



Land Use, Transportation & Infrastructure Committee Summary Minutes

Tuesday, February 15, 2011 10:30 AM City & County Building, Room 391

Members Present: Madison, Montero, Robb, Sandoval

Members Absent: Hancock, Johnson

Other Council Present: Brown, Nevitt, Lehmann

Committee Staff: Gretchen Williams

Presentations

1 Update on Denver Union Station and Market Street Station
Diane Barrett, Mayor's Office

In preparation for Committee discussion of a proposed transaction regarding Market Street Station in a few weeks, Ms. Barrett reviewed a few of the key activities regarding the Denver Union Station project, starting in 2004.

- Council approved the master plan for DUS to become the multi-modal transportation hub of the region;
- Council approved the rezoning for the 19.5-acre building site;
- Council approved a third amendment to the intergovernmental agreement among the four partner agencies (Denver, RTD, CDOT and DRCOG), providing for procurement of a master developer;
- Master developer was retained in 2006;
- In 2008, we began putting together the framework for the financing for the entire \$500 million project;
- Council supplemented the master plan in 2008 to reflect the latest design with bus facility under 17th St.;
- In 2008, Council created the Denver Union Station Project Authority (DUSPA); five metropolitan districts; the Downtown Development Authority (DDA); and a special revenue fund for the tax increment revenue from the DDA and pledged to DUSPA for repaying indebtedness and other project-specific items.

The project budget includes \$38 million for items without federal funds - renovation of the historic Union Station building and some parts of the plaza. These funds are the proceeds from:

- RTD's sale of the 5 development parcels around the station; and
- Denver's pending purchase of the Market Street Station.

In late 2008, Council agreed to use \$11.436 million of the Tabor reserve to purchase Market Street Station. We now have a site plan and a purchase and sale agreement to accomplish that, and these items will be presented to Committee in the next few weeks. The City will hold the property until RTD is able to relocate its offices from the Market Street site to DUS, projected to be in 2014. Then, the City can sell the Market Street Station parcel for redevelopment.

2 Division of Small Business Opportunity process for setting contract goals

Tamela Lee, Division of Small Business Opportunity

The Division of Small Business Opportunity (DSBO) in the Office of Economic Development (OED) is charged with implementing the minority and woman owned business enterprise (MWBE) construction goals for city contracts based on the required disparity study of the geographic market area and if so, to what extent, in construction and professional services. The study provides context for establishing goals based on the availability of MWBE contractors in the various categories. In 2006, the goals were set at 22% for construction and 15% for professional services. The 2006 ordinance establishing and governing the program requires the study be updated every 5 years, which is Dec. 2011. A Request for Proposals (RFP) to update the study is currently being completed.

Each City contract including qualified work goes through of 3 Goals Committees that establishes the MWBE goals for the contract. The Goals Committees are: Heavy Highway work; Construction; and Professional Services (i.e., engineering, architectural, hydraulic consultants). Each committee is comprised of 9 members: 3 MBEs; 3 WBEs; and 3 non-MWBEs. They serve for 1, 2 or 3 year terms and are appointed by the Director. Members either volunteer their time or are asked to serve.

Committee members must meet certain criteria:

- MWBE Certified and maintain certification during term;
- Held a City contract in last 5 years;
- Attend 80% of all meetings (Committees meet every other week);
- Fully understand the MWSDBE (minority, woman, small, and disadvantaged business enterprise) Program; and
- Be knowledgeable of the B2G directory, the software program that lists all certified MWSDBEs and all the contracts with goals and compliance.

Councilwoman Montero and Councilman Nevitt had questions and concerns about allowing committee members to have current City contracts, and with the fact that members are allowed to bid on contracts for which they helped set the goals. Ms. Lee responded that they gain bidding advantage as there is no proprietary information disclosed to the goal-setters, only the type and scope of work. All the meetings are open to the public. The situation does not present any conflict of interest.

Councilman Nevitt countered people setting the goal should not be allowed to bid on the contract. Shaun Sullivan, Assistant City Attorney, noted that if committee members are

precluded from bidding, there will not be any one on those committees.

Councilwoman Montero said she does not believe anything unethical is happening, but the arrangement looks a little too cozy. She suggested the committee members should go through the City's ethics training to minimize any chance of conflict of interest.

When the committee is determining a contract goal, there are basically three considerations:

- What the Disparity Study says the goal for this particular work should be.
- How many certified firms for this type of work are listed in the directory? Generally, the more there are, the higher the goal is set.
- What were the goals on similar past projects? Were they met or exceeded?

After the agency establishes the scope of work, the appropriate goals committee reviews the work and recommends a goal. The scope of work and the goal recommendation are published on the website for at least 3, generally 5, days, allowing for public input. Once approved by the director, the agency is notified and the goal goes into the bid solicitation. DSBO reviews all submitted bids to determine if the goal is met, and if not, if a good faith effort was made. This is a pass/fail review, and those passing go back to the agency for the selection process.

The Disparity Study, the rules & regulations, information on certification, the directory, and all proposed contract goals are published at <http://www.denvergov.org/oed/DenverOfficeofEconomicDevelopment/BusinessServices/DoBusinesswiththeCity/tabid/435878/Default.aspx>.

The Disparity Study is funded by OED and DIA. The cost ranges between \$500,000 and over \$1 million, and part of that amount is in the 2011 budget; part will be in 2012. Because the RFP is still receiving public input, Council will be asked to extend the ordinance for six months or year to allow time for the update to be completed.

Councilwoman Robb questioned why the study was not started earlier, since conditions change over the 5 years and the contracting community is probably nervous. Ms. Lee replied that the budget process had to be completed to be sure the funds were available. The plan is to publish the RFP by the end of the month.

Councilwoman Montero asked about the goals in the RFP. Ms. Lee said goals are not required by the ordinance; however, the RFP contains language encouraging outreach to the MWBE community.

Bill Request

BR11-0078 Approves implementation of the Public Works annual infrastructure maintenance program, a total of \$32,850,000 approved in the 2011 budget, and waives the requirement that any contracts above \$500,000 to implement the program be individually approved by Council in order to expedite projects, following all standard contract advertising and competitive awards to the lowest responsive bidder and reporting to Council on all contracts.

David Roberts, Mayor's Office; George Delaney, Public Works

Manager

This item was presented but held at the Committee's Feb. 8 meeting due to requests for more information on the City's Minority, Woman, Small, and Disadvantaged business enterprise program goal setting and on the use of on-call contracts.

David Roberts presented the context for the proposed ordinance to approve the annual Public Works annual maintenance work program. A couple of years ago, Council asked the Mayor to convene a broad-based group to investigate why Council was often asked to approve contracts after the work had begun and how the City could speed up its contracting process. The working group included 2 Council members and Council staff director. At that time, it took about 75 days after the bid was complete for the average contract to go through the process. The working group formed and discussed 12 ideas; only 3 were pursued.

Based on the group's work, the final signature process has already been shortened from 22 to 15 days, which will be further improved when the new electronic document management system is brought on-line in about two weeks. Everyone will be able to track every contract throughout the process hour by hour.

Another idea was to bring Public Works annual maintenance programs to Council for approval at the start of each year. This approximately \$32 million program (curb, gutter and crossspan repair; street maintenance; etc) is actually approved in the budget. The idea is to have Council adopt an ordinance approving the entire program and to waive the \$500,000 threshold for Council approval of individual contracts being let to implement those specific annual programs. This allows work to begin 4 to 6 weeks earlier, putting contractors to work, getting maintenance items started earlier in the construction season, and possibly allowing for additional work at the end of the season.

Mr. Delaney said the intent is for a one-year pilot program. Council can review how it worked and decide if it wants to continue it next January. The Public Works annual maintenance program includes over \$32 million, which was approved in the 2011 budget. In 2010, only nine contracts in the program were over the \$500,000 threshold for Council approval, totaling about \$10 million. The 2011 contracts will not differ much from 2010. The balance of the contracts does not come to Council because they are below the threshold. All contracts are still subject to the MWBE goals. All of the hauling contracts go to the defined Small Business Enterprise contractors.

Public Works will provide a monthly written report to Council on all contracts let, including the contractor name, amount, and MWBE goals and commitments. At least quarterly, at the Committee's direction, a presentation of those reports will be made at a Committee meeting.

Councilwoman Sandoval asked how the success of the pilot will be measured. Mr. Delaney said Public Works will be able to show how many days sooner the contractors are on the streets working in 2011 than in 2010. Usually, all the

contracts are out by mid-May, but under this process, it is anticipated they will all be out by early April, mid-April at the latest.

Councilwoman Montero said that the word "bundling" of contracts was used last week and that term got traction in the community. She asked for assurance that the contracts are not being "bundled" and that every contract will be bid alone.

Mr. Delaney said all contracts will be bid separately; there is no bundling. The entire program will require about 20 contracts, each with individual goals.

Councilman Nevitt said the objective goal is to save time, but the subjective goal is whether Council likes it. He said he likes the efficiencies, and Council would see only a small percentage of the contracts anyway. He will look for a comprehensive report and discussion at Committee later this year.

Councilwoman Johnson asked if the new management system recognizes a secondary contract signatory if the primary is on vacation or out ill. Mr. Roberts said yes, and everyone will be able to see exactly where the problems are.

Councilwoman Sandoval noted that sometimes the contractors hold on to the contract for several days or weeks before signing and returning it.

Councilwoman Robb said she had thought the questions would be about how we prioritize which curbs and gutters and street get done each year. That is what is important to the public, as well as the quality and amount of the work. What we hear from the public will also be a measure of the success. Residents can visit their district Council office to see the map of the annual projects.

A motion offered by Councilmember Sandoval, duly seconded by Councilmember Johnson to file the bill carried by the following vote:

AYES: Nevitt, Johnson, Madison, Montero, Robb, Sandoval(6)

NAYS: (None)

ABSENT: Hancock(1)

ABSTAIN: (None)

Presentation

Discussion on use of on-call contracts

George Delaney, Public Works Manager; Lesley Thomas, Public Works; Chantal Unfug, Parks & Recreation Deputy Manager

Councilwoman Robb asked for this discussion because she hears from the public that the City spends too much on consultants; and she has heard City employees say the City hires consultants to do work the employees could be doing. What policies do we have in place to decide when we use on-call contracts?

Public Works Department provided a "fact sheet" (see attachments) describing the

use of on-call contractors. There are two categories: Professional Services, which include disciplines such as engineering, architecture, geotechnical services, etc. and Construction, which is further divided into General and Integrated (there are very few of these highly specialized contracts for bridge, structural and sewer work). General Construction on-call contracts are capped at \$400,000.

The City has some IGAs, master purchase orders, and other types of relationships that are technically on-calls, like for office supplies.

Mr. Delaney noted that "as needed" might be a better description than "on-call". Timeliness of getting work done is important. The amount of work is inconsistent, and it makes more sense to keep a group of on-call contractors lined up rather than the City hiring and laying off people. Some on-calls are highly specialized, such as bridge engineers, which the City does not need to have on staff.

Public Works uses on-calls when the work load exceeds the capacity of staff. A core group of employees are on staff to perform the core work. When the needs peak, as with the bond projects, more on-calls are utilized in order to complete more work faster. Those decisions are made as needed.

On-call contracts are for longer terms, typically 3 or 5 years, than the standard contracts let for specific jobs. On-call contracts include annual maximum expenditures as well as an overall maximum.

In 2010, Public Works utilized 199 on-call contracts and expended about \$14 million, or roughly 5% of the annual \$250 million budget. Sixty-eight of those were construction contracts. Last year, approximately 5% of the 199 received an increase in capacity and/or contract term. About 70% were utilized to full capacity.

Councilman Nevitt noted that the on-call consultants are competitive among themselves. The City gets bids from a few contractors already under on-call contracts for each piece of work, so we get the competitive advantage without going through the whole advertising and bidding process.

Chantal Unfug and Fred Weiss, Parks & Recreation, said they use on-calls when there is an immediate need for work beyond what the employees can do. Sometimes the department needs something done that the regular staff does not have the expertise to perform. Sometimes emergencies require on-calls. The City compliments rather than competes with the private sector. On-calls are not simply hand picked, as they must go through all the processes that any contractor does in order to be awarded a contract. But we can use them as much or as little as we need them.

Parks & Recreation utilizes some of the same types of contractors – construction, landscaping, etc., but it also needs different types, such as tree trimmers (there are 6 currently on-call) and algae control. Their expertise also supplements the department's core staff.

Currently, P&R has 49 on-calls, about 15% of the total 335, not counting total master purchase agreements. Twenty-nine of those contractors are directly constructing project, not designing or otherwise consulting. Many of both types are

working on bond projects.

Bill Requests

Jim Potter, Public Works, explained that the proposed on-call contractors will perform a wide variety of services as needed. These contractors responded to a Request for Proposals. The amount for each contract is \$500,000 annually for 5 years. MWBE goals were set at 12%, and the commitment varies, but all three met the goal.

Councilman Nevitt asked how these are managed if one is outstanding and we use up the contract capacity. Do we end up paying more to the other two?

Ms. Thomas replied that these are all very competitive firms that can provide us great depth of engineering work. We do track the work, and it is fairly evenly divided because we do such a broad range of activities. If we are nearing the contract capacity or term, we may come back to Council and ask to increase the maximum or the term. It depends on the circumstances.

Councilwoman Robb asked if generally the on-call contracts are staggered terms. Ms. Thomas said yes.

BR11-0088 Approves a Contract Execution with ICON Engineering for a term of 5 years and contract amount not to exceed \$2.5 million for on call professional engineering services to support the various needs of Public Works (OC11006).
Jim Potter, Public Works

BR11-0089 Approves a Contract Execution with Olsson Associates, Inc. for a term of 5 years and contract amount not to exceed \$2.5 million for on call professional engineering services to support the various needs of Public Works (OC11009).
Jim Potter, Public Works

BR11-0090 Approves a Contract Execution with Enginuity Engineering Solutions, LLC for a term of 5 years and contract amount not to exceed \$2.5 million for on call professional engineering services to support the various needs of Public Works (OC11008).

A motion offered by Councilmember Johnson, duly seconded by Councilmember Sandoval to file a bill to carried by the following vote:

AYES: Nevitt, Johnson, Madison, Montero, Robb, Sandoval(6)
NAYS: (None)
ABSENT: Hancock(1)
ABSTAIN: (None)

