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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: March 2, 2023

RE: Demolition Contractor Bids without Insurance

Legislative Policy Division (LPD) has been requested by Council Member Coleman A. Young, II to provide a report on whether demolition contractors that are able to bid without having insurance would be able to provide a lower bid than those that bid with insurance.

The issue of submitting a bid without first having insurance in place is the subject of a proposed ordinance submitted by Council Member Mary Waters. The purpose of the ordinance amendment is an attempt to remove barriers that may inhibit smaller contractors from having the ability to bid on contracts. It has been presented to Council Members that some smaller contractors do not have the financial resources to incur the cost of insurance for the bids. However, the smaller contractors believe they can obtain the insurance needed if awarded a contract, since the contract would provide proof of the resources to acquire adequate insurance for the project.

Currently, contractors are required to show they have adequate insurance to cover the project¹. The cost of that insurance is presumed to be included in the bid quote. The proposed ordinance would not require a

¹ It is LPD's understanding that the proof of insurance requirement is a matter of public policy to protect the City from liability related to the performance, error or negligence on the part of the contractor. This is a legitimate concern of which the current process is designed to address. However, the insurance will still be required of any contractor awarded a contract under the proposed amendment.

showing of insurance until after the bid is awarded. Under the proposed amendment, any bidder awarded a bid will have five (5) days to provide proof of adequate insurance. Failure to provide the proof of insurance would result in the bid going to the next appropriate bidder.

Under the proposed ordinance amendment, no bidder would be required to show adequate insurance until after being selected. Any bid submitted is presumed to include all cost associated with undertaking the demolition project, this would include the cost of any insurance acquired for the project.

LPD acknowledges that a demolition contractor that does not have insurance may be able to submit a bid without including the cost of insurance. This could have the effect of a lower bid being submitted where a demolition contractor that has insurance would most likely include the cost of insurance within their bid. This could possibly make the bid of the contractor with insurance higher. However, a bidder who submits a bid without including the cost of insurance would be required to honor that bid quote after obtaining insurance. This would mean that the bidder without insurance would incur the cost of insurance without passing the cost to the City through the bid.

LPD notes that all bidders have the ability to obtain insurance quotes that would provide the cost of the insurance prior to bidding on the contract. In fact, having only five days under the proposed ordinance to obtain insurance, it would be to the entity's advantage to know the cost of insurance, prior to obtaining the award. It is up to the bidder to pass the insurance cost, or any other cost associated with the business (i.e. equipment, fuel, labor etc.) to the City within the bid quote or submit a lower bid. Submitting a lower bid without the cost of insurance included would be a decision by the entity to receive less profit or net gain in order to secure the contract. Whatever bid quote that is submitted is the amount the entity awarded the bid will be entitled to receive. This being the general concept of an open bid.

With regard to whether another bidder can have a claim against the City or legally challenge the award of the bid to another bidder, the courts have addressed this issue. In MCNA Insurance Company v Department of Technology, Management and Budget, 326 Mich. App. 740, 929 N. W. 2d 817 the Court stated:

This Court rejected the plaintiffs' **challenge**, noting that "Michigan jurisprudence has never recognized that a disappointed bidder ... has the right to challenge the bidding process." The Court went on to observe that "[l]itigation aimed at second-guessing the exercise of discretion by the appropriate public officials in awarding a public contract will not further the public interest; it will only add uncertainty, delay, and expense to fulfilling the contract." The Court further stated that an action to review the **bidding** process is limited to cases where there is evidence of fraud, illegality, or abuse and then such an action can only be brought by the appropriate public official. Such restriction was necessary because "[o]pening the floodgates of litigation to every disappointed bidder that believes it has been aggrieved by the **bidding** process would serve the interests of neither the government nor the citizen-taxpayers that the **bidding** process is designed to advance." Id at 743

The disappointed bidder has no right to make a legal claim or take legal action challenging the bid process. The bidder may file a protest under the Office of Contracting and Procurement Standard Operating Procedures Manual, Section 3.7, *Supplier Protest*, and/or the City Council Rules Section 22.1 *Vendor Protest Petitions*:

All vendor protest petitions, after having exhausted the Office of Contracting and Procurement protest procedures, shall be presented to the City Clerk in writing and follow the above petition process.

LPD is not aware of whether the cost of insurance is itemized in the bid contractors submit. This information may be available from the Office of Contracting and Procurement.