

From: Jacob Patterson
To: [Miller, Tabatha](#)
Cc: [Smith, John](#)
Subject: Public Comment -- 5/14/18 Item No. 7B, Wastewater Plant Upgrade Construction Contract
Date: Friday, May 11, 2018 1:16:49 PM

Tabatha,

I reviewed the agenda packet for Item No. 7B and have a couple of questions and comments that staff might want to cover during the meeting on Monday.

I attended the Public Works Committee meeting this week where Council-member Cimolino and Vice Mayor Lee discussed concerns about how the City contracts for public works projects. The discussion was informative and it brought up various points about holding contractors to the terms of the contract (the City doesn't always do this), keeping costs within the original contracted amount, and recovery of damages should the contractor or a subcontractor breach their agreements with the City. In light of those discussion points, I would like the City to carefully consider this draft contract, paying particular attention to the provisions that relate to these concerns to make sure the City is learning from past problems.

This contract format doesn't seem to follow one of the City's four standard contracts, why is that? For example, I don't see anything about the contract change order process. Are those provisions located in the standard conditions, etc., in the Project Manual? Where can one review the Project Manual, which is listed as a Contract Document? If possible, it might be helpful to add that to the agenda item materials currently posted on Legistar.

The draft contract describes something called Unit Price Work, which isn't covered by the fixed bid amount. What falls into this category? If nothing does, that surplusage should probably be deleted from the contract to avoid any confusion that this is a fixed price contract (other than appropriate and approved change orders).

[If there is no Unit Price Work, then the next potential issue is not applicable to this project. I can't tell because the agenda packet doesn't include the original RFP or the Contract Documents that are incorporated by reference.]

Provisions 4.03, Liquidated Damages; and 4.04, Special Damages, concern what would happen if the contractor fails to meet the substantial completion deadline. These contract provisions only provide for remedies for failure to achieve substantial completion of the total construction project, not significant project milestones prior to 520 days into the project. It is entirely feasible that an earlier project milestone or contractor-requested change order could have a material effect on the overall project cost and completion and the City might not want to assume the financial risk for the contractor's failure to keep the project on time and on budget.

Think of the water tank project where the City chose to increase the overall project costs even though the sub-contractor failed to deliver the particular contracted water tank. An actual or anticipatory breach by a sub-contractor wouldn't fall under the terms of these provisions even if it had a material effect on the project but happens prior to the 520 day evaluation point and the City consents to a resulting change order that increases the overall contract costs.

Finally, the potential consequential damages from a breach under one contract often relate to other separate contracts for services provided as part of the overall capital works project rather than direct cost increases under the contract. Although this question doesn't relate to this contract, did the complementary engineering and project management contracts include similar provisions that

should they breach their agreement (e.g., failure to adhere to the project timeline concerning materials testing or monitoring) that they would make the City whole in the form of Special Damages for the consequential increased construction costs (i.e., increased costs under this proposed contract due to necessary change orders)?

Thanks,

--Jacob