

BOARD OF PUBLIC WORKS

Date of Meeting: September 10, 2020, at 11:00 a.m. in the Council Chambers

Members Present: Lindman, Groat, Jacobson

Also Present: Wesolowski, Steve Opatik – Becher Hoppe, *By WebEx:* Allen Howe – Donohue & Associates, Susan Wojtkiewicz – Donohue & Associates, Jack Kilgore - Miron

In compliance with Chapter 19, Wisconsin Statutes, notice of this meeting was posted and received by the *Wausau Daily Herald* in the proper manner.

Drinking Water Treatment Facility: Miron Construction, Pay Estimate #1

Lindman stated that this morning Becher Hoppe forwarded a list of values and line items for work done. However, the totals do not match what was provided earlier this week and it is still missing documentation to complete the pay request.

Jacobson thanked Opatik for forwarding the copies of the bookmarked general and supplementary conditions for review of the contract. Article 15 talks about payments to the contractor. She questioned if this is for unit price work, cost of work, or both and Opatik replied both. Jacobson read conditions from the contract regarding pay request submittals and required documents.

For the Drinking Water project, Opatik explained there are some materials stored on the site but not to the extent that there are with the Wastewater project. The Drinking Water project had a substantial amount of earth work and mobilization. Jacobson noted if the request for payment is at all based on materials not yet used but stored on the site, the application for payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the owner has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance. There were no lien waivers attached to the Wastewater pay application. Jacobson referenced Article 8 of the supplemental conditions where the owner may at any time require the contractor to furnish lien waivers for labor and materials covered by specified applications for payment. Jacobson is still reluctant if the Drinking Water request for payment is similar to the Wastewater one where there is no recommendation for payment or lien waivers attached. She referenced Article 15.01(c) where the engineer will within 10 days after receipt of application for payment either indicate in writing a recommendation of payment or send it back. Jacobson would like to see a statement from the engineer recommending payment. She is also concerned about lien waivers and proper insurance on materials that have not yet been used. These are huge and expensive projects and the City needs to do due diligence with expecting that all this documentation is provided at the beginning and followed throughout the course of the projects.

Opatik provided a letter dated September 3rd that was included in the original packet. The final paragraph states they do not certify the unit prices listed in this application; however, they are confident the total cost of work completed to date greatly exceeds the amount of payment requested and recommend payment. Opatik respects and understands the comments made on completeness of documentation. It was his understanding that this was to get money to their subs who have had a large amount of expense.

Groat stated the City purchased the builders risk insurance. She would think materials would be covered under that policy but she can verify. Jacobson appreciates the request for payment and need by Miron to pay their subs. However, we need to follow the contract provisions to protect both parties. She wants to make sure the insurance is good and we have lien waivers.

Kilgore explained that lien waivers typically are not started until payment is received from the City. For the first pay application, Miron does not have lien waivers to provide because Miron has not paid any subs yet for work put into place.

Howe indicated insurance is proven with the bonds as part of the signing of the original contract so all the insurance is in order. Many times at the start of a project, 10% of the contractor's costs are typically upfront dealing with their insurance payments. At this point there are over 100 submittals and the contractor has done plenty of work on the site. They could request a set of lien waivers but it would be conditional on being paid. It was discussed at the pre-con that any subsequent pay requests after the first request would require an affidavit or official lien waivers from the subs. It is not uncommon to not have lien waiters with the first pay application. He does not feel this is a contradiction of anything in the front end documents as far as Article 15 is concerned. We are able to physically see material on the site and they do not necessarily look for invoices from the contractor. They do ask for invoices for any equipment stored off site. Normally proof of insurance is not necessary for equipment on site as the builders risk does cover some of that. The contractor's insurance would cover too as they have ownership of the site from the date the contract is signed until it is closed. He feels what has been submitted for the first pay app is typical and not out of the ordinary. Jacobson is not familiar with the engineering side of projects and appreciates being filled in regarding practice and pre-con details.

Based on the representations made and the fact that the lien waivers will come, taking them on their word that insurance covers this and we will receive lien waivers when subs get paid, Jacobson moved to approve the payment on the Drinking Water side. Lindman seconded.

Lindman stated that the pay request and list of values previously submitted does not match with what was submitted today. The previous request was a total of \$1,639,444.60. The itemized list with unit prices shows a request of \$1,656,637.80. Both numbers are before retainage.

Kilgore stated the difference between the two amounts has to do with the unit price for Volumes 1 and 2, activation and backfill. On Miron's end there was a clerical mistake. The unit prices on the original invoice were not correct. The updated spreadsheet sent this morning shows the correct unit prices, which are increased a bit because of bond costs. Lindman stated there is not a signed cover sheet from Miron with the updated amount. Miron staff is working on this.

Jacobson asked if Lindman is comfortable with authorizing an amount for payment without having a formal form. Lindman is comfortable with the work done. He has not run all of the numbers on the sheets sent this morning. Miron will be putting the unit prices into the correct form. If we get a fully signed form showing the proper retainage, Lindman is comfortable if Jacobson is comfortable with documentation stating lien waivers are not needed for the first pay application.

Kilgore said the contract states 5% retainage. 5% of the amount submitted this morning is \$82,831.89 for retainage leaving the amount owed to be \$1,573,805.91.

Lindman stated the Board has been looking at multiple documents on different days when they should be looking at one document. He is concerned with tracking this project. The hang up on whether to approve is because we haven't received all of the documents. He feels like this project is starting out haphazardly and he is not comfortable. Jacobson agreed.

Howe indicated the rush was due to only one pay period in the month of September for the Clean Water Drinking Fund and the Clean Water Loan Fund. The first submittal did not include the schedule of values and he takes responsibility for that as there was an understanding this would be followed up with the second pay app. He received a revised schedule of values; the numbers should be the same as the first version and the retainage should be correct. Howe then described breakdown. Miron will be using a revised accounting software so future schedule of values will be in a different form. Howe requested that the Board not look at both groups as trying to push something through even though it may have that appearance. From the Wastewater standpoint, he wouldn't submit the application if he wasn't comfortable. He appreciates the Board's willingness to look at this more than once and he apologizes if the format has changed. He questioned what should be included in the cover letter. Jacobson was rushing to review the general conditions this morning and didn't see where it indicates lien waivers

will only come with second payments and beyond. The cover letter didn't recommend payment and stated absent from the application are the lien waivers which will come with subsequent applications.

Groat asked if lien waivers are received with a typical street project. A lien waiver is only required at the end of street projects. Howe noted that at the end of the project no final payment would be made until all final lien waivers are received. Groat asked about future affidavits. Howe can forward an example of an all-encompassing affidavit that would come from Miron stating there are no liens contingent upon the contractor receiving payment. Payment bonds would come into effect if we have subs that come to the engineer saying the general is not paying. Howe has yet to have a general go south on their subs for lack of payment.

Discussion followed on approving contingent upon receiving signed documents by the end of the day. Jacobson is hesitant to approve items on numerous contingencies. Lindman stated this puts the onus on Miron as the payment will not be submitted to the DNR if documents are not received.

Jacobson amended her motion to include authorization of payment of \$1,573,805.91, contingent upon the contractor submitting the proper documents to Chair Lindman by the end of the day. Lindman seconded the amended motion. Motion passed.

Wojtkiewicz noted that wage sheets will also need to be received and submitted to the DNR.

Wastewater Treatment Facility Improvement Project: Miron Construction, Pay Estimate #1

Wage sheets are also required for this submittal. Per the contract, there is significance to the engineer recommending payment which was not in the cover letter. Recommendation of payment constitutes representations to the City of various items contained within the contract. She would like to see a recommendation for payment in the cover letter. Jacobson recommends considering changing the contract if lien waivers are not required for the first payment. Lindman added that if the first pay app is approved, we will see lien waivers going forward. Discussion followed.

Jacobson read a portion of the contractor's certification from the pay application, which gives her some measure of comfort. Howe stated subs will let him know if they are not getting paid and there is secondary protection with the payment bond. No one wants a black eye with bonding and no further payments would be issued until resolved.

Lindman moved to approve Pay Estimate #1 in the amount of \$2,236,451.54 contingent upon receipt of a letter of recommendation from the engineer. Jacobson seconded and the motion passed.

Open Request for Proposal for Professional Services regarding Stewart Avenue from 48th Avenue to 72nd Avenue

One additional proposal was submitted on time. The proposal was in Customer Service and not included with the proposals opened on Tuesday. The additional proposal was from AECOM. All proposals will be reviewed and brought back with a recommendation.

Lindman moved to adjourn the meeting. Seconded by Jacobson. Meeting adjourned at approximately 11:50 a.m.