projects such as additional park and ride facilities.

#### RECOMMENDATION –

Approval of the various actions listed in the Synopsis, including the recommended financing and budget amendments.

#### BACKGROUND –

##### A. Resolution Approving Submission of Bids

Sealed bids for the Intermodal Transportation Facility were submitted by the following bidders:

Taylor Ball L.C. - Des Moines - West Des Moines, Iowa  
Penn-Co Construction, Inc. - Eagan, Minnesota  
The Weitz Company, Inc. - Des Moines, Iowa  
Knutson Construction Company - Minneapolis, MN - Bid Read Under Advisement  
Neumann Brothers, Inc. - Des Moines, IA - Bid Read Under Advisement

which were received and opened at a public meeting presided over by the Chief Civil Engineer in the Council Chambers at 11:00 AM, on May 20, 1997.

In tabulating the bids for the Project, the Engineering Department determined that none of the bidders fully understood the intended use and inter-relationship of the City and Federal Disadvantaged Business Enterprise (DBE) forms. In point of fact, none of the bidders properly completed the proposal and all the required forms. These irregularities will be discussed later.

##### B. Receive and File Bid Protest Submitted by Penn-Co Construction, Inc.

Penn-Co Construction, Inc. (Penn-Co) has filed a protest with the City of Des Moines, indicating its objection of the award of the contract to anyone but Penn-Co. Penn-Co. has taken the position that it has properly completed the proposal forms, and that the proposal submitted by Taylor Ball L.C. - Des Moines was not properly completed, should be considered non-responsive by the

City, and therefore, rejected, and that Penn-Co should be designated as the lowest responsible, responsive bidder by the City.

### C. Concurrence in City Engineer's Denial of Penn-Co Bid Protest, Designation of Lowest Responsible - Responsive Bidder, and Selection of Add-Alternates

#### Resolution Of Formal Protest

On Tuesday, May 20, 1997, the City of Des Moines received bids for the construction of the Intermodal Transportation Facility, as discussed previously. Among the forms which bidders were required to complete and submit with their bids were two forms pertaining to DBE participation by subcontractors, suppliers, and assignees. The first of those forms was a City of Des Moines form identified as "Proposal: Part F - Identity of Subcontractors." The second form was identified as "Proposal: Part H, City of Des Moines and Des Moines Metropolitan Transit Authority Disadvantaged Business Enterprise (DBE) Certification for Non-Rolling Stock Materials or Services." The two forms were intended to elicit the following information from bidders regarding subcontractor or supplier participation in the Intermodal Project:

- (a) Identity of all DBEs who were contacted for subcontract or material quotes, including indication whether or not each quote was "used in preparation of Bid" (Proposal: Part H, 2nd and succeeding pages);
- (b) Identity ("attach a listing) of the DBE firms from whom purchase of components or services is anticipated" (Proposal: Part H, first page); and
- (c) Identity of "Any non-DBE subcontractor or assignee where the portion of work to be done by the subcontractor or assignee exceeds \$25,000.00" (Proposal: Part F, first page).

It should be recognized that Proposal: Part H, elicited two distinct categories of information, and that the provision of the information requested in (a) above would not satisfy the informational requirement stated in (b) above. The first page of the Proposal: Part H specifically instructed bidders to "attach a listing of the DBE firms from whom purchase of components or services is anticipated." That requirement could not be met simply by filling out the second and succeeding pages of the federal form. The City attempted to provide a means for bidders to meet the DBE listing requirement by requiring them to fill out Proposal: Part F, which required the bidders to "identify . . .

1. All DBE subcontractors, suppliers or assigns"

and to

"certify that said subcontractors or assignees shall be utilized on this project . . ."

The Engineering Department has determined in tabulating the bids for the Project that none of the bidders fully appreciated the intended use and inter-relationship of the two DBE forms, and none of the bidders properly completed both forms. None of the bidders provided a separate listing of the DBE firms from whom purchase of components or services is anticipated, nor did

any of the bidders understand that the City form could be used to satisfy that requirement. Furthermore, a number of the bidders did not properly fill out the City form to identify "Any non-DBE subcontractor or assignee where the portion of work to be done by the subcontractor or assignee exceeds \$25,000.00".

After further review and discussion with the Legal Department, the Metropolitan Transit Authority (The Metro), and Federal Transit Administration (FTA); the Engineering Department requested that all bidders complete and return a Proposal Supplement including a listing of the DBE firms from whom purchase of components or services is anticipated and a listing of the non-DBE subcontractors or assignees exceeding \$25,000.00 which the bidder intends to utilize.

The intent was to utilize that information to determine if each bidder's intended DBE utilization would result in that bidder meeting the DBE participation percentage and to confirm each bidder's intended utilization of subcontracts in excess of \$25,000.

The Engineering Department's request for this information is contemplated by Part D of the Proposal Form, Disadvantaged Business Enterprise (DBE), which provides in part the DBE "information is subject to verification and confirmation;" and furthermore, the procedure being utilized to obtain this information is consistent with the City's past practices in confirming intended DBE participation and in confirming intended utilization of subcontracts in excess of \$25,000.

Proposal Supplements were received from the following bidders:

Taylor Ball L.C. - Des Moines - West Des Moines, Iowa  
Penn-Co Construction, Inc. - Eagan, Minnesota  
The Weitz Company, Inc. - Des Moines, Iowa  
Knutson Construction Company - Minneapolis, Minnesota,

on May 27, 1997. Said Proposal Supplements and a Tabulation of said supplements as well as detailed tabulation of the supplement submitted by Taylor Ball L.C. - Des Moines are attached to the roll call.

Penn-Co Construction, Inc., (Penn-Co) has filed a protest with the City of Des Moines, indicating its objection of the award of the contract to anyone but Penn-Co, as previously stated.

The City Engineer has reviewed said protest and the information on the Proposal Supplements, and has responded to Penn-Co., indicating that Penn-Co's protest is without merit and is denied. A copy of the City Engineer's response is attached to the roll call.

Designation Of Lowest Responsible - Responsive Bidder

After further review of the original proposals submitted on May 20, 1997, and the Proposal Supplements submitted on May 27, 1997, the Chief Civil Engineer has determined that the

lowest responsible, responsive bid was submitted by Taylor Ball L.C. - Des Moines and has further prepared the attached tabulations of DBEs and Subcontractors over \$25,000.00. Tabulation of the Taylor Ball L.C. - Des Moines bid shows DBE participation of 11.28 percent, which exceeds the 11 percent DBE goal established by the FTA. The Chief Civil Engineer recommends that the City Council designate Taylor Ball L.C. - Des Moines as the lowest responsible, responsive bidder.

#### Selection Of Add-Alternates

After further review of the low bid and add-alternates submitted by Taylor Ball L.C. - Des Moines and the project financing, Staff is recommending the following Intermodal Transportation Facility improvement:

Bid Price Amount	Description
Base Bid:	
	Construction of a 1,577-car, six-level Parking Garage, Bus Transfer Facility, and Day Care Center, Complete as Specified
	\$14,600,000.00
Add-Alternate No. 1	
	Construct Additional Parking Level (264 spaces) North Stair, and modify Structural, Mechanical and Electrical, Complete as Specified
ADD	\$ 734,000.00
Add-Alternate No. 3	
	Add Grating and Chainlink Screens to the Structure Facade, Complete as Specified
ADD	\$ 183,000.00
TOTAL BASE BID PLUS SELECTED ADD-ALTERNATES	
	\$15,517,000.00

The bid documents, Special Provision Bidding Requirements, established the preferential order (Add-Alternate 2, then Add-Alternate 1, and then Add-Alternate 3) in which Add-Alternates were to be added or deleted from the Project, and that the selection of alternates would not deviate from that order "unless project funds do not allow inclusion of an Add-Alternate of lower priority."

Staff is recommending that the construction of Add-Alternate No. 2, day care interior finish, should be delayed until it is determined that construction of that item is eligible for funding from the FTA grant, or that it could be funded from alternate sources. Staff is further recommending that Taylor Ball L.C. - Des Moines submit a letter of intent to honor its bid price as long as possible, on Add-Alternate No. 2: Finish the Interior of the Day Care Center, Complete as Specified for the additional cost of \$315,000, pending further staff study of the day care center and its funding.

Pending City Council authorization on June 2, 1997, the Chief Civil Engineer will secure execution by Taylor Ball L.C. - Des Moines and its surety of the contract documents in the form

heretofore approved by this Council in the amount of \$15,517,000 as discussed above, subject to concurrence by The Metro and FTA, and to thereafter present said contract documents to the Council for approval and authorization to the Mayor to sign.

D. Approving MidAmerican Energy Company Agreement for Overhead Primary Relocation required by the Intermodal Transportation Facility

During the design phase of the Intermodal Transportation Facility, discussions were held with the City, MTA, and the architect regarding the overhead primary electrical lines on Crocker Street adjacent to the proposed facility. It was determined that these overhead electrical lines on wooden poles should be removed and placed underground to be compatible with the remainder of the project. MidAmerican Energy Company has submitted a proposal for reconstructing the overhead lines as an underground facility for a cost of \$39,426. Staff recommends approval of this proposal.

E. Approving Mid American Energy Company Agreement to provide underground electric service for the Intermodal Transportation Facility

The proposed Intermodal Transportation Facility requires a new 277/480 volt electrical service. MidAmerican Energy Company has submitted a proposal to provide the necessary underground electrical service to this facility at no cost to the City. Staff recommends approval of this proposal.

F. Approving Supplemental Agreement with Herbert Lewis Kruse Blunck for Bid and Construction-Phase Services

On April 28, 1997, by Roll Call No. 97-1549, the City Council approved a 28E Intergovernmental Agreement with the Des Moines Metropolitan Transit Authority (MTA) concerning construction and operation of the Intermodal Transportation Facility. Section 3, Project Responsibilities, Paragraph C, of that 28E Agreement provides that at the time of the execution of the 28E Agreement, the MTA shall assign all its rights, duties, privileges, and obligations arising under active contracts to the City.

The only active contract the MTA had at the time the 28E Agreement was executed was a Professional Services Agreement, including Supplements No. 1 and No. 2, with the firm of Herbert Lewis Kruse Blunck Architecture (HLKB), and under the terms of the 28E Agreement, this contract has been assigned to the City.

HLKB has submitted Supplemental Agreement No. 3 to provide for additional bid phase and construction-phase services in conjunction with the Intermodal Transportation Facility for compensation not to exceed \$284,821.00. Staff recommends approval of this supplemental agreement.

G. Hearing on Loan Agreement with Polk County, to borrow funds, payable from net revenues of the Municipal Parking System Enterprise

The Polk County Board of Supervisors has authorized a loan to the City of up to \$8,200,000 for the local match share of the Intermodal Transportation Facility. The loan will be repaid from the net revenues of the Municipal Parking System Enterprise, including, if necessary, injections of TIF or other sources. The public hearing is needed for the City to enter into a Loan Agreement with the County.

H. Resolution to approve and enter into Loan Agreement with Polk County, at designated loan amount of \$5,565,000

Due to the recommended use of \$2,600,000 TIF for the local match (as described above in the Fiscal Impact section), the City need borrow only \$5,565,000 from the County for the remainder of the local match. The County has committed to sell taxable General Obligation Bonds on June 24, 1997 to fund its loan to the City. Bond closing is scheduled for mid-July.