
**LEVANDER,
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MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: April 30, 2014
**RE: 2014-01 Street Improvement Project; Resolution Accepting Bid and
Awarding Contract – May 6, 2014 City Council Meeting; Agenda Item 8(b)**

Section 1. Background. At the March 4, 2014, Council meeting, the Council ordered the advertisement of bids for the 2014-01 Street Improvement Project. The advertisement was published on March 16, 2014, and on March 23, 2014, in the *South-west Review* (the City's official newspaper). The advertisement was published on March 17, 2014, and on March 24, 2014, in *Finance & Commerce* (trade newspaper). The advertisement specified the work to be done and stated that the deadline for submission of bids was 2:00 p.m. on Wednesday, April 16, 2014.

Section 2. Bid Opening. On Wednesday, April 16, 2014, at 2:00 p.m. the bids were opened and tabulated at the offices of WSB & Associates, Inc. Tom Voll of WSB, Leah Rose of my office, and the Mayor were present to act as designated officers and agents of the City at the opening and tabulation of the bids. The bids were opened and read aloud by Tom Voll. The bid results were as follows:

<u>Bidder</u>	<u>Bid Bond</u>	<u>Total Bid</u>
1. Danner, Inc.	5%	\$235,540.00
2. Northwest Asphalt	5%	\$277,803.32
3. Valley Paving, Inc.	5%	\$285,627.00
4. Park Construction	5%	\$307,795.45
5. Hardrives	5%	\$324,753.92
6. Bituminous Roadways	5%	\$326,322.40

Attached to this Memo please find the minutes of the April 16th bid opening.

Section 3. Lowest Responsible Bidder. Minnesota Statute § 412.311, subd. 1 and Minnesota Statute § 429.041, subd. 2 require cities to award contracts to the “lowest responsible bidder.” The phrase “lowest responsible bidder” does not mean the lowest bidder, but the lowest bidder who is most likely to do faithful, conscientious work and promptly fulfill the contract. In determining who the lowest bidder is, the courts have said that the council has reasonable discretion. The lowest bidder must be considered “responsible” to perform the proposed contract. “Responsibility” includes such things as the bidder’s financial responsibility, integrity, ability, skill, and likelihood of providing faithful and satisfactory performance.

The lowest responsible bidder among the bids received for Project 2014-01 was Danner, Inc. in the amount of \$235,540.00. The City’s consulting engineer has conducted reference checks on Danner, Inc. and has checked on the work that Danner, Inc. has performed in other cities. Based on the City consulting engineer’s investigation, the City’s consulting engineer is recommending that the contract be awarded to Danner, Inc.

Section 4. Eligibility for Award of Contract. After the bid opening, a question was raised concerning the previous debarment of Danner, Inc. by the Minnesota Department of Transportation in 2011.

In Minnesota, there are two forms of debarment.

One form occurs under Minnesota Statute § 161.315 whereby the Department of Transportation issues the debarment. Under this form of debarment, the city is prohibited from awarding a contract to the disbarred contractor during the duration of the debarment. It does not matter whether federal or state funds are involved with the city project. If the contractor is under disbarment with the Department of Transportation, then by Minnesota Statute § 161.315, subd. 3 the contractor is also under debarment with the city.

A second form of debarment exists under Minnesota Rules 1230.1150 and 1230.1175 whereby the Department of Administration issues the debarment. Under this form of debarment, state agencies, except for the Department of Transportation, are prohibited from contracting with the debarred contractor. Cities are not affected by this particular form of debarment.

Upon further review and investigation, we determined the following:

1. Danner, Inc. was debarred by the Minnesota Department of Transportation on August 22, 2011.
2. The Department of Transportation initially imposed the debarment until August 2014.
3. Danner, Inc. appealed the disbarment and a Contested Case Proceeding was held in front of an Administrative Law Judge. The Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge are attached to this memo.
4. The Administrative Law Judge recommended that the debarment cease as of February 22, 2014.

5. The Department of Transportation concurred with the Administrative Law Judge and issued an Order providing that the debarment would cease February 22, 2014. The Findings of Fact, Conclusions of Law and Order of the Department of Transportation are attached to this memo.
6. The Department of Transportation has now publicly issued an Order and Notice showing that the disbarment of Danner, Inc. ended February 22, 2014. This Notice is attached to this memo.
7. Under Minnesota Statutes § 161.315, cities and the Minnesota Department of Transportation are no longer prohibited from entering into a contract with Danner, Inc. The disbarment under Minnesota Statutes § 161.315 has ceased.
8. The Department of Administration under Minnesota Rules 1230.1150 and 1230.1175 also disbarred Danner, Inc. The Department of Administration disbarment runs to August 30, 2014 with a probationary period to August 30, 2015. The Department of Administration disbarment is still in place. This particular debarment prohibits state agencies from contracting with Danner, Inc., but does not prohibit the Department of Transportation or cities from contracting with Danner, Inc.

Based on the investigation, it appears that the City of Sunfish Lake may contract with Danner, Inc. for the public improvement project.

Section 5. Council Action. The bids will be considered by the City Council at the May 6, 2014 City Council meeting. At the May 6th Council meeting, the Council will be asked to consider the attached proposed Resolution Accepting the Bid and Awarding the Contract to Danner, Inc. for the 2014-01 Street Improvement Project.

Attachments

**CITY OF SUNFISH LAKE
St. Anne's Episcopal Church
Highway 110 and Charlton Road
Sunfish Lake, Minnesota**

Minutes of Bid Opening on Wednesday, April 16, 2014

SUNFISH LAKE 2014-01 STREET IMPROVEMENT PROJECT

Pursuant to an advertisement for bids for the 2014-01 Street Improvement Project, an administrative meeting was held on April 16, 2014 at WSB & Associates, Inc. at 701 Xenia Avenue South, Suite 300, Minneapolis, Minnesota, for the purpose of bid opening. Bids were opened by Tom Voll from WSB & Associates, Inc. and read aloud.

Attending the meeting was:

Tom Voll, WSB & Associates, Inc.
Todd Elbert, WSB & Associates, Inc.
Mayor Molly Park
Leah Rose, Paralegal for City Attorney
Brent Carron, Valley Paving, Inc.
Jeff Clapp, Park Construction
Al Plummer, Northwest Asphalt

Bids were opened and read aloud by Tom Voll as follows:

<u>Bidder</u>	<u>Bid Bond</u>	<u>Total Bid</u>
1. Bituminous Roadways	5%	\$326,322.40
2. Danner, Inc.	5%	\$235,540.00
3. Harddrives	5%	\$324,753.92
4. Northwest Asphalt	5%	\$277,803.32
5. Park Construction	5%	\$307,795.45
6. Valley Paving, Inc.	5%	\$285,627.00

Submitted by:

Leah M. Rose, Paralegal
City of Sunfish Lake

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 14- _____

**RESOLUTION ACCEPTING BID AND AWARDING CONTRACT FOR THE
2014-01 STREET IMPROVEMENT PROJECT TO DANNER, INC.
IN THE AMOUNT OF \$235,540.00**

WHEREAS, pursuant to an advertisement for bids for the 2014-01 Street Improvement Project bids were received, opened, read aloud, and tabulated according to law. The following bids were received complying with the advertisement:

<u>Bidder</u>	<u>Bid Bond</u>	<u>Total Bid</u>
1. Danner, Inc.	5%	\$235,540.00
2. Northwest Asphalt	5%	\$277,803.32
3. Valley Paving, Inc.	5%	\$285,627.00
4. Park Construction	5%	\$307,795.45
5. Hardrives	5%	\$324,753.92
6. Bituminous Roadways	5%	\$326,322.40

WHEREAS, Danner, Inc. is the lowest responsible bidder.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF
SUNFISH LAKE, MINNESOTA:**

1. The Mayor and Clerk are hereby authorized and directed to enter into a contract in the amount of \$235,540.00 with Danner, Inc. in the name of the City of Sunfish Lake for the 2014-01 Street Improvement Project according to plans and specifications therefore approved by the Council and on file at the Office of the City Clerk.
2. The City Clerk is hereby authorized and directed to return, forthwith, to all bidders, the deposits made with their bids except for the deposit of the successful bidder and the next lowest bidder shall be retained until the contract has been signed.

Adopted by the City Council of Sunfish Lake this 6th day of May, 2014.

Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk