

DATE February 23, 2015

ACCEPTING AND APPROVING THE CITY ENGINEER'S RECOMMENDATION WITH REGARD TO THE DISQUALIFICATION OF JENCO CONTRUCTION, INC. FROM BIDDING ON FUTURE PUBLIC IMPROVEMENT CONSTRUCTION OR REPAIR CONTRACTS AS A CONTRACTOR AND FROM PARTICIPATING IN SUCH AS A SUBCONTRACTOR FOR A PERIOD OF THREE YEARS

WHEREAS, the Interim City Engineer, by letter dated December 19, 2014, notified Jenco Construction, Inc., Herluf, H.S. Jensen, President, 6804 NW 2nd Street, Des Moines, Iowa, 50313, that the Interim City Engineer would recommend disqualification of Jenco Construction, Inc. from bidding on future public improvement construction or repair projects as a contractor or from participating in such as a subcontractor for a period of three years, all as provided by Sections 94-198 and 94-199 of the Municipal Code of the City of Des Moines; and

WHEREAS, in response to the December 19, 2014 notification letter, Jenco Construction, Inc, made a timely request for a hearing pursuant to Section 94-199(b) of the Municipal Code; and

WHEREAS, in compliance with Section 94-199 of the Municipal Code, the hearing was scheduled and held on January 8, 2015 at 10:00 a.m. in the City Council chambers where Jenco Construction, Inc. presented evidence and information as to why it should not be disqualified; and

WHEREAS, on February 5, 2015 the City Engineer made a written Report and Recommendation to the Des Moines City Council, as attached, that Jenco Construction, Inc. be disqualified from participating in the construction of public improvements under public improvement contracts with the City of Des Moines for a period of three years; and

WHEREAS, the City Engineer's Report and Recommendation was mailed to all parties participating in the hearing pursuant to the Section 94-199 of the Municipal Code; and

WHEREAS, that Report and Recommendation documents that the City Engineer considered the evidence and argument at the January 8, 2015 hearing, the performance of Jenco Construction, Inc. on the Grand Avenue Bridge over Walnut Creek project including numerous incidents and actions by Jenco meeting the standards for disqualification set for in Section 94-198(1) and (2) of the Municipal Code and found that Jenco Construction, Inc. has continually failed to remove and replace work found by the City Engineer not to be in reasonably close conformity with the contract documents and continually and, in the judgment of the City Engineer, without good cause therefore failed to carry on the work in an acceptable manner; and

WHEREAS, pursuant to Section 94-199 of the City Code, the City Council may accept or reject the recommendation of the City Engineer.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA

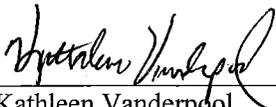
1. That the Report and Recommendation of the City Engineer, which Report and Recommendation is attached hereto and made a part hereof, be and it hereby is accepted, approved and adopted as the finding and determination of the City Council.

DATE February 23, 2015

2. That it be and it is hereby found and determined that Jenco Construction, Inc. has :
- Continually failed or refused to remove and replace materials or work found by the City Engineer not to be in reasonably close conformity with the contract documents or to correct such material or work so as to cause such materials or finished product to be reasonable acceptable work;
 - Continually and, in the judgment of the City Engineer, without good cause therefore failed to carry on the work in an acceptable manner or refused to comply with a written order of the engineer within a reasonable time.
3. That Jenco Construction, Inc. be and is hereby disqualified from bidding on future public improvement construction or repair contracts and from participating in such as a subcontractor for the City of Des Moines as provided in Sections 94-198 and 94-199 of the Municipal Code for a period of three years from and after the date of this resolution; provided however, this disqualification shall not affect the contracts previously approved by this Council.

Moved by _____ to adopt.

FORM APPROVED


 Kathleen Vanderpool
 Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

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

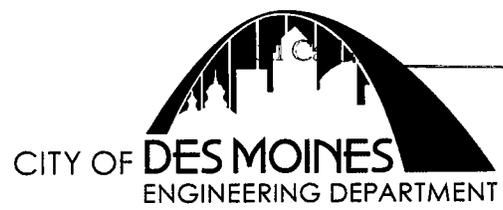
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

 City Clerk

Date Feb 23, 2015

Agenda Item III



February 5, 2015

CITY OF DES MOINES, IOWA
Before the City Engineer

Regarding

Jenco Construction, Inc.

Disqualification from bidding on future public improvement construction or repair contracts as a contractor and from participating in such as a subcontractor

REPORT AND RECOMMENDATION OF THE CITY ENGINEER
TO THE DES MOINES CITY COUNCIL

I. Background

Pursuant to the procedures outlined in Section 94-199 of the Municipal Code of the City of Des Moines, Iowa, Jenco Construction, Inc. (Jenco) was notified by letter dated December 19, 2014, that the Interim City Engineer would recommend disqualification of Jenco from bidding on future public improvement construction or repair contracts as a contractor and from participating in such as a subcontractor for a period of three years, based upon Jenco's performance on the Grand Avenue Bridge over Walnut Creek, Project No. BRM-1945(738)—8N-77, City Activity ID 12-2008-001. The Interim City Engineer's determination to disqualify was based upon numerous incidents and actions by Jenco meeting the standards for disqualification set out in Section 94-198(1) and (2).

Jenco made a timely request for a hearing pursuant to Section 94-199(b) in response to the December 19, 2014 notification of recommendation of disqualification. In compliance with Section 94-199, the hearing was scheduled and held on January 8, 2015. The purpose of the hearing was to allow Jenco the opportunity to present evidence or argument as to why Jenco should not be disqualified and Jenco did present such evidence and argument. The City responded to Jenco's evidence and argument in support of the Interim City Engineer's determination of disqualification. The Interim City Engineer's December 19, 2014 letter, including all that is referenced in the letter, was part of the record at the hearing designated as Exhibit 1. Jenco presented a substantial amount of written information at the hearing, designated as Exhibit 2.

The standard for disqualification of Jenco by the Interim City Engineer's recommendation is set forth in Section 94-198:

Sec. 94-198. Disqualification of bidders.

Upon the recommendation of the city engineer, the city council may disqualify a contractor or subcontractor from bidding on future public improvement construction or repair contracts or from participating in such as a subcontractor for a period of up to three years. A contractor or subcontractor may be disqualified upon a determination by the city council that the contractor or subcontractor has:

- (1) Continually failed or refused to remove and replace materials or work found by the city engineer not to be in reasonably close conformity with the contract documents or to correct such material or work so as to cause such materials or finished product to be reasonable acceptable work;*
- (2) Continually and, in the judgment of the city engineer, without good cause therefore failed to carry on the work in an acceptable manner or refused to comply with a written order of the engineer within a reasonable time.*

II. Hearing Before City Engineer

The December 19, 2014 letter to Jenco, pages 1 through 85 and all that is referenced in the letter, was noted as Exhibit 1. Jenco was asked to present any information pertaining to the hearing. Jenco's information was presented by attorney Thomas Olson, Olson Construction Law P.C.

Mr. Olson presented a PowerPoint presentation and provided a binder that included a copy of the presentation, summary of Jenco's position, Legal Memorandum, Calendar, Damages, contract and change order, borings, correspondence and 38 exhibits (Exhibit 2).

The Interim City Engineer's December 19, 2014 notification of recommendation of disqualification identified the following key issues supporting the determination of disqualification:

- Temporary Shoring Design
- Sheeting and Steel Pile Drive for West Abutment
- Second Improper Placement of Sheeting
- Working In Violation of Stop Work Order
- Improper Cutting of 6rl diaphragm hoop bar
- Illicit Discharge (slurry discharge)
- Schedule and Prosecution of Work
- Failure of Jenco to Mitigate the Problems in a Timely Manner

EVIDENCE AND ARGUMENTS PRESENTED BY JENCO

The issues related to Illicit Discharge (slurry discharge), Improper Cutting of 6rl diaphragm hoop bar, and Temporary Shoring Design (providing such design after beginning work) were admitted and

characterized as mistakes. No evidence was presented to dispute the Second Improper Placement of Sheeting and Working in Violation of a Stop Work Order although Jenco argued that such assertions were “simply false” and that both determinations were an “allegation without merit”.

Jenco’s argument focused on providing reasons why they were not able to successfully perform the work. Jenco’s presentation focused on three primary points, including:

1. Sheeting and piling cannot be driven through boulders and concrete (obstructions). Jenco argued that work was not possible due to the presence of boulders and concrete. Several references were cited and included in Exhibit 2.
2. No borings were taken where work was to occur. Jenco further argued that had borings been located under the abutment in accordance with Iowa DOT and SUDAS references cited and included as part of the Exhibit 2, the presence of concrete and boulders would have been known during the design.
3. Jenco provided immediate written notice of concrete and boulders. Jenco argued that the immediate written notice consisted of two e-mails, dated May 13, 2013 and June 30, 2013. The May 13, 2013 e-mail notes broken concrete and rebar. The June 30, 2013 e-mail notes boulders below the streambed.

Mr. Olson responded to issues related to Schedule and Prosecution of Work with arguments including: heavy rains resulting in above normal water levels, misinterpretation of working day contract with interim completion dates, work acceleration, and additional work.

CITY OF DES MOINES RESPONSE

Following Jenco’s presentation, the City representative, attorney Marty Kenworthy, responded to the information presented by Jenco. Mr. Kenworthy referenced Exhibit 1 and advised that the City does not have the burden of proof. Mr. Kenworthy responded to the points raised with:

1. On more than one occasion, Jenco “raised the flag” after work was underway. There is a process in the contract to address differing site conditions. That process was followed by Jenco for falsework concerns and the City responded per that process.
2. Jenco placed piling at improper locations and batter and attempted to deflect responsibility to the City. The City incurred time and money to help remedy the situation rather than directing Jenco to remove and re-work. City inspection does not waive Jenco’s performance.
3. All potential bidders had the boring information, including location, in the bid documents. If borings were not done as Jenco felt were required, they had opportunity to raise this matter before they bid. There were no questions during the bid period raising the issue.

JENCO’S RESPONSE

Jenco responded by asking for any documentation that disputed Jenco’s position. Jenco further responded that they “raised the flag” on May 13, 2013 and on June 30, 2013. Mr. Olson stated that

City did not respond until after the sheeting was in place. Mr. Olson further provided that contractors do not have the obligation to back check design to see if properly done and referenced the Spearin Doctrine.

CITY OF DES MOINES RESPONSE

Mr. Kenworthy responded that it was not the City's responsibility to dispute what Jenco has provided. It is disputed or there would not be a hearing. Exhibit 1 is ample evidence and information disputing most if not everything presented by Jenco. The City stated this is not a Spearin Doctrine case; it has nothing to do with design error. The City argued that the issues raised by Jenco are all subsurface conditions.

III. Findings

As noted by Mr. Olson on Jenco's behalf, construction is a complex industry and mistakes happen. However, as presented at the hearing and in Exhibits 1 and 2, there does seem to be a noted difference between Jenco and the City of Des Moines as to what is reasonable, what is required, and what is acceptable.

Jenco emphasized:

1. Sheeting and piling cannot be driven through boulders and concrete (obstructions)
2. No borings were taken where work was to occur
3. Jenco provided immediate written notice of concrete and boulders

In response to each of those items, in respective order, I find the following after reviewing the evidence and arguments at the hearing (including Exhibits 1 and 2):

1. Jenco placed sheeting and temporary shoring as part of the west abutment construction. In accordance with the contract, Jenco is required to notify the City in writing before the site is disturbed and before the affected work is performed if differing site conditions are encountered. Jenco placed a significant number of piles in the wrong location and at the wrong batter without notifying the City of differing site conditions affecting the progress of work per the contract. Even after the issue of piling location was raised by the City inspector (July 9, 2013) and project manager (July 10, 2013), Jenco did not provide survey or other methods to ensure the piles were located in accordance with the plans. Jenco placed an additional 59 piles after being advised to survey the piles. Jenco twice placed sheeting that conflicted with the construction of the footing relative to concrete dimensions and placement of the piles.
2. The bid documents included the boring location and logs. If Jenco or other bidders were not satisfied with the provided information, a question should have been raised during the bid process. The borings taken on this project were located adjacent to the existing structure and nearby the proposed structure. Jenco referenced the Iowa DOT and SUDAS Design Manuals.

The actual reference is Appendix A to the Iowa DOT Design Manual titled "Consultant Geotechnical (Soils Design) Work Requirements" that was issued on January 15, 2014, after the project was open to traffic. The Iowa DOT Design Manual provides design guidance to designers to assist with projects involving the Primary highway and Interstate systems. The referenced document is used as a scope of work when Iowa DOT hires consultants. Jenco argues that the reference document requires that all bridges shall have soil borings/soundings taken at each abutment. However, the referenced document also provides: "Engineering judgment should be applied by a licensed and experienced geotechnical professional to adapt the exploration program to the projects as a whole, to the foundation types and depths needed, and to the variability in the subsurface conditions observed." The SUDAS Design Manual includes that one boring should be performed for piers and abutments. The SUDAS Design Manual also provides that it "is not a textbook, but rather a document that provides design guidance through references to appropriate national standards and regulations in Iowa." Taking a boring near the existing structure is consistent with standard practice and not inconsistent with borings and information provided on other bridge projects. Design manuals are guidance documents. Both the Iowa DOT and SUDAS manuals referenced by Jenco include language to this affect. Design documents are prepared by licensed professionals who must take into account actual conditions and use engineering judgment.

3. Jenco argued that immediate written notice was provided on two occasions: May 13, 2013 and June 30, 2013. Jenco's argument seems to be an after the fact attempt to use their e-mails to satisfy the specification requirements of written notice before the site is disturbed and before the affected work is performed. The May 13, 2013 e-mail does not describe the concrete debris as unexpected and does not mention any impact to planned work. The June 30, 2013 e-mail mentions difficulty sealing off the area for excavation with sheeting that was already in place and noted anticipated problems with driving falsework piles. The City responded with Change Order 6 for \$175,000 to compensate the contractor to change from the planned timber pile falsework.

Jenco relied heavily on providing an argument for differing site conditions. However, the two emails (i.e. May 13, 2013 and June 30, 2013) that were repeatedly referenced by Jenco during the hearing did not satisfy the requirements of the Iowa DOT Specification Section 1109.16.A to give the City notice of a potential impact on the contracted work before the site is disturbed and before the affected work is performed. Iowa DOT Specification Section 1109.16.A.3 further provides that "no contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice." The May 13, 2013 e-mail from Jenco included:

"On a related item, we have encountered what appears to be broken concrete and rebar from the 1959 Bridge widening. This rubble is buried quite deep, running parallel with the bridge on both sides. When you can, please take a look at this and let us know your thoughts."

Jenco's e-mail does not raise the issue of differing site conditions or note work being affected. This does not conform to the written notification required in accordance with Iowa DOT Specification, Section 1109.16.A. No mention of how this concrete/rebar may affect work (sheeting, pile, or falsework) that was planned. No mention of this being materially different or unusual. The contractor did not tie the issue to a specification or otherwise make this "encounter" one that affected the work to be performed.

June 30, 2013 e-mail from Jenco included:

"During excavation Jenco has encountered a large amount of boulders below the stream bed. This is causing numerous problems with the sheeting. Jenco is unable to seal off the area for excavation..."

"...Jenco needs to drive 190 falsework piles in the streambed. The boulders encountered will cause immense problems. Please advise how to remedy these unforeseen conditions."

Jenco's e-mail does not mention piling as an issue. Jenco notes "numerous problems with the sheeting" and says they are unable to seal off the area for excavation. Sheeting was placed prior to June 30, 2013. Jenco did raise an issue related to falsework piles in the June 30, 2013 e-mail. City responded with Change Order 6 for \$175,000 to compensate the contractor for costs associated with falsework that did not include timber piling to address the issue raised.

Jenco's July 16, 2013 e-mail appears to be the first correspondence that specifically cites Differing Site Conditions and Iowa DOT Spec 1109.16.A. Jenco's July 24, 2013 letter ties the conditions encountered to anticipated difficulty with installing timber piling as originally planned and designed. The e-mail and letter are both after the west abutment piling had been placed by Jenco, coincident and after City issued Non-Compliance Notice to Jenco, and after City had surveyed the piling and while City's consultant was developing corrective action to maintain the integrity of the footing design.

- A. The following actions by Jenco satisfy the standard for disqualification as set forth in Section 94-198(1).
1. Jenco *continually failed to remove and replace work found by the city engineer not to be in reasonably close conformity with the contract documents* with regard to placement of the west abutment piles.

On July 9, 2013, the project inspector noted concerns on relative placement of piles and sheeting. On July 10, 2013, the project manager advised Jenco of the concern and need to survey the piles. Jenco did not provide survey or other information to confirm pile location. Rather than address the concern, Jenco continued to drive an additional 59 piles without regard to plan location.

The City surveyed the pile locations and confirmed that the piles were not placed in accordance with plans. On July 16, 2013, the City issued a Non-Compliance Notice for the defective work that noted piling not placed in accordance with design drawings and designated batter piling not at specified batter. The Non-Compliance Notice from Mr. Cole dated July 16, 2013 and the survey attached to it, clearly show the placement of the piling in locations in excess of four feet from the designed location of the piling. The survey clearly shows that the pilings were incorrectly located and placed by Jenco. Due to Jenco's failure to remove and replace the piling per design, the City provided a re-design that allowed a portion of the defective work to remain in place.

2. *Jenco continually failed to remove and replace work found by the city engineer not to be in reasonably close conformity with the contract documents with regard to placement of sheeting.*

In addition to the incorrect piling location, Jenco's sheeting was placed within the limits of the concrete footing. The sheeting was placed by Jenco as part of their excavation work and did not have specified locations established in the plans. However, in the location established by Jenco, the sheeting was in direct conflict with the dimensions and location of the specified concrete footing. Following the re-design that allowed a portion of Jenco's defective work to remain in place, the corrective sheeting was placed such that all the corrective piling could not be properly placed.

Jenco described the allegation that sheeting was placed improperly twice as "an allegation without merit." However, Exhibit 1 provides evidence that Jenco had twice placed sheeting improperly. The survey provided by the City as an attachment to the July 16, 2013 Non-Compliance Notice clearly shows the sheeting located within the limits of the designed concrete footing. Concerning the second occurrence where sheeting placed such that corrective piling could not be properly placed, City correspondence dated August 16, 2013 documented the August 15, 2013 meeting between City Engineer Jeb Brewer, Herluf Jensen and others recorded that Herluf Jensen "acknowledged this issue and promised you would take corrective action, once again."

- B. The following actions by Jenco satisfy the standard for disqualification as set forth in Section 94-198(2).
 1. *Jenco continually and, in the judgment of the city engineer, without good cause therefore failed to carry on the work in an acceptable manner as demonstrated by the following related to construction of the west abutment:*
 - a. Placed temporary shoring prior to submittal of the required temporary shoring plan (design calculations, material, layout, details) noted on plan sheets C.02 and V.29 and prior to City review/comment of required submittal and receiving notice to

proceed from the City. Jenco is responsible for working in compliance with project requirements. The project requirements were provided on plan sheets C.02 and V.29. Jenco was reminded of the requirement prior to the work and after the work began. Jenco proceeded with the work without receiving notice to proceed. This is far beyond a mere “clerical error”, this is basic contract administration and working outside bounds of the contract, which is unacceptable.

- b. Placed sheeting within the limits of the footing. The sheeting placed as part of the Class 21 Excavation work is entirely controlled by the contractor. However, placing the sheeting in such a way to prevent construction of the footing in accordance with the plans is not acceptable. Placing sheeting in conflict with the specified footing is not acceptable and not in conformance with Iowa DOT Specification Section 2405, that requires a clear space of at least 18 inches between all sides between the footing and the cofferdam. Further, not appropriately locating or surveying work in a manner to allow construction in accordance with the plans is not acceptable.
- c. Worked within the area of west abutment in violation of a stop work order. In response to Jenco’s notification of finding potential archeological items, the City issued a stop work order dated August 12, 2013 that included, “Until such time as we are able to provide further direction on how to proceed, no further work is to occur with respect to the west abutment construction.” On August 15, 2013, after receiving archeological clearance, work was authorized to resume. Jenco argued that during this time they “cut and prepared all key sheeting, which was not in the area of the archeological find.” However, the City inspector found Jenco driving sheeting at the west abutment on August 14, 2013. This clear violation of the direction that “no further work is to occur with respect to the west abutment construction” is not acceptable.
- d. Placed piles in a manner that did not comply with the project plans and specifications, including location, layout and batter. Piling is part of the design and its placement with respect to both location and batter is critical. In accordance with Iowa DOT Specification Section 2501.03, L, Jenco is required to “... use care to locate (points of piles) as shown in the contract documents or as directed by the Engineer. Limit the deviation from such designated locations to 3 inches or less at the time driving is begun, except as may be made necessary by the presence of unavoidable obstructions.” Jenco was advised on July 9, July 10, and July 11, 2013 of an issue regarding the piling location and continued to drive piles. As provided in the City’s July 16, 2013 Non-Compliance Notice and repeated in the City’s July 31, 2013 Correction of Defective Work letter, “The work as currently exists, is defective work and cannot be accepted.” The placement and continued placement was not in conformance with the plans and specifications and is not acceptable.

- e. Did not perform survey or other work to properly place or confirm pile locations. Piling is part of the design and its placement with respect to both location and batter is critical. As noted above, the specifications include tolerances for the placement of piles. As provided in the City survey (attached to July 16, 2013 letter), piling was not placed in accordance with the plans and some piles were as much as four feet away from their correct location. After being advised of an issue with pile location and directed to survey, Jenco offered an alternative method of establishing the location, but then continued driving piles rather than resolve the issue. Not appropriately locating or surveying work to ensure placement in accordance with the plans and specifications is not acceptable.

- f. Cut diaphragm reinforcing steel without consulting the City. The City inspector witnessed and reported that Jenco cut the 6r1 diaphragm hoop bar. Cutting the bar was not required by the plans and Jenco cut the bar without consulting the City. Jenco did not advise that there was an issue and did not provide the City an opportunity to resolve the issue prior to cutting the bar. Jenco argued that cutting the bar was a mistake and “out of necessity.” This argument is inconsistent and illogical, it cannot be both a mistake and done “out of necessity.” However, when Jenco discovered that they were not able to construct the project as designed or that the bars would not fit, Jenco had an obligation to give the City written notification in accordance with Iowa DOT Specification 1105.02 B “...any appreciable deviation from the plans made necessary to expedite construction, or because of error, shall be called to the attention of the other party, in writing, by the party discovering such conditions.” Jenco’s failure to report this deviation and attempt to construct the project in such a way that was not in compliance with the contract documents is not acceptable.

- g. Discharged concrete slurry into Walnut Creek. Concrete slurry from the grooving operation was discharged along Walnut Creek. Concrete slurry then washed into Walnut Creek. Jenco confirmed that this occurred and argued that this “was a *minor* mistake.” In addition to being an Illicit Discharge as defined by Section 42-453 of the Municipal Code of the City of Des Moines, the discharge is not allowable by the State of Iowa or Federal requirements applicable to the construction of this project, including the Clean Water Act. The potential consequences for such a discharge go beyond the administrative penalty for a first violation of a City ordinance.

Each of the above actions indicates a failure to carry on the work in an acceptable manner. Collectively, the actions demonstrate a *continual* failure to carry on the work in an acceptable manner.

2. Jenco *continually and, in the judgment of the city engineer, without good cause therefore failed to carry on the work in an acceptable manner* by not complying with the contract documents

and further not responding to the reminders from the City to provide the required temporary shoring submittal and allowing City review/comment prior to placement of temporary shoring.

As argued by Jenco, sheeting was placed under two different specifications. The first type of sheeting was Jenco's choice as part of Class 21 excavation. The second type of sheeting was paid for as Temporary Shoring and noted on plan sheets C.02 and V.29. Temporary Shoring was required as necessary to prevent the earth under the adjacent flood protection (west abutment) and signs (east side of Walnut Creek) from sloughing in during construction. Providing a temporary shoring plan for review (30 days) and receiving notice to proceed from the City is a part of the contract. Jenco continually failed to carry on the work in an acceptable manner when they did not submit the required temporary shoring plan noted on plan sheets C.02 and V.29 and when Jenco proceeded with the temporary shoring without receiving notice to proceed. The contractor is required to comply with the contract documents. Jenco proceeded to place temporary shoring without providing the required plan, without any review/approval by the City and without receiving notice to proceed. Jenco continually failed to carry on the work in an acceptable manner after being requested **five times** to provide the required temporary shoring plan.

In response to the allegation of not submitting the temporary shoring plan, Jenco described their mistake as a clerical error that was remedied as soon as they were informed. The City reminded Jenco to submit the required temporary shoring plan beginning two months prior to closure and four other occasions - January 28, 2013, March 11, 2013, June 10, 2013, June 14, 2013, and July 22, 2013. Not only were the required documents provided after the work was completed, there was no acknowledgement or response from the contractor on the status or intent to provide the required submittal. When the contractor submitted the required temporary shoring plan, all temporary shoring had been placed, negating the ability for the City to review or approve the submittal. According to City records, Jenco placed temporary shoring as early as June 10, 2013 and did not provide the required temporary shoring plan until July 23, 2013.

Jenco's evidence and argument on the dates of work and when they supplied the plan was conflicting. Mr. Cole's June 10, 2013 e-mail notes sheeting being placed to protect the flood tower gate footings. The City's June 10, 2013 inspection report includes: "driving sheeting up against floodgate tower sheeting to protect the bottom of that sheeting from scouring action." However, Jenco's Exhibit 2 Position Summary indicates that the work did not begin until June 27, 2013.

As provided in Exhibit 2 PowerPoint and as argued by Jenco at the hearing, the design for temporary shoring was complete prior to work beginning. The date of the certification by a licensed professional engineer is June 27, 2013. This is after temporary shoring had been placed.

The required temporary shoring plan was submitted to the City on July 23, 2013 (Exhibit 1). Jenco provided conflicting information regarding when the required temporary shoring plan was provided: "day it began work" (i.e. June 27, 2013) in Exhibit 2 Position Summary versus July 23, 2013 as presented at hearing and included in Exhibit 2 PowerPoint.

The evidence indicates that the temporary shoring plan, as provided in Exhibit 1, was received by the City on July 23, 2013 after the work was completed by Jenco, which is unacceptable.

3. Jenco *continually and, in the judgment of the city engineer, without good cause therefore failed to carry on the work in an acceptable manner* by failing to complete the work within the contract time.

The original contract time in the project bid documents included 180 working days and two intermediate completion dates, being: Site 1 (minimum of 3 traffic lanes open) by November 5, 2012 and Site 2 (all 5 traffic lanes open) by December 31, 2012. These terms were modified by Change Order No. 1, dated May 21, 2012 due to utility delays. The revised terms provided the same 180 working days and modified the two intermediate completion dates to be September 9, 2013 for Site 1 and November 4, 2013 for Site 2.

On February 25, 2013 and before the existing bridge was closed for demolition, Jenco provided a schedule that showed deck pour occurring September 26, 2013 through October 3, 2013. These dates are well after the intermediate complete date of September 9, 2013 when the roadway was to be open to three lanes of traffic.

Unexpected delays related to asbestos and material testing resulted in Change Order No. 5, dated June 10, 2013, which revised the intermediate completion dates to September 27, 2013 for Site 1 and November 22, 2013 for Site 2. Jenco signed change order No. 5 on May 29, 2013. The City requested an updated project schedule from Jenco on June 5, 2013. After a reminder on June 14, 2013, Jenco provided the updated schedule (as of June 18, 2013) on June 20, 2013 with a letter disputing the intermediate completion dates provided in Change Order No. 5. The City responded by letter dated June 26, 2013, pointing out that Jenco's schedule would not meet the intermediate completion dates and advising that progress of work shall be at a rate sufficient to complete the contract as specified. Jenco argued and provided a letter dated July 8, 2013. A Written Order of the City Engineer dated July 9, 2013 was issued to address construction schedule, rate of progress and contract completion requirements. The Order provided, "In accordance with Iowa DOT Specification, 1108.02, I: the contractor is ordered to take the steps necessary to complete the contract within the period of time specified."

The schedule provided by Jenco dated August 22, 2013, did not satisfy the contract intermediate completion dates for Sites 1 and 2. Change Order 7 further extended the intermediate completion dates six calendar days due to the archaeological investigation, from September 27, 2013 to October 3, 2013 for Site 1 and from November 22, 2013 to November 28, 2013 for Site 2.

The roadway was open to three lanes of traffic (Site 1) late afternoon on December 12, 2013; this is 70 days beyond the October 3, 2013 intermediate completion date. All five lanes of traffic were open mid-afternoon on December 16, 2013 with a temporary rock trail open beneath the bridge; this is 18 days beyond the November 28, 2013 intermediate completion date.

The contract time provided 180 working days; in total Jenco was charged 195.5 working days; this is 15.5 working days beyond the 180 allowed by the contract. It is clear that Jenco did not complete the contract within the period of time specified in the contract and as modified by Change Orders 1, 5 and 7.

4. *Jenco continually and, in the judgment of the city engineer, without good cause therefore failed to carry on the work in an acceptable manner by not mitigating problems in a timely manner.*

Jenco failed to provide the temporary shoring design to the City for review prior to beginning work and failed to provide a survey after being advised of concerns that the west abutment pilings were not placed in the location specified. Jenco failed to address the piling not placed in the location specified in the plans in a timely manner when it was raised by the City inspector on July 9, 2013, by the City project manager on July 10, 2013 and July 11, 2013. After being advised of an issue with pile location and directed to survey, Jenco offered an alternative method of establishing the location, but then continued driving piles rather than resolve the issue. As provided in the July 16, 2013 Non-Compliance Notice, the City surveyed the pile locations and provided a drawing to Jenco showing that driven piles were not placed in accordance with the design drawings, designated batter piling was not at specified batter and that sheet piling had been placed in conflict with the specified concrete footing dimensions. Jenco was also told, "The work as currently exists, is defective work, and cannot be accepted." The City's consultant was asked to recommend corrective action to maintain the integrity of the footing design. On July 23, 2013, Jenco informed the City that they were unable to remove a pile. With this information, the City's consultant, at additional cost to the City, developed an alternative that required Jenco to cut off the front two rows of piles below the bottom of footing. Information on an alternate solution for consideration was provided to Jenco on July 31, 2013. On August 1, 2013, Jenco was able to successfully remove a pile. The City then asked their consultant to further evaluate the design with Jenco now removing the front two rows of piling. The defective work and failure to mitigate problems in a timely manner delayed the project,

caused the City to incur additional design effort and cost associated with consultant fees, and staff time to administer and inspect the project.

IV. Recommendation

Based upon a review of the evidence and argument at the December 8, 2014 hearing, the City Engineer hereby continues to find that a determination of disqualification is supported. The City Engineer hereby recommends to the City Council that Jenco be disqualified pursuant to Section 94-198 and 199 of the City Code for a period of three years due to Jenco's work and actions taken that satisfy the criteria set forth in Section 94-198 (1) and (2) of the City Code.

NOTICE

Pursuant to Section 94-198 and 94-199 of the Des Moines City Code, this Recommendation shall be forwarded to the City Council for consideration on the Council's Agenda at the City Council's February 23, 2015 meeting. This meeting shall commence at 4:30 p.m. and shall be held in City Council Chambers of City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

Sincerely,



Pamela S. Cooksey, P.E.
City Engineer
City of Des Moines, Iowa

Copies Sent VIA: Certified Mail, return receipt requested, regular mail and email

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