

★ Roll Call Number

Agenda Item Number

62

Date April 25, 2011

RECEIVE AND FILE REPORT FROM CITY MANAGER REGARDING CONTRACTOR QUALIFICATION QUESTIONNAIRE PRESENTED AT THE APRIL 11, 2011, CITY COUNCIL MEETING

WHEREAS, on April 11, 2011, by Roll Call 11-0617, City Council referred a Contractor Qualification Questionnaire to the City Manager for review; and

WHEREAS, City Staff has reviewed the questionnaire and provided a report on the questionnaire.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DES MOINES, IOWA; to receive and file report from the City Manager on the Contractor Qualification Questionnaire.

(Council Communication No. 11-239 attached)

Moved by _____ to receive and file.

FORM APPROVED: Kathleen Vanderpool Deputy City Attorney

EB

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

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.

MOTION CARRIED APPROVED

Mayor

City Clerk

Preliminary Report on Contractor Qualification Questionnaire

April 25, 2011

Current Bidding Procedure Summary

The City of Des Moines does not currently have a prescriptive bidder qualification program. The City of Des Moines does have Council-approved bidding and contracting policies that do include qualification criteria such as the following:

- Compliance with the Iowa Code bidding requirements in Chapter 26, which requires all bidders to furnish bid security in the form of a bid bond or certified check on all competitive bids.
- Compliance with Iowa Code Section 573.2, which requires City to obtain a performance and payment bond from the contractor when the contract is awarded.
- Adoption of the Statewide Urban Design and Specifications Program (SUDAS) Standard Specifications, which are the City's Standard Specifications and require a Certificate of Insurance from the contractor as proof of coverage for commercial general liability insurance and workers compensation insurance before the contract is awarded.
- City is utilizing the services of bonding and insurance companies to in effect qualify bidders for the City of Des Moines, by requiring a bond and insurance. The bonding company is financially responsible for the project if the bidder fails to perform. This concept has worked well in the past, as there have been few projects in the past where a bonding company has had to take-over and complete a project. In all cases, the bonding company has stepped in and completed the work.
- Verification by the Engineering Department that the contractor is licensed to do business in Iowa with the Secretary of State also that the contractor is registered with the Iowa Workforce Development, Division of Labor, which requires that all individual contractors and businesses performing "construction" work within Iowa must be registered if they earn at least \$2,000 a year.

Contractor Qualification Questionnaire

On April 11, 2011, under Roll Call 11-0617, the City Council discussed Taxpayer Quality Assurance and referred a Contractor Qualification Questionnaire to the City Manager for review and comment. This report provides the City Council historic background information. In summary, the City Council adopted a policy requiring qualification of contractors and subcontractors on public improvement projects in December 2000. The City was sued over the policy and the City chose not to adopt any implementing procedures or qualification program. The lawsuit did not resolve the question of whether the City can legally have a qualification policy.

The Contractor Qualification Questionnaire referred by the City Council on April 11, 2011 to the City Manager for review and comment is similar to the questionnaire that the City Council used in 2000 to developed its Qualification Questionnaire. The 2011 questionnaire also includes some of the questions included in The American Institute of Architects (AIA) current Contractor's Qualification Statement form (AIA Document 305, 1986 Edition). However, the 2011 questionnaire does include some questions similar to the 2000 questions that were eliminated from a 2006 proposal (see History) in order to create a more legally defensible and administratively supportable program.

Potential benefits to a qualification program

There has been and continues to be concern by some people and organizations that governmental entities utilizing Iowa's competitive bidding laws to determine the low bidder may not be selecting the best qualified bidder. The concept of bidder qualification is to be able to restrict the pool of bidders on construction work to those companies that have the highest skilled workers, best equipment, and best organization. In theory, these organizations will:

- Build higher quality projects with fewer defects.
- Reduce change orders due to better management.
- Perform the work with few safety concerns due to better training programs.

Potential drawbacks to a qualification program

Potential drawbacks include:

- The process may discourage some qualified for bidding, resulting in a smaller pool of bidders and ultimately higher costs.
- The process may eventually result in qualification standards not directly related to construction.
- Implementation of the program may result in higher City Administrative costs.
- The program may discourage smaller firms from participating in the bidding process, and may also discourage disadvantaged business enterprises and targeted small businesses.
- If the program conflicted with Iowa Department of Transportation (IDOT) or a federal agency's bidding procedures, the program could not apply or it may limit the City's ability to bid certain work.
- Potential lawsuits depending on the nature of the qualification program.

Comparison to other programs

The IDOT has a prequalification program that has been in place for many years. The IDOT prequalification process addresses primarily bidder's financial standing, equipment, and experience in the execution of the work or similar work. The authority for the IDOT program is specifically set forth in Section 314.1(1) of the Iowa Code. The American Institute of Architects (AIA) has had a Contractor's Qualification Statement form since at least 1986. The AIA form only provides a standard format for collecting relevant information and does not provide any guidance, requirements, or implementing procedures for the owner. The Contractor Qualification Questionnaire provided on April 11, 2011 is substantially different than either the IDOT or AIA forms or programs.

Background - History

On December 18, 2000, under Roll Call 00-4701, the Des Moines City Council adopted a policy requiring qualification of contractors and subcontractors on public improvement projects. The City Council also developed a Contractor Qualification Questionnaire that included detailed questions to elicit information from the contractor or subcontractor regarding:

- Organization,
- Licensing,
- Experience,
- Compliance with Laws,

- References,
- Safety,
- Claims and Litigation, and
- Staffing

The City Council’s proposed 2000 policy would have:

- Required all persons, firms, and/or corporations proposing to bid on any City of Des Moines public improvement construction project in which the total bid for construction exceeded \$100,000, to submit a qualification statement.
- Required subcontractors on a public improvement contract exceeding \$100,000, the dollar value of whose work on the project was in excess of 20% of the contractor’s bid price on the project, or \$25,000, whichever is greater, to also submit a qualification statement.
- Exempted heavy and highway construction companies that are qualified/prequalified by the Iowa Department of Transportation from the City’s Qualification requirements.
- Created a Bidder Qualification Advisory Committee to assist in qualification issues.

A lawsuit was filed by three contracting associations to have the policy declared unlawful. Motions for summary judgment were filed by both the plaintiffs and by the City of Des Moines. The Court denied both motions for summary judgment, stating it could not rule until the implementing regulations were also in front of the Court to review. After this ruling by the Court, it appeared evident that even a trial would not be dispositive of the issues for the City, without adoption of implementing regulations. It was decided that the trial should take place following adoption of implementing regulations.

In May 2001, the Engineering Department and Legal Department developed a draft “Administrative Regulation Implementing Bidder Qualification Policy” as the rules, regulations, and criteria for implementation of the Council’s policy. These Administrative Regulations were not adopted by the City Council.

In May 2006, the City Council made inquiries regarding the issue of contractor qualification. At that time, Staff reviewed the 2000 program and recommended some modifications to the program and implementing regulations in order to create a more legally defensible and administratively supportable program. The proposed 2006 program and its regulations were forwarded to the City Council; however, were not adopted.