



AGENDA
SPECIAL TELEPHONIC MEETING of the
STATE TRANSPORTATION BOARD
10:00 a.m., Friday, May 4, 2012
Arizona Department of Transportation –Executive Conference Room
206 S. 17th Avenue
Phoenix, Arizona 85007

Pursuant to A.R.S. Sec. 38-431.02, notice is hereby given to the members of the State Transportation Board and to the general public that the State Transportation Board will hold a meeting open to the public at 10:00 a.m., Friday, May 4, 2012 at the ADOT Administration Building, 206 S. 17th Avenue, Executive Conference Room, Phoenix, Arizona 85007. The Board may vote to go into Executive Session, which will not be open to the public, to discuss certain matters relating to any items on the agenda. Members of the Transportation Board will attend either in person or by telephone conference call.

EXECUTIVE SESSION OF THE STATE TRANSPORTATION BOARD

Pursuant to A.R.S. 38-431.03 (A)(3), notice is hereby given to the members of the Arizona State Transportation Board and to the general public that the Board may meet in Executive Session for discussion or consultation for legal advice with legal counsel at its meeting on Friday, May 4, 2012. The Board may, at its discretion, recess and reconvene the Executive Session as needed, relating to any items on the agenda.

Roll Call

Roll call by Board Secretary, Lila Trimmer

- *Item 1:** **CONSTRUCTION CONTRACT** (Action As Noted)
Staff will present recommended construction project, Payson-Show Low Highway
(SR 260)
(For discussion and possible action - Jennifer Toth)

*** Adjournment**

* ITEMS that may require board action

Federal-Aid ("A" "B") projects do not need FHWA concurrence, but must comply with DBE regulations.

***ITEM 1:**

BIDS OPENED: March 2, 2012
HIGHWAY: PAYSON-SHOW LOW HIGHWAY (SR 260)
SECTION: Linden to Show Low
COUNTY: Navajo
ROUTE NO.: SR 260
PROJECT: NH-260-B(215)A 260 NA 331 H835301C
FUNDING: 94% Federal 6% state

APPARENT LOW BIDDER International Surfacing Systems
BID AMOUNT: \$ 1,099,682.00
STATE ESTIMATE: \$ 1,005,703.66
\$ OVER ESTIMATE: \$ 93,978.34
% OVER ESTIMATE: 9.3%
PROJECT DBE GOAL: 4.05%
BIDDER COMMITMENT: Met Goal
NO. of BIDDERS: 4
RECOMMENDATION: AWARD

RECOMMENDATION:

Award to the third low bidder, International Surfacing Systems as the lowest responsible and responsive bidder on this project.

COMMENTS:

There were four bids on this project. The as-read bid results and the DBE assurances certification of each bidder were as follows:

<u>Bidder</u>	<u>As-Read Bid Amount</u>	<u>Contractor Name</u>	<u>DBE Assurances</u>
1	\$1,041,000.00	INTERMOUNTAIN SLURRY SEAL, INC.	Good Faith Effort
2	\$1,056,602.35	SOUTHWEST SLURRY SEAL, INC.	Met Goal
3	\$1,099,682.00	INTERNATIONAL SURFACING SYSTEMS	Met Goal
4	\$1,144,909.08	GENEVA ROCK PRODUCTS, INC.	Met Goal

This project was agenda item 13f at the April 20, 2012, Board meeting with a recommended action to reject all bids. However, because Bidder 3 filed a protest concerning rejection of its bid the day before the meeting, the Board postponed action to allow all other bidders and the State Engineer an opportunity to respond to the protest in accordance with the requirements of the Specifications and to determine if Bidder 3 had met the initial DBE requirements for the project.

For reasons discussed in the DBE Compliance Review comments below, Bidders 1, 2 and 4 must be rejected for failure to comply with project DBE requirements. No protests were received from any party concerning rejection of Bidders 1, 2 & 4. Further, there was no response from any party to the letter of Bidder 3 protesting the rejection of its bid.

My original recommendation to reject all bids was based on the premise that a bidding outcome where all but one bid must be rejected does not best serve the interests of the Department or the public and that re-advertising would allow for more competition with only minimal delay in delivering this project for the public benefit.

Bidders do not have a "right" to be awarded a contract. As stated by the Arizona Court of Appeals, "Arizona's statutes, do not create any private rights in a bidder, but exist only to protect the public." *Grand Canyon Pipelines, Inc. v. City of Tempe*, 168 Ariz. 590, 593, 816 P.2d 247 (App. 1991). Also, "the authority for letting public contracts is derived for the public benefit and is not intended as a direct benefit to the contractor." *City of Scottsdale v. Deem*, 27 Ariz.App. 480, 482, 556 P.2d 328 (1976). Therefore, the right of a bidder to protest or contest a proposed decision exists solely as a vehicle to promote the public interest. The question for the Board to consider is what best serves the public interest in each specific case, not what is best for an individual bidder, even a bidder who is otherwise in compliance with the bid requirements.

There have been times in the past where ADOT rejected all bids on a project. There is also precedent for rejecting all bids but one and awarding to the only remaining bidder. In each instance, it is a question of finding the balance that best serves the interest of the public for the unique circumstances of each situation.

The cost to award to Bidder 3 is \$58,682 more than Bidder 1, but is not an excessive amount. The bid of Bidder 3 is less than 10% over the Department estimate and within the range considered acceptable by the Department. While re-advertising might result in a lower bid, there is no guarantee that this will be the case. It is also possible that prices will rise as argued by Bidder 3. Even under the best scenario, re-advertising would delay start of work on this project by three months to sometime in mid August and is a strong argument for award now. Waiting three months would delay work that benefits the public in the form of a smoother roadway and also serves to preserve and prolong the life of that roadway. Further, delaying start of work to mid August also pushes this project to a time of year in an area where the risk of adverse weather conditions could delay the project even more.

In this instance, the question as to what best serves the public has no clearly defined answer. My initial opinion was to reject all bids and re-advertise. However, for the reasons discussed above and after due consideration, it is now my conclusion and recommendation that the public interest is best served by award of this project to Bidder 3.

No other bidder responded to the protest of Bidder 3 asking that it be awarded this project. No other bidder protested rejection of its own bid for failure to comply with DBE requirements. The deadline for filing any such response or protests has passed. Bidder 3 has shown that it has complied with the DBE specifications and other requirements and thus becomes the lowest responsible and responsive bidder. Because it serves the best interests of the public to complete this project without delay, I recommend award to Bidder 3, International Surfacing Systems, in the amount of \$1,099,682.00.

DBE COMPLIANCE REVIEW:

Bidder 3, with its bid documents certified that it had met the DBE goal for the project. Bidder 3 did submit its DBE Intended Participation Affidavit and required information to the ADOT Civil Rights Office for review within the required time limit. ADOT Civil Rights has completed its review and reports that Bidder 3, International Surfacing Systems, has met the initial DBE requirements for this project.

Bidder 1, with its bid documents certified that it had not been able to meet the DBE goal for the project but had made a good faith effort to do so. In order to claim good faith effort, the specifications require that a bidder take all necessary and reasonable steps to solicit, assist and use DBE firms to meet the DBE goal prior to the bid and that the bidder actively and aggressively seek DBE participation in the project. Bidder 1 used as its source of information a list of DBE firms that was over 18 months old and in fact predated the use of DBE goals on ADOT projects. Some of the firms Bidder 1 claims to have attempted to contact were not certified DBE firms. Bidder 1 submitted fax transmittals as evidence of soliciting bids from qualified DBE firms, but many of the confirmation sheets indicated that the faxes had not been processed due to incorrect or disconnected numbers and there was a lack of evidence regarding any follow up to the faxes that were sent. Up-to-date DBE lists are readily available from ADOT Civil Rights and would have allowed Bidder 1 to recognize that some firms were no longer certified DBEs, others have been added, and current information on how to contact each DBE. Further, Bidder 1 claims to have solicited DBE firms in a number of work categories but could not provide any evidence that it had done anything more than simply send out a general request for quotes. Further, Bidder 1 claims that it provided bid documents to three DBE firms, but one of those was not an Arizona certified DBE firm, another said that it had only been provided information verbally, and the third said it had received no information. Bidder 1, Intermountain Slurry Seal, Inc., must be rejected because it did not use all necessary and reasonable means to solicit, assist and use certified DBE firms for this project prior to bid and did not actively and aggressively seek DBE participation.

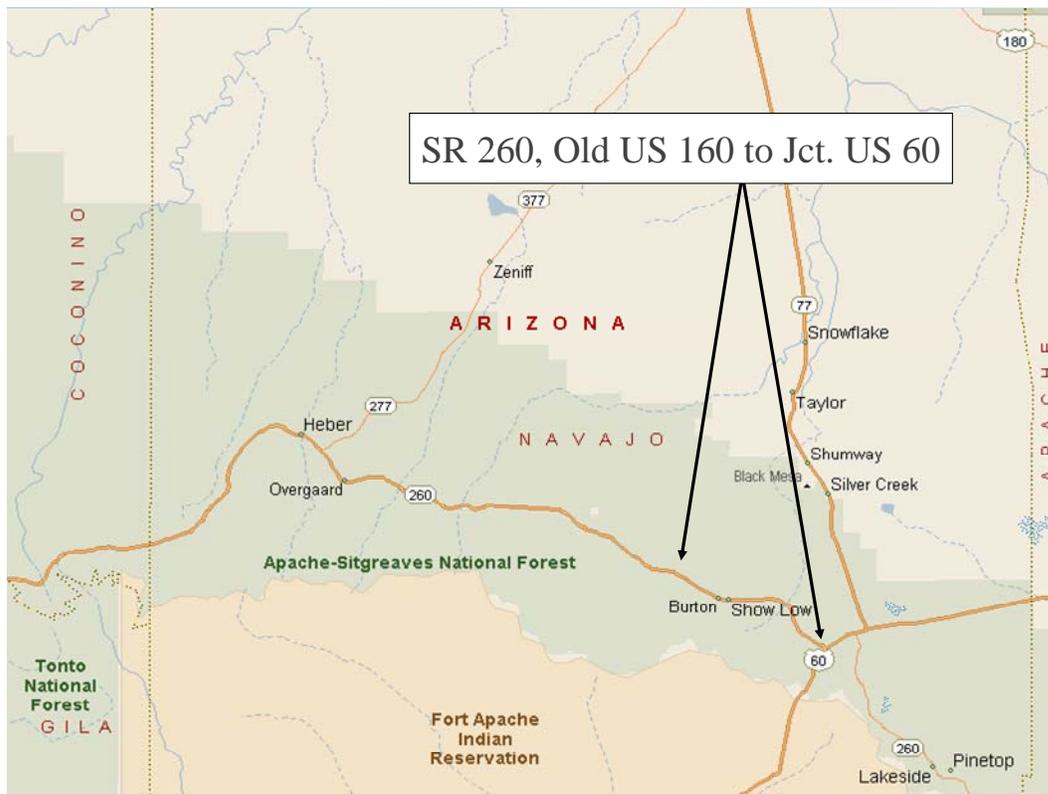
Bidders 2 and 4 both certified with their bids that they had met the DBE goal for the project. During its review, ADOT Civil Rights noted that Bidders 1, 2 and 4 all proposed to use the same DBE firm for trucking work, but Bidders 2 and 4 were claiming a substantially higher DBE credit. Civil Rights contacted that DBE for an explanation. The DBE explained that it had quoted the same price for the same work to all three bidders, but that Bidders 2 and 4 both stated they were increasing the quoted amount in order to meet the DBE goal. Within the DBE specifications for this project:

Section 10.01 states in part “Only the value of the work actually performed by the DBE can be credited toward DBE participation.”, and

Section 10.03 states in part “A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a commercially useful function on the contract” and “To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.”

Section 10.04 states in part “...there cannot be a contrived arrangement for the purpose of meeting DBE goals.”

The value of the work and commercially useful function to be performed by the DBE is the amount of the quote from the DBE. Only that value, not the additional amount, can be counted toward the DBE goal. Further, in offering to pay more than the quoted amount and more than the commercially useful function, Bidders 2 and 4 contrived to meet the goal by artificially inflating the cost of the work to be performed. Based on this information, Bidders 2 and 4, Southwest Slurry Seal, Inc. and Geneva Rock Products, Inc., must be rejected.



ARIZONA DEPARTMENT OF TRANSPORTATION
 INTERMODAL TRANSPORTATION DIVISION
 CONTRACTS AND SPECIFICATIONS SECTION

BID RESULTS

Completion Date:
 35 Working Days

The project is located in Navajo County on State Route 260, west of the City of Show Low, beginning at Milepost 331.90 and extending east along SR 260 to Milepost 340.07. The proposed work includes microsurfacing of the roadway surface on both west and east bound of SR 260, striping and other related items.

Bid Opening Date : 03/02/2012, Prequalification Required, Engineer Specialist : Do David

Project No.	Highway Termini	Location	Item
260 NA 331 H835301C 260-B-(215)A	PAYSON-SHOW LOW HIGHWAY	LINDEN TO SHOWLOW Globe District	21212

Rank	Bid Amount	Contractor Name	Address of Contractor
	\$1,005,703.66	DEPARTMENT	
1	\$1,041,000.00	INTERMOUNTAIN SLURRY SEAL, INC.	520 NORTH 400 WEST NORTH SALT LAKE CITY, UT 84054
2	\$1,056,602.35	SOUTHWEST SLURRY SEAL, INC.	22855 N. 21ST AVENUE PHOENIX, AZ 85027-2034
3	\$1,099,682.00	INTERNATIONAL SURFACING SYSTEMS	P.O. BOX 980430 W. SACRAMENTO, CA 95798
4	\$1,144,909.08	GENEVA ROCK PRODUCTS, INC.	1565 WEST 400 NORTH OREM, UT 84057

Apparent Low Bidder is 3.5% Over Department Estimate (Difference = \$35,296.34)

ARIZONA DEPARTMENT OF TRANSPORTATION

ADVERTISEMENT FOR BIDS

BID OPENING: (FRIDAY, MARCH 2, 2012), AT 11:00 A.M. (M.S.T.)

TRACS NO 260 NA 331 H835301C
PROJ NO NH-260-B(215)A
TERMINI PAYSON-SHOW LOW HIGHWAY (SR 260)
LOCATION LINDEN TO SHOW LOW

ROUTE NO.	MILEPOST	DISTRICT	ITEM NO.
SR 260	331.90 to 340.07	GLOBE	21212

The amount programmed for this contract is \$950,000. The location and description of the proposed work and the representative items and approximate quantities are as follows:

The project is located in Navajo County on State Route 260, west of the City of Show Low, beginning at Milepost 331.90 and extending east along SR 260 to Milepost 340.07. The proposed work includes microsurfacing of the roadway surface on both west and east bound of SR 260, striping and other related items.

REPRESENTATIVE ITEMS	UNIT	QUANTITY
Emulsified Asphalt (Microsurfacing)	Ton	418
Aggregate (Dry Mineral, Type III)	Ton	3216
Temporary Pavement Markers (Chip Seal)	Each	4010
Flagging Services (Civilian)	Hour	112
Flagging Services (Local Enforcement Officer)	Hour	56
Flagging Services (DPS)	Hour	56
Permanent Pavement Marking (Painted)	L.F.	221,249
Dual Component Pavement Marking (Epoxy)	L.F.	331,874
Construction Surveying and Layout	L.S.	1

The time allowed for the completion of the work included in this project will be 35 working days.

The Arizona Department of Transportation hereby notifies all bidders that pursuant to this advertisement for bids, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this solicitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

The minimum contract-specified goal for participation by Disadvantaged Business Enterprises in the work, as a percentage of the total amount bid, shall be 4.05%.

Project plans, special provisions, and proposal pamphlets may be purchased from Contracts and Specifications Section, 1651 W. Jackson, Room 121F, Phoenix, AZ 85007-3217, (602) 712-7221. Plans and bidding documents should be available for sale to bidders within one week following the advertisement for bids. The cost is \$7.00, payable at time of order by cash, check or money order. Please indicate whether a bid

proposal package or a subcontractor/supplier set is desired. An additional fee of \$5.00 will be charged for each set of Special Provisions requested which is not accompanied by the purchase of a related set of project plans. Checks should be made payable to the Arizona Department of Transportation. No refund will be made for plans and specifications returned. We cannot guarantee mail delivery.

This project is eligible for electronic bidding.

No contracting firm will be issued a proposal pamphlet until it has become prequalified. The Application for Contractor Prequalification shall be filed at least 15 calendar days prior to the bid opening date. The Application may be obtained from Contracts and Specifications Section.

No award will be made to any contractor who is not a duly licensed contractor in accordance with Arizona Revised Statutes 32-1101 through 32-1170.03.

All labor employed on this project shall be paid in accordance with the minimum wage rates shown in the General Wage Decision. These rates have been determined in accordance with the requirements of the law and issued by the Secretary of Labor for this project. The wage scale is on file in Contracts and Specifications Section and copies may be obtained at all reasonable times.

A proposal guaranty in the form of either a certified or a cashier's check made payable to the State Treasurer of Arizona for not less than ten percent of the amount of the bid or in the form of a surety (bid) bond for ten percent of the amount of the bid shall accompany the proposal.

Surety (bid) bonds will be accepted only on the form provided by the Department and only from corporate sureties authorized to do business in Arizona.

Proposal pamphlets shall be submitted only in the envelope provided by the Department to:

Arizona Department of Transportation
Intermodal Transportation Division
Contracts and Specifications Section
1651 West Jackson Street, Room 121F
Phoenix, Arizona 85007-3217

Sealed bids will be received until the hour indicated and then publicly opened and read. No bids will be received after the time specified.

Engineering Specialist:	David Do	(602) 712-7445
Construction Supervisor:	Elaine Leavens	(928) 532-2330

STEVE HULL,
Engineer-Manager
Contracts & Specifications Section

260 NA 331 H835301C
NH-260-B(215)A
Advertised on (1/31/2012)