

Date MAR -7 2005

Agenda Item 35

Roll Call # 05-564

**AMENDMENT NO. 1 TO WRA OPERATING CONTRACT**

**BETWEEN**

**THE DES MOINES METROPOLITAN  
WASTEWATER RECLAMATION AUTHORITY (WRA)**

**AND**

**THE CITY OF DES MOINES, IOWA,  
AS OPERATING CONTRACTOR**

**EFFECTIVE MARCH 22, 2005**

**THIS AMENDMENT NO. 1 TO WRA OPERATING CONTRACT** is made and entered into as of the 22nd day of March, 2004, by and between the Des Moines Metropolitan Wastewater Reclamation Authority and the City of Des Moines, Iowa.

**RECITALS**

**WHEREAS**, the City of Des Moines, as Operating Contractor for the Des Moines Metropolitan Wastewater Reclamation Authority (WRA), is authorized, pursuant to Division 9, Section 2.47 of the Initial Operating Contract (WRA Operating Contract), to procure goods and services on behalf of the WRA pursuant to the procedures and policies reflected in the City's Procurement Ordinance (Chapter 2, Article V, Division 3, Subdivision V of the Des Moines City Code); and

**WHEREAS**, Section 2-705 of the Des Moines City Code, entitled "Preference for local goods and services", provides that in the procurement of goods and services by competitive bid, "the procurement administrator shall give preference to a responsive bid from a business located within the corporate limits of the city over an acceptable low bid submitted by a business located outside of the corporate limits, where the local bidder's bid exceeds the acceptable low bid by no more than one percent...", and further provides, with respect to the procurement of goods or services pursuant to request for proposals, that "a local preference equivalent to one percent of all points available to competing proposers under the evaluation criteria adopted for each procurement shall be awarded to each proposer whose business is located within the corporate limits of the city"; and

**WHEREAS**, the application of such a preference to bids or proposals received from businesses located within the corporate limits of the City of Des Moines would not be appropriate in the context of the procurement of goods and services on behalf of the WRA, whose membership is comprised of cities and counties in the Des Moines metropolitan area; and

**WHEREAS**, the parties have further agreed that the Operating Contract should be amended to provide that the local preference provisions of the City of Des Moines Procurement Ordinance will not be applicable to procurements made by the City of Des Moines, as Operating Contractor, on behalf of the WRA, that the WRA Board shall have the discretion to develop its own policy with respect to the giving of a preference for local goods and services, and that the City's procurement administrator be required to apply any such policy adopted by the WRA Board in the selection and recommendation of goods and/or services to be procured by the WRA; and

**WHEREAS**, the parties have agreed that the Operating Contract should be amended to provide that the WRA Director shall have and exercise the same powers as are assigned to the Des Moines City Manager under said City of Des Moines Procurement Ordinance, including but not limited to powers relating to bidder and proposer appeals.

NOW, THEREFORE, the parties do hereby agree that Division 9, Section 2.47 of the Initial Operating Contract be and is hereby amended to provide as follows:

**Division 9 Procurement of Goods and Services; Assumption of Outstanding Contracts and Purchase Orders.**

Section 2.47 Operating Contractor to Procure Goods and Services. The Operating Contractor shall, through the Procurement Division of the City of Des Moines Finance Department, provide procurement services to the WRA for the procurement of all goods and/or services, exclusive of professional engineering services for WRA Improvement Projects, for the operation, maintenance and management of the WRA System. The Operating Contractor shall procure such goods and/or services utilizing the established procurement procedures of the City of Des Moines, as provided in the City's Procurement Ordinance (Chapter 2, Article V, Division 3, Subdivision V of the Des Moines City Code, entitled "Procurement Division"), or in procurement policies adopted pursuant thereto. Consistent with the procurement provisions of the Des Moines City Code, the Parties agree (a) that the Operating Contractor shall have authority to procure goods and/or services having an annual cost of \$25,000 or less without the prior approval of the Board, (b) that all procurements of goods and/or services having an annual cost in excess of \$25,000 shall be subject to approval by the Board, and (c) that as to all such procurements in excess of \$25,000, the Board shall have and exercise the same powers as are assigned to the Des Moines City Council under said Procurement Ordinance, and (d) that the WRA Director shall have and exercise the same powers as are assigned to the City Manager under said Procurement Ordinance with respect to the procurement of goods and services, including but not limited to powers relating to bidder and proposer appeals. Should the above dollar amounts in the procurement provisions of the Des Moines City Code be adjusted, the dollar amounts set forth above shall, upon Board consultation, be adjusted accordingly.

The parties further agree that the provisions the City's Procurement Ordinance relating to the giving of a preference for local goods and services (Section 2-705 of the Des Moines City Code) shall not apply to the procurement of goods and services by the WRA, and that the WRA Board shall have the discretion to develop its own policy with respect to the giving of a preference for local goods and services. The Operating Contractor agrees that its Procurement Administrator shall be required to advise potential bidders and proposers of any such policy adopted by the WRA Board, and to apply such preference in the selection and recommendation of goods and/or services to be procured by the WRA.

CITY OF DES MOINES, IOWA,  
OPERATING CONTRACTOR

By T. M. Franklin Cownie  
T. M. Franklin Cownie Mayor

Attest:

Diane Rauh  
Diane Rauh  
City Clerk

Approved as to Form:

Terrence L. Timmins  
Terrence L. Timmins  
Deputy City Attorney

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

On this 7<sup>th</sup> day of March, 2005 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and Diane Rauh, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in (Ordinance No. \_\_\_ passed) (the Resolution adopted) by the City Council, under Roll Call No. 54 of the City Council on the 7<sup>th</sup> day of March, 2005, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.



Karen Marie Herzberg  
Notary Public in and for the  
State of Iowa

DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY (WRA)

By Tom Hadden  
Tom Hadden, Chair, WRA Board

Attest: Mark Miller  
Mark Miller, Secretary, WRA Board

STATE OF IOWA )  
) ss:  
COUNTY OF POLK )

On this 22<sup>nd</sup> day of MARCH, 2005 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Tom Hadden and Mark Miller, to me personally known, and, who, being by me duly sworn, did say that they are Chairperson and Secretary, respectively of the WRA Board; that the instrument was signed and sealed on behalf of the WRA by authority of its Board, as contained in the Resolution No. 04-05-24, adopted by the WRA Board on the 22<sup>nd</sup> day of March, 2005, and that Tom Hadden and Mark Miller acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

Christopher C. Coco  
Notary Public in and for the  
State of Iowa

4-7-06

