



TO: Mayor and Council

FROM: Milton Dohoney Jr., Interim City Administrator

CC: Derek Delacourt, Community Services Area Administrator
John Fournier, Assistant City Administrator
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SUBJECT: March 7, 2022 Council Agenda Responses

DATE: March 3, 2022

AC-1 – Memo in Response to R-21-396 - ARPA Public Engagement Results and Final Recommendation

Question: The memo describes how the Fire Station 4 Net Zero Fire house “can be funded through other infrastructure funds and the city’s capital improvement plan.” What other items in the list of ARPA recommendations could be funded with alternate funds like this? Which items on the list do not have alternate funding sources available? (Councilmember Nelson)

Response: In theory, any of the projects could be funded from other sources; however, that may mean a wait of several years before the necessary funding can be accumulated or the project prioritized. Projects such as the net zero fire house, galvanized pipe replacement project and the Gallup Park Bridge replacement are already planned in our CIP. Given, the expenditure of ARPA funds on these projects would accelerate construction on other parks and water projects, these two projects scored well, and that there is a clear public benefit to completing the galvanize pipe replacement project earlier, these projects were included in the final recommendation.

March 7, 2022 Council Agenda Response Memo– March 3, 2022

Page | 1

City Administrator’s Office

The City intends to apply for Federal infrastructure funding on numerous projects; however, there is a difference between a project being eligible to be submitted for infrastructure funding, and one that might have a higher probability of being funded. In particular the net zero firehouses should be at least competitive when considered for infrastructure money. Solar on City facilities **might** be an eligible submittal for some bucket of infrastructure funding, but it quite arguable how that would stack up under competition.

Question: This memo clarifies that the \$500,000 dedicated to the arts is proposed to be disseminated in art grants for pursuit of an “artistic endeavor that can be displayed or performed in the City of Ann Arbor,” awarding of which could be managed by a local arts organization. If these payments are direct to artists rather than institutions, who at the city is going to be charged with arranging space and location for display and performance? Since these payments are to artists rather than art institutions, non-profits or businesses, is it anticipated that such display and performance must occur without their involvement? (Councilmember Nelson)

Response: Details such as the place and nature of installations, the administration of funds, the nature of partnerships with outside arts organizations, and final program eligibility still need to be planned and finalized. The staff would prefer that City Council signal support for funding for the arts and allocate funds before staff resources are invested in implementing the details of an arts assistance program. However, it is recommended in the memo that the City “ask a local art organization to administer the award process” and the final program design would be guided by input from artists and organizations in the community. While the memo indicates a preference for investing directly in artists, the rules and eligibility for that investment would be subject to conversations with professionals in the creative and arts community in Washtenaw County.

Question: Currently the City's affordable housing on city owned lots project is moving forward with approximately 10 sites. Roughly how many properties would 3.5 million enable the city to bank for the future? (Councilmember Disch)

Response: Although each site is different, it is estimated that \$3.5 million would generate approximately 50-60 units.

Question: Regarding the 1/2 million proposed for arts spending. Does this recommendation restrict that funding to direct a grant to artists? If so, what is the rationale behind that decision? (Councilmember Disch)

Response: The memo discusses providing the funding directly to artists. However, the final program eligibility rules are yet to be finalized, and we would want to do so with some input from the creative and arts community in Washtenaw County.

CA-4 - Resolution to Approve a General Services Agreement with The Davey Tree Expert Company in the amount of \$450,000.00 for Park Tree Care (ITB No. 4697)

Question: Has the City previously contracted with Davey Tree Expert Company for pruning trees in our Parks? If so, have there been any concerns regarding their pruning and care of these trees? I have received questions and concerns regarding the use of this firm, because they are the same firm DTE contracts with to prune trees in the ROW under utility lines. However, I recognize that Davey is contracted and required to prune to a vastly different standard for trees under utilities. (Councilmember Briggs)

Response: Davey Tree Expert Company won the bid three years ago, for the initial Parks Tree Pruning Contract. We have had no concerns with the quality or care of the work they have done in the Parks. Davey also handles the street tree pruning contract for The City of Ann Arbor and the quality of work has been satisfactory, as well. As for pruning under utilities, there are vastly different priorities. Also, the current contractor that handles this in the Ann Arbor area is not Davey Tree Expert Company, but another large tree trimming company. This company works for DTE.

Question: Davey Tree Expert Company was the only firm that bid on this project, but we have a number of locally based tree care services. Has forestry inquired with local companies now or in the past about why they don't respond to these RFPs? (Councilmember Briggs)

Response: The City has not contacted locally based tree care companies, aside from letting them know that we have a bid for tree care. Hesitation from these companies may come from the insurance amount that we require for a large project like this. We also ask for a list of staff and equipment that will be available for our use. Smaller companies may struggle to commit to up to \$450,000.00 worth of tree work with no guarantee that any work will be required.

CA-6 – Resolution Establishing Ann Arbor Industrial Development District 2021-001 – Five Lots including 3874 Research Park Drive

Question: What is the timeline for approval of specific terms/timeline for eventual tax-abatement on these parcels? (Councilmember Nelson)

Response: Based on the Tax Abatement Policy adopted by City Council previously, and Public Act 198 of 1974, here is the anticipated schedule for consideration of a potential Sartorius Tax Abatement Application:

3/7/22:	City Council Considers IDD
3/8/22:	Application for Certificate filed by property owner
3/21/22:	City Council considers action to schedule Public Hearing on 4/4/22.
3/24/22:	Publication of notice of public hearing, and notice to other parties

4/4/22: Public Hearing on Application.
4/4/22, 4/18/22, or 5/2/22: City Council Action on Application for certificate.

CA-9 – Resolution to Approve the Appropriation of \$30,177.39 from the General Fund Unobligated Fund Balance for the Design and Cost Estimating of an East-West Pathway under the East Medical Center Drive Bridge (8 Votes Required)

Question: Has U-M offered to cost share for the design work of the east-west pathway under the East Medical Center Drive Bridge? (Councilmember Briggs)

Response: No. After the design and cost estimate are completed, if it is decided that construction should proceed, staff will approach the University about cost sharing for the construction.

CA-11 – Resolution to Approve an Agreement with Dawn, Inc., d/b/a Dawn Farm, to Provide Drug Abuse Counseling and Rehabilitative Services to Sobriety Court, Veterans Treatment Court, and Mental Health Treatment Court Participants (\$118,890.00)

Question: Could staff briefly spell out the positive contribution of this money toward building more robust diversion and or deflection programs? (Councilmember Disch)

Response: The funds for the services under this agreement are provided to the Court from three different State Court Administrative Office grants. The funds flow through the City, but are not available to the City otherwise. This agreement allows the court to contract to provide services for eligible treatment court participants who require or need the services but are uninsured or unable to pay for the services. The treatment courts are different from diversion and deflection programs as defendants who choose to participate in a treatment court program agree to be sentenced into Mental Health Treatment Court, Sobriety Court or Veterans Treatment Court. These are intensive probation programs whose purpose is to divert defendants who have pled to or been found guilty of non-violent misdemeanor crimes from the traditional punishment-oriented sanctions into treatment and rehabilitative programs. Unlike traditional criminal justice probation, where a defendant is supervised by one probation officer after sentencing by a judge, these programs take a judicially supervised team approach to address each participant's individualized needs for mental health and/or substance abuse services as well as other ancillary services such as education, housing, job skills, etc. The teams in the treatment courts may consist of a judge, prosecuting attorney, defense attorney, probation officer, court coordinator, Veterans Administration Justice liaison (social worker) Eisenhower Center supervisor, Veteran Mentor Coordinator, Community Mental Health case worker, substance use treatment provider, Shelter Association representative, community engagement Ann Arbor police officers, NAMI volunteer, peer recovery coaches and peer support persons, depending on the focus of the particular court. The goal is to assist participants in bettering their lives so that they can take care

of themselves and their families while also benefiting the community by reducing jail time, recidivism rates, and court docket congestion.

Diversion programs allow eligible defendants, who have a criminal court case filed with the court, to enter into an agreement with the prosecuting official pre-plea to address root causes of justice involvement. Participants who successfully complete the agreed upon requirements receive a reduction of charges or a dismissal of criminal charges.

Deflection programs allow eligible defendants, who do not yet have a criminal case filed with the court, to enter into an agreement with the prosecuting official. If participants complete the agreed upon program requirements, the prosecuting official does not file a criminal court case. However, if participants do not complete their requirements, the prosecuting official can choose to go forward with filing a criminal case with the court.

DC-2 – Resolution to Award a Construction Contract to E.T. Mackenzie Company for the Third & Mosley Water Main and Resurfacing Project (\$1,299,999.25) (ITB No. 4702)

Question: Has staff developed the “best Value Matrix” which was discussed leading up to passage of Prop A last year that would score city contracts? Many questioned changes to our City Charter without knowing the specific changes and consequences of those changes. Has the newly developed “value” matrix that scores city contracts been already developed? Was this new matrix ever shared with Council? Was Council given the opportunity to vote on the adoption of the new scoring system? (Councilmember Ramlawi)

Response: The City Council adopted ordinance ORD-21-41 on January 3, 2022 which created a scoring matrix for all construction contracts. That ordinance can be viewed here: <https://a2gov.legistar.com/LegislationDetail.aspx?ID=5360905&GUID=0B0EBFD4-40C0-40B0-8258-10379AD7D4B1&Options=ID|Text|&Search=best+value>. The ordinance contemplates “scoring rubrics” that will be created at the discretion of the City Administrator. These are documents that will be used to record scoring for individual solicitations based on the requirements contained in city code, but they will not alter or amend the scoring criteria or weighting required in the ordinance nor will they alter Council’s direction as expressed in the ordinance. The controlling language for how the evaluation process works for this type of city procurement is in ORD-21-41.

Question: Whom on staff and/or Council were involved with developing this new scoring system/matrix? (Councilmember Ramlawi)

Response: The ordinance went to Council, so all members of the body had a role in developing the new scoring matrix. On staff, members of the City Administrator’s Office, the City Attorney’s Office, Financial Services, and Transportation and Engineering were

involved in developing the matrix, which is based, in large part, on the criteria in the definition of Responsible Bidder in former Code Section 1:312(20)(b)(i) – (iii).

Question: Have there been any contracts which used this new “value” matrix that have come before council for a vote? If so, which contracts thus far? (Councilmember Ramlawi)

Response: No contracts have been awarded using the new scoring matrix as of yet because solicitations that were under way already as of 12/31/21 must be completed under the bidding process that was in effect when they were advertised. There are solicitations underway now that will use it, but they have not reached a stage yet where a recommendation can be made on award of the contract.

Question: What are the reasons for having a formal competitive bidding process to award contracts, i.e., please explain why we have staff evaluate bids and make a recommendation on the contract award rather than allowing Council choose contractors at the table? (Councilmember Nelson)

Response: There are currently no state laws requiring public or competitive bids on municipal projects, and the development and use of purchasing policies and procedures has been left to local governmental entities.

Generally, a competitive bidding process for public projects is used to obtain the best price for a project. Public project procurement also often includes an threshold evaluation of whether a contractor is responsible – which generally looks at whether a contractor has the qualifications, experience and resources (e.g., equipment, employees/labor, or financial) to complete the project for the bid amount.

City staff evaluate bids and recommend contract awards to Council because it is an efficient and appropriate division of labor which allocates high volumes of detailed administrative procurement work to staff and the final decision on awards of public contracts to Council.

Question: How many bids has E.T. MacKenzie submitted to the city in the last five years? How many contracts (and for what amount) has the city awarded to E.T. MacKenzie in the last 5 years? (Councilmember Nelson)

Response: E.T. MacKenzie has submitted 29 bids and has been awarded five contracts valued at \$8,510,843.10 total over the last five years.

Question: How many bids has Bailey Excavating submitted to the city in the last five years? How many contracts (and for what amount) has the city awarded to Bailey Excavating in the last 5 years? (Councilmember Nelson)

Response: Bailey Excavating has submitted 10 bids and has been awarded five contracts valued at \$7,663,584.56 total over the last five years.

Question: Three firms submitted bids under the Engineer's estimate (Mackenzie, Bailey, and Fonson) In brief, please describe how E.T. Mackenzie was selected by staff over the other firms based on the criteria required under the City's previous Lowest Responsible Bidder and City's Responsible Contractor Policy? Please specifically discuss how:

- a. Q. The answer to question #9 regarding percentage of local workforce is utilized using the City's Responsible Contractor Policy? E.T. Mackenzie has .5% (or 1 employee) residing in Ann Arbor and 1.7% or (or 3 employees) who live in Washtenaw County, and no count on subcontractors. Bailey reported 0 employees, but 20% of subcontractors. Fonson reported 0 employees living in City and <10% in County.

Response: Under the former “lowest responsible bidder” framework in which ITB 4702 was issued, the Charter and Code required public improvement projects to be competitively bid and awarded to the lowest responsible bidder. Because the term responsible is not qualified by a comparative adjective (e.g., “most” responsible), it is treated as a binary determination, meaning a bidder is either responsible or it is not. In this framework, the City determines the pool of responsible bidders and awards to the lowest bidder from that pool.

In July 2020 the City implemented its “Responsible Contractor Policy” by amending its definition of “responsible bidder” in former Code Section 1:312(20) to include additional criteria and further define the responsible bidder threshold, but note the determination of whether a bidder was responsible remained a binary determination and did not allow for a comparative or qualitative evaluation of bidders against one another. The City was still required to award construction contracts to the lowest responsible bidder even though it had refined what it meant to be a responsible bidder. Council had been advised previously about the limitations of the responsible contractor criteria without a change to the Charter requirement that public projects be let to the lowest responsible bidder.

As to ITB 4702, staff reviewed whether the bids received were responsive to the local workforce question and determined they were, but did not compare bidders’ respective percentages of local workforce to determine which was more “responsible.”

- b. Q. An affirmative or negative response to question #14 (OSHA or MIOSHA violations in the last 5 years) factors into the award process. Mackenzie answered yes, while both Bailey and Fonson answered no.

Response: See the response to (Qa) above. Staff reviewed whether the bids were responsive to Question 14. As to ET MacKenzie’s bid, staff determined that it was responsive and that the violations did not render it not responsible.

- c. Q. Please specifically share how affirmative or negative responses to questions 20 (use of master, journeypersons, and apprentices) and 21 (participation in registered apprenticeship programs) are used to inform how

a contract is awarded under the Lowest Responsible Bidder criteria. (Councilmember Briggs)

Response: See the response to (Qa) above. Staff reviewed the bids to determine if the responses to the workforce training questions were responsive, and they determined they were. Note, the question allows a bidder, who does not participate in a registered apprentice program, to provide an explanation of how it assesses the skills and qualifications of its employees. Because the question of whether a bidder is responsible is binary, staff did not conduct a qualitative comparison of the responses.

Question: Do items 201, 202, and 203 on the bid form reference labor costs? (Councilmember Briggs)

Response: These are standard lump sum pay items on most construction projects. They do not specifically reference, or are related to, labor costs.