

**THE CITY COUNCIL
GRAND FORKS, NORTH DAKOTA
15, 1997**

**PROCEEDINGS OF
OF THE CITY OF
Tuesday, July**

The city council of the city of Grand Forks, North Dakota met in special session in the council chambers in the City Hall on Tuesday, July 15, 1997 at 7:30 a.m. with Mayor Owens presiding, pursuant to call by Mayor Owens, which was served on all members of the council on July 14, 1997: Document No. 7323 - Notice.

Present at roll call were Council Members Beach, Polovitz, Hamerlik, Carpenter, Klave, Babinchak, Bakken, Hafner, Hagness - 9; absent: Council Members Hanson, Glassheim, Sande, Beyer - 4; 1 seat vacant.

AWARD BID FOR CONSTRUCTION OF INCUBATOR
BUILDING, AND APPROVE ALLOCATION OF CDBG
FUNDS TO MATCH EDA GRANT FUNDS

John O'Leary, executive director of Urban Development, reported that they solicited bids to construct the incubator building in the Industrial Park and total cost of the project according to low bid was \$6.889 million, this would involve \$1,166,750 in EDA funds, which have been approved, a match of 25% is required and CDBG funds can be used for this. He reported several weeks ago the council authorized bidding and proceeding with the project, contingent upon the receipt of EDA or CDBG and both of those funds are available, that last week EDA announced the approval of a \$5.1 million grant to construct this building; and Secretary Cuomo waived low and moderate income requirements thus making CDBG funds eligible for this project (which means that whoever occupies the building will not have to hire predominantly low and moderate income people), and will be lot more flexible, and that City (JDA) will own the building free and clear. He reported that the building will be 150,000 sq.ft. which should generate \$300,000+/yr. in revenue for the JDA. He reported that a subcommittee comprised of Council Member Beach, Dick Olson of the Development Foundation, George Berg and himself, met and reviewed proposals. He reported they received bids from Innes Construction and Construction Engineers, Ltd., and that low bidder was Innes Construction by about \$600,000, and in addition to that Innes had a 30-day earlier completion date. He also reported that the subcommittee didn't know at time of review that Innes' proposal was submitted 30-minutes late, that Innes' proposal is basically same proposal he prepared 30-day earlier and is proposal they used to write the EDA grant application (he did cost estimate to construct the building and developed his own specifications on the project and shared those with the other contractors and City used Innes' specs. to spec. the structure. He stated that the issue before the council is whether or not to allocate the CDBG funds, and award of the bids. He reported that it is staff's recommendation to award bid to Innes Construction and waive late bid as a minor defect or rebid the project. He also reported there are two issues in addition to those is that they are running out of time if rebid, and ground-breaking scheduled for Thursday.

Council Members Hamerlik and Babinchak expressed some concern re. opening of this bid.

Council Member Hagness asked Mr. Swanson his opinion on letter from Construction Engineers, Ltd. stating that their proposal had been delivered on time and that no other bids had been delivered nor accepted by the Office of Urban Development, that City policy re. late bids is that they will be considered non-responsive and returned to the bidder unopened, and requesting that award of the job be given to Construction Engineers, Ltd.

Howard Swanson, city attorney, stated he had no opinion on the letter, but identified options, that he hasn't seen any of the pre-bid or pre-proposal materials so not aware of delivery time, etc. but assuming it would resemble our

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typical package of bid instructions, but identified options for council:
1) accept the lowest and timely bid, or accept the low bid and waive the minor irregularity, or reject all bids and rebid. He stated that in each instance decision is left to council's discretion.

There were comments from several council members that this is an on-going problem, that council should stand firm on their policy or get rid of it. Council Member Hafner questioned whether this policy was costing the City a lot of money, or if the City was doing enough to make sure that people understand the bidding process.

Mr. O'Leary reported that the day of the bid opening there was a discussion between Dick Olson and the bidders about an alternate, which had to do with

putting in a concrete roof vs. steel roof, that Innes was trying to reach Mr. Olson before the bid opening so that the proper number could be put in the bid, whether concrete or steel, that Mr. Olson didn't get that message until after the bid opening. He stated he understands the council's policy re. bid openings and setting firm times, but that this did happen and do know about the \$600,000 which makes it more difficult to make decision, but that he knows there was no way for Innes to know what the competing bid was.

There was some discussion re. completion date, whether penalty if not completed by that date. Mr. O'Leary reported they have had some discussions with HUD and EDA, the City has generally been unsuccessful, as have most private industries, in levying a penalty against any contractor for completion of any project. He stated that what's been done in other parts of the country is to have penalty for late completion but reward for early completion as well.

It was noted that Construction Engineers, Ltd. was aware of this meeting. Mayor Owens also stated that while appearing before Congress it was stated that the City would be watched as to how the money (for flood relief) was spent, and didn't know how the City could justify \$600,000 at this point.

After further discussion it was moved by Council Member Beach and seconded by Council Member Hafner that we waive the irregularity in the bid and award the bid to Innes Construction. Upon roll call vote the following voted "aye": Council Members Beach, Polovitz, Bakken, Hafner -

4; voting "nay": Council Members Hamerlik, Carpenter, Klave, Babinchak, Hagness - 5. Mayor Owens declared that the motion failed.

Council Member Carpenter moved to accept the bid of Construction Engineers, Ltd.; the motion failed for lack of a second.

It was then moved by Council Member Hamerlik to reject the bids received and to rebid the project as early as possible; Council Member Hafner seconded the motion. Upon roll call the following voted "aye": Council Members Hamerlik, Klave, Babinchak, Hagness - 4; voting "nay": Council Members Beach, Polovitz, Carpenter, Bakken, Hafner - 5. Mayor Owens declared that the motion failed.

Council Member Carpenter moved for reconsideration of the motion to waive the irregularity in the bid and to award the bid to Innes Construction. Council Member Bakken seconded the motion.

After some discussion and upon roll call vote, the following voted "aye": Council Members Polovitz, Carpenter, Bakken, Hafner, Beach - 5; voting "nay": Council Members Hamerlik, Klave, Babinchak, Hagness - 4. Mayor Owens declared the motion for reconsideration carried.

Upon call for the question on the previous motion by Council Member Beach and Council Member Hafner to waive the irregularity in the bid and to award bid to Innes Construction, the following voted "aye": Council Members
Carpenter, Bakken,
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Hafner, Beach, Polovitz - 5; voting "nay": Council Members Hamerlik, Klave, Babinchak, Hagness - 4. Mayor Owens declared the motion carried.

It was moved by Council Member Carpenter and seconded by Council Member Polovitz to authorize allocation of CDBG funds to match EDA funds. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Hamerlik, Carpenter, Klave, Babinchak, Bakken, Hafner, Hagness - 9; voting "nay": none. Mayor Owens declared the motion carried.

APPROVE EXTENSION OF FLOOD RESPONSE COMMITTEE AUTHORITY

The city auditor reported that when the purchasing authority was approved by council, July 15 was the deadline for award by the Tri-chairs of \$50,000, Flood Response Committee of \$250,000 and Council Member Hafner, chair of the Flood Response Committee, had asked that this be placed on the agenda for consideration.

It was moved by Council Member Hagness and seconded by Council Member Klave to extend the authority of the committee and tri-chairs to October 1, 1997. Carried 9 votes affirmative.

ADJOURN

It was moved by Council Member Hamerlik and seconded by Council Member Polovitz that we do now adjourn. Carried 9 votes affirmative.

Respectfully submitted,

John M. Schmisek
City Auditor

Approved:

Patricia A. Owens, Mayor