



## City Council

### Approval of a Resolution Directing the City Manager to Reject All Bids and Re-advertise the Fones Road Project

**Agenda Date:** 6/18/2024  
**Agenda Item Number:** 4.F  
**File Number:**24-0514

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**Type:** resolution **Version:** 1 **Status:** Passed

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#### **Title**

Approval of a Resolution Directing the City Manager to Reject All Bids and Re-advertise the Fones Road Project

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee.

##### **City Manager Recommendation:**

Move to approve a Resolution directing the City Manager to reject all bids and re-advertise the Fones Road Project.

#### **Report**

##### **Issue:**

Whether to approve a Resolution directing the City Manager to reject all bids and re-advertise the Fones Road Project.

##### **Staff Contact:**

Jim Rioux, Project Manager, Public Works Engineering, 360.753.8484.

##### **Presenter(s):**

None - Consent Calendar Item.

#### **Background and Analysis:**

Fones Road SE is an important travel corridor connecting southeast Olympia to Interstate 5 and to downtown Olympia via Pacific Avenue SE. The condition of the road is poor and bicycle and pedestrian facilities are non-continuous, missing, or in poor condition. Fones Road SE includes a connection with the Karen Fraser Woodland Trail which requires modifications to improve safety for those using the trail.

This project is focused on non-motorized improvements that will encourage and enhance multimodal travel along Fones Road SE, making it a "Complete Street."

### Funding and DBE Requirements

Funding for this project includes four grants from the Federal Highway Administration (FHWA). Conditions of the grant include meeting a Disadvantaged Business Enterprise (DBE) goal established by the Washington State Department of Transportation (WSDOT). The proposal must include documentation showing how the contractor intends to achieve this goal.

Contract specification 1-02.13 states in part that, "A Proposal will be considered irregular and will be rejected if...The Bidder fails to submit or properly complete DBE documentation forms."

When a DBE goal is established, the City must obtain concurrence from WSDOT's Office of Equal Opportunity prior to awarding the contract. Historically, WSDOT has rejected bidders with very minor irregularities in the DBE documentation.

### Bid Irregularities

Staff reviewed the bids provided by the lowest bidder and the second lowest bidder, which revealed errors in both bid submittals.

Should the City award to either bidder, FHWA funding may be in jeopardy. If this were to occur, the City would not have sufficient funds to complete the project.

Selecting the lowest or second lowest bidder or rejecting both and awarding to the next lowest bidder could lead to litigation and delay the project.

The City has the discretion to reject all bids. For that reason, rejecting all bids and re-advertising is the route that has the least chance to involve the City in litigation and significant project delay.

There is sufficient time to re-advertise the project and seek new bids. Staff recommends rejecting all bids and re-advertising the project.

### **Climate Analysis:**

Not applicable to this action.

### **Equity Analysis:**

Not applicable to this action.

### **Neighborhood/Community Interests (if known):**

None. The project will continue to move forward with a minor delay associated with amount of time needed to re-advertise the project.

### **Financial Impact:**

The project is fully funded. The additional cost to re-advertise will be within anticipated project contingency.

### **Options:**

1. Approve a Resolution directing the City Manager to reject all bids and re-advertise the Fones Road Project.
  - The City will start the project later this summer.

- There are minor additional costs to re-bid the project.
  - This approach is considered to have the least litigation risk, because the City reserved the right to reject all bids.
2. Direct staff to take all steps necessary to award the Fones Road Project to the low bidder and waive non-responsive DBE Form issues.
- Two protests have already been received and there is significant risk of litigation.
  - The City is required to obtain WSDOT concurrence for award to a contractor who submitted non-responsive DBE Forms.
  - WSDOT may withhold concurrence, jeopardizing grant funding.
3. Direct staff to take all steps necessary to award the Fones Road Project to the next lowest responsive and responsible bidder.
- There have been two bid protests and there is significant threat of litigation.

**Attachments:**

Resolution

Vicinity Map