



Leavenworth Excavating & Equipment Co., Inc.

May 9, 2023

Committee Members
Transportation, Infrastructure & Operations Committee
City of Kansas City Missouri
414 E. 12th Street
Kansas City, MO 64106

Re: Ordinance 230315
North Green Hills Road Reconstruction Project

Committee Members,

On May 4, 2023, the City Council directed Ordinance 230315, North Green Hills Road Reconstruction project back to the Transportation, Infrastructure and & Operations Committee. I was disheartened and confused why this ordinance was sent back to the Committee since nothing has changed.

The project was bid on 1/10/23. At the beginning of February, the City staff began the process to award the project to Lexeco according to policy. In late March, we learned the project was going to be awarded to Pyramid Contractors instead of Lexeco. The project went to the Transportation, Infrastructure & Operations Committee on April 26. After receiving legal advice in closed session, the Committee returned to open session and voted unanimously to follow policy and award the project to Lexeco.

At the full City Council meeting on May 4, politics entered back into the game and the ordinance was sent back to committee. I'm sure the hope is to get the award switched to Pyramid Contractors

Policy 3-455 (attached) was established to protect MBE/WBE's during the bidding process. The policy requires certain documents to be submitted within 48 hours of the bid time. There was a lot of thought and hard work put into this ordinance so the pricing provided by MBE/WBE's wouldn't be shopped after the bid time. During most pre-bid conferences, this policy is discussed. Bidders are advised if they don't submit the MBE/WBE form timely, the bid will be found non-responsive. In the past, bidders have been found non-responsive and their bids rejected for not submitting the forms in time. I am unaware of any case where this ordinance has been waived in the past.

The Council's job is to establish policies and ensure that they are being followed. Kansas City Missouri has been a leader in ensuring MBE/WBE's are treated fairly in the contracting process. As was stated in the Committee meeting on April 26 by legal, Pyramid Contractors did not submit the MBE/WBE forms within 48 hours of bid time. Lexeco submitted the required MBE/WBE forms in our bid packet; therefore, they were submitted within the 48-hour time period.

Do not waive the policy that protects MBE/WBE's in the contracting process. I encourage you to follow the policy and return the Ordinance back to the full City Council unchanged for a vote.

Yours Sincerely,

Greg D. Kaaz, President



Sec. 3-455. Procedures for construction contracts.

The following shall apply to construction contracts in which the estimated cost thereof is more than \$300,000.00:

- (1) Bid submissions. Bidders shall submit an affidavit of intended utilization with their bids.
- (2) Forty-eight hour submissions. Bidders on city contracts shall submit the following within 48 hours after bid opening:
 - a. A notarized contractor utilization plan in conformance with section 3-433 hereof; and
 - b. Letters of intent to subcontract; and
 - c. A request for waiver of the contract goals pursuant to subsection 3-437(a) if the bidder failed to meet or exceed the goals.
- (3) Timely submission of the contractor utilization plan is a material element of the submission. The director is authorized to extend the 48 hour deadline for the letters of intent to subcontract but not the deadline for submission of the contractor utilization plan.
- (4) The apparent successful bidder shall submit documentation of good faith efforts made prior to 48 hours after bid opening when requested by the city or the incentive agency.
- (5) A notarized affidavit certifying actual MBE/WBE participation in the contract, including the names of such MBE/WBEs and the participation amount, and a certification that all MBE/WBE subcontractors and other subcontractor have been paid must be submitted by the contractor prior to the city's release of retainage under the contract.
- (6) Any increase in the amount of MBE/WBE participation after submission of the contractor utilization plan shall not count toward meeting the contract goals, unless otherwise permitted under section 3-443 hereof.
- (7) Bid shopping is prohibited.

(Ord. No. 180535 , § 1, 10-25-18)