

FINANCE COMMITTEE MEETING
JUNE 3, 2008

Finance Committee Chair Mr. Knuchel opened the Finance Committee Meeting at 6:30 p.m. In attendance from the Committee were Mr. Knuchel, Mr. Lajeunesse and Mr. D'Ambrosio. In attendance from Council were Ms. Vaughn, Mr. Zontini, Mr. Morley and Council President Mr. Elshaw.

In attendance from the Administration were Mayor Andrzejewski, Finance Director Condron, Law Director Mr. Klammer, Service Director Mr. Semik and City Engineer Mr. Gwydir.

Also in attendance were members of the public in the audience.

ADVERTISE: 2008 CITY AUCTION

Mr. Morley: I have one question – Item #150 “Canine Vehicle Cage for Crown Victoria.”

Mr. Semik: That cage was in the older Crown Victoria – the Police Department tried to refurbish it but when they tried to install the cage it would not work.

There were no further questions or comments.

The Committee agreed to move forward for passage at the next regular Council meeting.

BID AWARD: 2008 CONCRETE ROAD PROGRAM

Mr. Knuchel: There are a couple of issues with this particular piece of legislation – a monetary amount of \$350,000 was included in the bid specs, which was incorrect – the number should have been \$335,000. It is in the contract and bid specs. The concrete road program was bid out with the lowest bidder being \$228,760. My recommendation is that we go with the \$228,760 and then allow with change orders the amount to go up to the \$335,000 limit we put into the budget.

Mr. Lajeunesse: I am in agreement with Mr. Knuchel.

Ms. Vaughn: What is the budget amount Mr. Condron?

Mr. Condron: \$335,000.

Ms. Vaughn: Where did the \$350,000 come from?

Mr. Gwydir: It was our understanding the City wanted to perform up to the budgeted amount of \$335,000. We set the specification up to essentially award that amount, but to also provide some quantities against which to determine the bid price.

Mr. Klammer: Did you use the specification with the presumption of what the unit prices would have been to approximate what was budgeted?

Mr. Gwydir: Correct, and if it came in lower it would give us the room to automatically go out and add areas up to the budgeted amount. We would essentially award the \$335,000 and do more streets at the unit price bid until we got to the \$335,000. But, instead we made a mistake and put in \$350,000.

Ms. Vaughn: It is in the letter.

Mr. Gwydir: Actually, it is included in the bid.

Mayor Andrzejewski: We will only spend \$335,000.

Mr. Knuchel: I do not have a difficult time with that – we all know the conditions of the roads in the City – they are probably one of the biggest sore spots for our residents – I do not think there will be a hard time approving anything above that amount. If we award the contract at \$228,760 it is the cleanest way to do it – if we would go with draft two – according to our Clerk – we would have to do a change order immediately to change the number from \$350,000 to \$335,000. This Draft Legislation No. 1 one seems to be the cleanest way to do it and that is my recommendation.

Mr. Klammer: I think the reasoning makes sense – that the budgeted amount does not have any meaningful affect on the awarding of a competitive bid. The question is – the bid specs were clear enough that the bidders knew what they were bidding on and you identified streets that they were bidding on with estimated quantities per street?

Mr. Gwydir: They were identified by quantities.

Mr. Klammer: Did you attach to them what street they are going to be?

Mr. Gwydir: We attached the street listing – there were a couple of clauses in the contract – the one stated that we increased quantities 15% or more – the contractor can theoretically ask for a change in the unit price bid. My thought on the matter – if you award more than 15% less than what you said you were going to award in the contract book that clause may kick in and may give the contractor the ability to change his unit prices. We anticipated \$335,000 and figured somewhere around \$300,000 as what it would actually come in at. We never guessed the bid would be this low which is well over 15%. I was worried if we award less than 15% of what we said we would award that could possibly trigger that clause.

Mr. Klammer: You mean if we do 15% less streets then he will come in because his per unit price has gone up?

Mr. Gwydir: Right, he would say he was anticipating doing \$350,000 worth of work and now I am only doing \$228,000 – that is much more than 15% less than what was said the awarded

amount would be. My question for Mr. Klammer is – I do not know that the City is held to award that \$350,000 even though it speaks to it or is it compelled to not award the lower value.

Mayor Andrzejewski: We advertised for bid – the bid \$228,000 – they will get \$228,000 worth of work – not \$350,000.

Mr. Klammer: My inclination would be to make the contract clear and award the \$228,000 – if there was some concern that was not helping us accomplish the program - I will analyze it further but if \$228,000 is going to get the job done why not award the \$228,000 and be done with it.

Mayor Andrzejewski: And, add the rest by change orders.

Mr. Morley: That was not his question. His question is if the \$228,000 falls 15% under can T.C. Construction adjust – maybe not to get it to \$335,000 but can they adjust their unit price now?

Mayor Andrzejewski: Once they sign a contract they have to abide by that contract.

Mr. Morley: But, that paragraph is in the bid specs.

Mr. Klammer: Mr. Semik, have we in the past added streets up to a budgeted amount?

Mr. Semik: No. But, this is the first time bids have come in so low that we had the additional money – in years past if an additional street or two that is what they would be charged with.

Mr. Klammer: So, it should be pretty clear – we sent out the bids – the bids over-estimated what we had as our budgeted amount of \$350,000 but they knew the quantities they were bidding on and the average person knew the streets and specification and they could come out and look and the lowest bidder was the \$228,000 and the provision provides that the bidder understands that we can award up to \$350,000 but that is our election. As long as the bidder understood what he was doing?

Mr. Gwydir: I would like Mr. Klammer to review three clauses on the sheet provided.

Mayor Andrzejewski: Mr. Gwydir, if we sign a contract with T.C. Construction – at that point they would have had to let us know that they are going to exercise this clause – correct?

Mr. Gwydir: No.

Mayor Andrzejewski: After they sign the contract?

Mr. Gwydir: Yes.

Mayor Andrzejewski: Then why don't we talk to T.C. Construction and see what he is going to do?

Mr. Klammer: It does not matter – I don't think it is an issue – that provision references those projects that are identified as contingencies and we do not have any labeled contingencies in our bid.

Mr. Gwydir: It is the portion that addresses the items in particular – there are no contingencies however there are items. The point I wanted to make was – we understood the intent was to award the amount budgeted – and then do work up to that amount. If the bid price came in over we only had to do the budgeted amount. If the bid price came in under you could do the work at the unit price bid. My concern is if you go 15% below that amount – if it gives the contractor the opportunity to change the unit price. I do not think he will. Can he – it is my understanding that may be possible – I just want to alert you to that possibility.

Mayor Andrzejewski: How do we get an answer from the contractor to say – I have no desire to increase my price – I will take on the extra work. At what point do we figure that out?

Mr. Klammer: We would be putting the cart before the horse – we went out to bid – you would theoretically have to rebid if you are changing that because someone may have bid differently.

Mayor Andrzejewski: We are not changing it but when will we know if the contractor is going to exercise that option – at what point in this process?

Mr. Klammer: When we decide to change the work – as the project were to move on you would have these changes.

Mayor Andrzejewski: Then after we do the \$228,000 in work and we want to do more – then we ask the contractor and see what he says? And, if he increases his price 15% we say – no thank you.

Mr. Klammer: That is a fair analysis – you are going to know what you will get into before you do it. I am not concerned with what Council budgeted – the \$350,000 versus the \$335,000 because you will have control over that. He is awarded the \$228,000 and we have the ability to monitor it going forward. Mr. Semik, are you comfortable with that – you can watch it? And, \$228,000 should be enough to get what we need done anyway.

Mayor Andrzejewski: We are just looking for extra.

Mr. Klammer: I am okay with it.

Mr. Zontini: Was that clause part of the bid package?

Mr. Gwydir: Yes.

Mr. Elshaw: One more time for clarification – the \$228,000 is solid – we do not have to worry about a change in unit price on that? Anything above and beyond the \$228,000?

Mr. Gwydir: I will ask Mr. Klammer this – my concern is that awarding the \$228,000 may – with the way the contract is written – allow that change in the unit price to happen. Because, as I read the contract – we are indicating that we are going to give him \$350,000 worth of work and if we award \$228,000 you are automatically below that 15%.

Mr. Klammer: Do you have the portion of the part that has the definitions in it? My concern is the quantities of work – he knew what quantities he was bidding on – he knew what streets and an estimate of square yardage – those are the quantities in my mind. He bid on it based on the quantity of work and a unit price. What he is saying is if the quantities come down then I need to be able to adjust my unit pricing. Your concern is the 15% difference between the \$228,000 and the \$350,000 – my answer is no – it is a question of quantity and per unit pricing. If it is just the 15% we can make a very fair argument – 15% is tied inherently to the per unit pricing.

Mr. Gwydir: In every regular contract that we bid that is exactly the case – in this case it was the intent to bid the amount – not quantity – we specifically said that the quantities were to get a number and we would have expected it to go up to the \$350,000.

Mr. Klammer: I am okay with it.

Mr. Morley: I understand what Mr. Gwydir and Mr. Klammer are saying – if everyone goes in looking like they will get \$350,000 I could bid \$150,000 to get the job but I want \$350,000. If he bid \$228,000 he should expect to get up to \$228,000 and if we want to increase by a few streets in each Ward to get to the \$335,000 or \$350,000 then that is our prerogative but I don't see how he should get more than what he bid.

Mr. Klammer: The \$228,000 will get all the streets done – the only difference will be if we decide to do additional streets.

Mr. Morley: So, if we decide to spend the other \$100,000 he can say instead of \$90 per unit it is \$100 per unit.

Mayor Andrzejewski: And then we will tell him thanks but no thanks.

Mr. Elshaw: So, we do believe the \$228,000 is solid – we are not concerned with this 15% clause?

Mr. Klammer: No. Is there a reason we can't just award it for \$228,000?

Mr. Knuchel: That is what we want to know.

Mr. D'Ambrosio: So, are we going to award it for \$228,000 and possibly go up to the \$335,000?

Mr. Condon: We will do the legislation with the \$228,000.

Mr. Knuchel: We will award the \$228,000 and if they want to do other roads they can do it through a change order approved by Council – or they have to go out for bid again for additional streets.

Mr. Klammer: I suggest we go out for bid for another project – the current bid amount will take care of the streets for 2008.

Upon review, the Committee agreed to move forward with Draft Legislation No. 1.

Mayor Andrzejewski: We want to repair as many streets as we can – we have bid specs right now – why not go ahead and use the same bid specs and go out for another bid of \$100,000. Help us move this thing along so we can get a bid out in time for the contractor to do the work by the end of the year. How can we get a new bid out there quickly?

Mr. Semik: Mr. Klammer, originally you indicated you were fine with a change order – we awarded \$228,000 and the addition of any streets would be done by a change order not to exceed \$335,000.

Mr. Morley: With the current bidder.

Mr. Semik: Yes. From past actions, once T.C. Construction sets the price he is good to go with that – I do not see him changing – I am not speaking on his behalf or anyone else – but, I think instead of rushing and putting the horse before the cart.

Mr. Klammer: The answer to the question is – is \$228,000 the most conservative and most defensible position – the \$350,000 or \$335,000 because that number is irrelevant – the larger number is simply not as defensible but it is certainly within your discretion and I do not think there is anything illegal or inappropriate about it – to do it by way of change order – that is the answer but the most conservative and correct way to do it is \$228,000.

Mr. Knuchel: That is exactly what I said at the beginning of the discussion.

Mr. D’Ambrosio: We should award the \$228,000 and add change orders until we reach \$335,000.

Mr. Knuchel: Correct.

Mr. Klammer: The problem is I cannot tell you which one of these I want to go with – I understand what you want to do.

Mr. Zontini: That is the first time I have seen us award a contract and mention the budget amount – we just award the contract for “x” amount of dollars.

Mr. Klammer: Do Draft Legislation No. 1.

Mr. Knuchel: The Clerk is advised, per the advice of our attorney Mr. Klammer, we will go with Draft No. 1.

There were no further questions or comments.

RECOGNITION OF THE PUBLIC

There was no one who wished to speak.

The meeting was adjourned at approximately 6:55 p.m.

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