



AGENDA BRIEFING MEMORADUM

AGENDA DATE:	March 27, 2019
SUBJECT:	Disqualification of Cornerstone Pavers
PREPARED BY:	Kathryn Kasper, Purchasing Agent
SUMMARY:	Disqualification of Cornerstone Pavers LLC and description of subsequent appeal determination

PROJECT BACKGROUND & ANALYSIS:

In a letter dated February 25, 2019, the City of Racine Department of Public Works Commissioner Mark Yehlen, disqualified Cornerstone Pavers LLC from participating in bidding on City of Racine projects. Wisconsin Statue 66.0901(2) allows for the City of Racine to make this determination. Acting on behalf of the City, in the letter the commissioner “found your firm to be disqualified to perform work for the City of Racine based on the 13 contracts listed that Cornerstone Pavers, LLC failed to complete on time during the last 10 years.” The 13 contracts listed were only contracts in which Cornerstone had paid or was expecting to pay liquidated damages. Liquidated damages are defined as *damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach*. This list does not detail all projects in which Cornerstone may have exceeded deadline, only projects in which the owner decided to apply/enforce liquidated damages.

On February 27, 2019, a letter of intent to appeal was submitted to the City Purchasing Agent. An appeal packet was submitted to the City Purchasing Agent on March 5, 2019. As part of the appeal process, Cornerstone supplied the City with a description of mitigating factors and the contact information for the administrator of each project. As part of the analysis of the appeal packet the City Purchasing Agent sent, via email, a list of questions to each listed project administrator. The entire appeal response provided to Cornerstone is attached to this memo.

Findings:

- Inability to complete work per schedule or contract terms – illustrated in all contract examples.
- Pattern of inferring that delays are caused by sub-contractors - hiring and managing qualified and able subcontractors is the sole responsibility of the general contractor.
- Argumentative behavior with contract holders regarding project questions/concerns.

Concerns:

- The three unfinished WisDOT projects from 2018 represent \$3.323M in unfinished work. If we were to assume: 90 days to complete National Avenue project, 90 days from April 1 on South 13th Street, and 122 days on CTH MM based completion date of 7/31/19; the contractor has combined 302 days of work left. However, they will have to complete the bulk of this work over 90 days concurrently because the start dates are all around early April 2019.
- Based on their commitments to WisDOT, the City has doubts that Cornerstone would have the capacity to complete the two projects they have already bid on (Three Mile \$1.185M @ 100 calendar days & Assessable North Side \$1.571M @ 120 calendar days) for a total of \$2.756M with combined 220 days, however they will have to perform the bulk of this work over 100 days concurrently.
- In a meeting requested by Chris Cape with City Staff – Cornerstone revealed that they recently had two key positions (Project Manager and Superintendent) vacated. They spoke positively about their two new hires, but they are replacing two high level positions going into their busy season which is a concern from the City side.
- It should also be noted that Cornerstone was fined \$400 for non-compliance with the Racine First program on two City of Racine contracts (20150003 & 20160015), there was a third contract (20170012) where Amy Cape’s time and pay was utilized to meet the minimum standards of the program. No fine was levied.

RECOMMENDED ACTION:

Recommend that City Staff determination initially made by the Commissioner of Public Works to find Cornerstone unqualified be upheld.

FISCAL NOTE: NA