

**SPECIAL BOARD MEETING
OF THE STATE TRANSPORTATION BOARD
MEETING MINUTES
10:00a.m., Wednesday, September 1, 2010
Human Resource Development Center (HRDC) Grand Canyon Room
1130 N. 22nd Avenue
Phoenix, Arizona 85009**

Pledge

The Pledge of Allegiance led by Bill Feldmeier.

Roll Call

Roll call by Board Secretary, Mary Currie.

In attendance: Bob Montoya, Bill Feldmeier, Felipe Zubia, Bobbie Lundstrom, Victor Flores, Steve Christy (telephone), and Kelly Anderson.

Opening Remarks

Chairman Montoya remarked that it was nice to have the August break.

ITEM 1: Consent Agenda – Floyd Roehrich

There are 15 projects on the Consent Agenda. Mr. Roehrich asked the Board to pass a motion to recognize approval of all Consent Agenda items.

Motion by Mr. Christy and a second by Mr. Anderson. In a voice note, the motion carries.

ITEM 2: Construction Contracts – Floyd Roehrich

There are 5 separate projects that require Board action. We are looking at a little over \$51.5M of work going out as part of these contracts and for us it is a really good boost to the economy and to the industry. We have been closing out a lot of contracts. We have had quite a capacity left out there for us in the construction industry and we are really looking forward to these projects.

ITEM 2a: US 60 at Vicksburg Road. It is reconstructive road to install a roundabout. This contract is 21% under the Department's estimate. After reviewing that contract and in looking at the discrepancies between our estimate and the low bid, Combs Construction was able to find a much closer location to waste the material which gave him a greater economy of force and effort. We are starting to see very competitive prices in concrete and catch basin work and other products, steel products and other supply products because of the soft market right now. We have reviewed the bid and we do think it is a competent bid and we are recommending that this contract be awarded to Combs Construction. I have asked that the Board award contract Item #2a.

Motion by Mr. Feldmeier and a second Ms. Lundstrom, in a voice note, motion carries for Item 2a.

ITEM 2b: 32nd Street in the city of Yuma. Improvement projects along 32nd Street and 8th Street in basically 66 locations. It is a small project but the bids came in all as 15% over the Department's estimate. After reviewing the bidding condition and discussing with a couple of the bidders, we did find where the Department had underestimated the amount of traffic control required as well as the

amount of crews that each contractor would be using to increase the proficiency and efficiency of completing this project. We are looking at from 8 – 10 crews working on the 66 locations, most contractors said that they were going to use 25 – 30 crews which would increase the amount of traffic control required at any time. They would be working more locations to get the work done faster. In reviewing the contracting method and looking at the costs, I would provide that this is a competent bid. It just reflects that the industry's approach would be different than the Department's approach. We are recommending awarding this contract. I would ask that the Board pass a motion to award Item #2b.

Motion by Mr. Flores and a second by Ms. Lundstrom, in a voice note, motion carries for Item 2b.

ITEM 2c: US 160 in the Tuba City area in the intersection of 160 and 264. This is a lighting project, an intersection lighting project with some related underground work for the electrical as well as a little bit of work for intersection improvement. It does reflect very competitive pricing. This estimate came in at almost 28% under the Department's estimate but again in reviewing the bids, not just a little bit but some of the other bids that we are receiving. We do think that it is a competent bid and we are recommending that the Board award Item #2c.

Motion by Mr. Anderson and a second by Mr. Feldmeier, in a voice note, motion carries for Item 2c.

ITEM 2d: This project has special consideration and because of that we are going to ask the Board take the Department's recommendation to reject all bids and let us re-bid it. At the bid opening Citywide Contracting was read as the apparent low bidder with a bid of \$241,160. The second low bidder was Southwest Concrete Paving with a bid of \$245,720.00 or in this case just about \$4,500 in bids. During the course of the bid, the Department had issued a second addendum which added an item to the project. We had found where we had left off a structural back-fill item on this project. It is 50 cubic yards, not a large quantity but given the size of this project at only about \$240,000, it is a significant item. They range from \$1,500 to \$7,700. The \$4,560 difference between the low bid and the second low bid falls within the range and under the maximum range of what would have been everyone else's bid. In the bid documents, Citywide had failed to acknowledge receipt of Addendum No. 2, which would have required their bidding to be rejected. But in reviewing why they did not get the Addendum, we found that at the time we had issued Addendum No. 2 and then sent it out we had put a wrong zip code on Citywide's address. When we had issued the Addendum we sent a copy of the Addendum to every contractor who picked up bids but in this case we made the mistake and put the wrong zip code on the Addendum that was mailed out to Citywide. Therefore Citywide did not get it in time to acknowledge the bid and include it in the bid. Therefore, they have bid on a separate project than everyone else had bid because they did not bid with Addendum No. 2's quantity of additional structural back-fill. In reviewing the bidding process which states that all bidders must competitively bid on a common basis and they must bid on the identical project, due to the Department's errors, these contractors did not bid on identical projects. Citywide has bid on a separate project through no fault of their own, they thought they were bidding on the project that was given to them which excluded the structural back-fill item and the rest of the bidders had bid including that item so they had bid on separate projects if you will, acknowledging the Addendum to the structural back-fill item. In this case with the discrepancy between the bidders that did not bid on a common package and due to the Department's estimate, we are asking that the Board reject all bids and all the Department to correct the error, resubmit it and to go ahead and re-bid it where everyone can bid on the same package and provide a competent bid.

Mr. Christy: I am just wondering, what does this do to the integrity of the bid process now since original bids though not complete were opened and shown to all the bidders.

Mr. Roehrich: Mr. Chairman, Mr. Christy, I think that it shows that we have a competent bidding process, meaning that if we find an error, we find an irregularity in it that is to no fault of the bidders, we as an agency accept that responsibility but we are going to maintain the integrity of the bidding process by correcting the error and giving everyone a common basis and a common bidding well, the same equal bidding environment in order to meet that bid.

Mr. Christy: I am just curious that if all the bidding has already been revealed, the fact that all the bidders revealed their bids, does that have any impact on the integrity of the system at this point.

Mr. Roehrich: In this case, they have only received the final bid numbers. They have not seen the individual items. There is still, in our opinion, a possibility of them to go back and use bidding strategy and still provide a competent bid. They now know, a number that has been placed out there by the competition that they have to take into consideration when they re-bid it. Instead of the Department's estimate that we have put out there for everyone to consider, they do have some insight into what the competition is bidding but again it is in an environment where they are all aware of that information, no one has an advantage over the other.

Mr. Christy: Mr. Chairman, Mr. Roehrich, this should not be a problem, then.

Mr. Chairman: I will ask this question, the rest of the bidders were given the opportunity to bid, they did.

Mr. Roehrich: Mr. Chairman, they submitted their bids including the Addendum, too, because they received it.

Mr. Chairman: Now this contractor did not because of the zip code error, once we had found that they had not revised their bid, could they not be able to mend their bid. That bid would then be judged to see if it would be the low bid or not.

Mr. Roehrich: Mr. Chairman, we could have asked for that probably, but I think, actually the law, the way it is written, I do not think the law really allows us to do that. Because now it is out in the open as a competitive bid, we are negotiating with them on bid pricing and giving them a second change to bid, a separate project and the same project as everyone else bid on, the intent of our competitive bidding process is that everyone submits the bid at the same time based upon the project. You open that in front of everyone and you know what the results are. Only in evaluating this afterwards, we found the discrepancy to go back and allow another contractor to change their bid whether it is our fault or anyone's fault, I think is outside the requirements of competitive bidding. We would be allowing them to change his bid after the fact. I think that in regard would give them the opportunity to have additional information that the others did not have.

Mr. Chairman: I think that is what Mr. Christy was alluding to, is that we are doing the same thing. Because now all of the bidders that were involved in this, know what the low bid was except for the modification of the Item that was excluded from this project.

Ron Aschenbach, Assistant AG: When you have one person that you are negotiating with so he can modify his bid, you are dealing with one person to the exclusion of all the others and it is not fair to the other bidders. Even though the bids have been opened and they have a target to shoot at, it is still a level playing field.

Mr. Flores: Do you have to let all of them do it over again or can you restrict it to the lowest bidder did in fact include the back-fill. Limit it to those two.

Ron Aschenbach, Assistant AG: No, it has to be open to everyone.


Mr. Roehrich: The recommendation is for the Board to pass a motion to reject all bids and direct the Department to rebid this project correcting the bidding error.

Motion by Mr. Flores and a second by Ms. Lundstrom, in a voice note, motion carries for Item 2d.


ITEM 2e: This is a landscaping project on I-17, the intersection of the 101 loop to Carefree Highway. ELS Construction was read as the apparent low bidder with a bid of just over \$4.6M. The second low bidder was Recon with a bid just over \$5.3M. Subsequent to the bid opening and reviewing ELS' bid, we found that they had made a clerical error in submitting their bid and it had to deal with the unit price that they had shown for Miscellaneous Work (Landform Graphics). They used a unit price of \$8,365, when it really should have been \$38,365. This is a fairly large discrepancy in unit price. By our specifications, ELS could choose to waive that discrepancy and accept the bid but they would have to take responsibility for \$510,000. To accept the error would have been detrimental to them financially. It is our recommendation that it is appropriate to reject their bid and to award it to the second low bidder. We have reviewed their bidding documents and saw that it was clearly an error. As we have done in the past when we have had a situation like this and we have agreed that it is really detrimental to the bidder as well as the Department to put us in the situation where we have to deal with the bidder that is already starting the project in financial difficulty, that we have rejected their bid, allowed them to take their bond back, and awarded to the second low bidder. In this case, our recommendation is to reject ELS Construction's bid without forfeiture of bond and award the contract to Recon.

Motion by Mr. Flores and a second by Mr. Zubia, in a voice note, motion carries for Item 2e.

In a voice note, motion carries to adjourn the meeting.



Bob Montoya, Chairman
State Transportation Board



John S. Halikowski, Director
Arizona Department of Transportation