

RESOLUTION NO. 2014-021
A RESOLUTION TO DECLARE HIGHMARK, INC., AND DALE SCHUELKE NON-RESPONSIBLE BIDDERS ON THE AWARD OF FUTURE CITY PROJECTS.

WHEREAS, Highmark Inc. (“Highmark”) is a domestic corporation performing construction services in the State of South Dakota; and

WHEREAS, Dale Schuelke is the owner of Highmark; and

WHEREAS, Highmark has performed work on public projects commissioned by the City of Rapid City; and

WHEREAS, Highmark was the contractor on a City project to construct a water main to serve the new Jackson Springs Water Treatment Plant (Project No. WTP 09-1836, the “Project”); and

WHEREAS, Highmark entered into a contract with the City on January 6, 2010, to construct the Project; and

WHEREAS, a significant amount of the pipe which Highmark installed was deficient and does not meet the minimum specifications contained in the contract; and

WHEREAS, Highmark’s contract with the City specifically provides that Highmark is responsible for any defects in materials and further requires that Highmark remedy all defects at its sole expense; and

WHEREAS, Highmark has failed to remedy the defects to the pipe and refused to fulfill its obligations to the City under the contract it agreed to for this Project; and

WHEREAS, Highmark has filed suit against the City for return of the retainage that the City has withheld until the defects are corrected; and

WHEREAS, the City has filed a counter claim to enforce Highmark’s obligations under its contract with the City and remedy the defects with the pipe; and

WHEREAS, the City has refrained from taking any additional actions against Highmark while an effort was made to settle this matter; and

WHEREAS, the parties recently engaged in mediation in an effort to resolve this matter; and

WHEREAS, the mediation was not successful in resolving the issues between the parties; and

WHEREAS, City staff can no longer support the award of public contracts to Highmark, or companies operated by Dale Schuelke, as long as Highmark is refusing to honor its obligations to the City on the contract it previously entered into; and

WHEREAS, SDCL 5-18A-5 authorizes public entities awarding contracts to refuse the award of contracts to “non-responsible” bidders; and

WHEREAS, the refusal of Highmark and Mr. Schuelke to honor their contractual obligations justifies the City in declaring them to be non-responsible bidders on future City contracts.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that Highmark, Inc. and its owner Dale Schuelke are hereby declared to be “non-responsible” bidders and until subsequent action is taken by the City Council to reverse this determination, no contracts for City projects may be awarded to Highmark, Inc., Mr. Schuelke, or any corporation or business that is owned, operated or managed by Mr. Schuelke.

Dated this __ day of February, 2014.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)