January 16, 2020

West Des Moines City Council Proceedings
Thursday, January 16, 2020

Mayor Steven K. Gaer opened the special meeting of the City Council of West Des Moines, Iowa, in the Community Room of the West Des Moines Public Library on Thursday, January 16, 2020 at 7:30 a.m. Council members present were: G. Hudson, M. McKinney, and K. Trevillyan. Council member R. Trimble participated via telephone.

On Item 2. Agenda. It was moved by Trevillyan, second by Hudson to approve the agenda as presented.

Vote 20-017: Hudson, McKinney, Trevillyan, Trimble…4 yes
Motion carried.

On Item 3(a) MidAmerican Energy RecPlex - Ice Refrigeration, initiated by the City of West Des Moines (Continued from January 6, 2020)

Mayor Gaer stated this phase of the MidAmerican Energy RecPlex project includes the two ice rinks, which would be considered the most critical piece. He stressed the importance of the City making the right decision on this, or it would adversely impact the entire project.

Council member Trimble stated if the City would accept a bid that did not comply with the bid requirements, it could be problematic from a legal standpoint, as the City's decision could be challenged by the bidder that was in compliance. If the issue has to go through the court system, that could significantly delay the timeline of the project. Therefore, he believes the City has no choice but to reject the non-responsive bid from Minnesota Ice and award the contract to Rink-Tec.

Council member Trevillyan stated he believes the supplemental information received from staff since the last council meeting provided sufficient support that the bid from Minnesota Ice should be deemed non-responsive and rejected.

It was moved by Trevillyan, second by Trimble to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Rink-Tec International, Inc.

Jack McDevitt, representing Minnesota Ice, 13540 Flagstaff Avenue, Apple Valley, Minnesota, stated he disagrees with the recommendation of City staff and the architect that the Minnesota Ice bid should be deemed non-responsive. He presented a packet of information to the Mayor and Council, which included a letter responding to the City's objections to the Minnesota Ice bid. He noted there is no way that any ice rink contractor can self-perform all the work as required in Addendum #2 of the bid documents, as ice rink contractors typically subcontract for concrete pours and connecting the chiller to electrical power. He also reiterated his position that Minnesota Ice does meet the bid requirement that the contractor has completed ten permanent floors in the last

two years, ten chiller installations in the last two years, and ten floor/chiller packages in the last two years. He suggested that, due to a number of discrepancies and ambiguity in the bid specifications, the City should consider re-bidding the project.

Mayor Gaer noted the bid from Rink-Tec is compliant with the bid requirements, therefore he doesn't believe there should be any reason to be re-bid the project.

Council member Trevillyan requested clarification on the Addendum 2 bid requirement that the contractor self-perform all the work.

Tom Bahls, Ice Rink Consultant, explained that Addendum #2 stated the bidder must self-perform the work for the refrigerated floors and refrigeration system, but they are not required to self-perform the concrete pour or connection to electrical power. He noted Addendum #2 also includes a requirement that the ice refrigeration package be assembled on-site, and Minnesota Ice has indicated their assembly process would not comply with that requirement. He responded to a question from the council, stating he had reviewed the bid submitted by Minnesota Ice, and his opinion is that it did not meet the requirements as they were written in the bid specifications.

Scott Brennan, Legal Counsel for the City of West Des Moines, responded to a question from the Council, stating that since Mr. Bahls, who has the expertise on this subject, has reviewed the bid submitted by Minnesota Ice and considers it to be non-compliant with the bid requirements, then under the terms of the bid specifications, the bid should be deemed non-responsive.

City Attorney Richard Scieszinski responded to a question from the Council, stating that nothing presented today by Mr. McDevitt has changed his opinion that the bid submitted by Minnesota Ice should be deemed non-responsive.

Mr. Bahls responded to the same question, stating that nothing presented today by Mr. McDevitt has changed his opinion that the bid submitted by Minnesota Ice should be deemed non-responsive.

The Mayor and Council held further discussion and, based upon the information contained in the Council communication and received at the meeting, reached a consensus in support of the staff recommendation to reject the bid from Minnesota Ice as non-responsive and award the contract to Rink-Tec.

Mr. McDevitt expressed concerns that the number of comparable projects required to qualify for this project was unreasonably high. He also reiterated that City staff have interpreted the licensing requirement in the bid specifications that the bidder must have the license in place at the time the bid is submitted, but he noted there is no such requirement in Iowa Code. He also expressed concerns that the bid specifications state liquidated damages shall begin if the project is not completed before July 15, 2020, but there is no assurance that the City would grant the notice to proceed to the contractor within a reasonable timeframe before that date. He stated these concerns,

which he considers to be flaws with the bid specifications, may have deterred other contractors from bidding on this project.

Council member McKinney acknowledged the requirements may have been stringent, but City staff and the consultants with expertise on this have determined these are the requirements that should be met for the high standard needed to complete this critical component of the MidAmerican Energy RecPlex project. He noted the City must apply the requirements equally to all bidders.

Vote 20-018: Hudson, McKinney, Trevillyan, Trimble…4 yes
Motion carried.

On Item 4. The Special Meeting Notice was Received and Filed.

The meeting was adjourned at 8:13 a.m.

Respectfully submitted,

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Ryan T. Jacobson, CMC
City Clerk

ATTEST:

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Steven K. Gaer, Mayor