

## AGENDA



Thursday, February 28, 2008

**Public Works  
RECOMMENDATION FOR COUNCIL ACTION****Item No. 23**

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**Subject:** Approve the adoption of written definitions and criteria for accurately determining the safety record of a construction contract bidder in order to determine the responsibility of the bidder in accordance with the requirements of Sections 252.0435 and 271.0275 of the Texas Local Government Code.

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In general, Texas law requires that the City award its construction bids to the “lowest responsible bidder.” This not only requires that the City award the contract to the bidder who provides the lowest price, but also that the City consider the “responsibility” of the bidder in making a determination of a contract award.

Case law indicates that when considering a bidder’s responsibility, the local government may consider the bidder’s “experience, manpower, equipment, and supervisory requirements” In addition, the Attorney General has recognized that “responsibility” may be measured by other factors as well, including the bidder’s financial resources, business judgment, ability, efficiency, reliability, reputation, facilities and capacity to perform the work required.”

Sections 252.0435 and 271.0275 of the Texas Local Government Code specifically allows the City to adopt written definitions and criteria for accurately determining the safety record of a construction contract bidder in order to determine the responsibility of the bidder. The Section 00410 is drafted to provide the written definitions and criteria with which to accurately determine the safety record of a bidder in order to support the determination of the responsibility of the bidder.

The summarized definitions include

“Citations” include notices of violation, criminal complaints, administrative orders, final judgments, etc.

“Environmental Protection Agency” includes, but is not limited to the TCEQ, EPA, the U.S. Fish and Wildlife, and similar regulatory agencies.

The summarized criteria include:

1. Number of OSHA final orders against bidders for serious violations within the past five years.
2. Number of citations against bidder for violations within the past five years.
3. Conviction of a criminal offense or entry of civil judgment within the past 10 years for a negligent act or omission, which resulted in serious bodily harm or death.

The City will consider the weight of the responses and the cumulative information developed in the bidding phase to determine in its reasonable discretion whether a bidder is “responsible”.