AMENDMENT 10/17/2012

9:00 a.m., Friday, October 19, 2012 Springerville Council Chambers 418 East Main Street Springerville. Arizona 85938

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 on Friday, October 19, 2012, 9:00 a.m. at the Springerville Council Chambers. 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, October 19, 2012. The Board may, at its discretion, recess and reconvene the Executive Session as needed, relating to any items on the agenda.

Amendments to the State Transportation Board Agenda are italicized below:

CHANGE CONTRACT ITEMS (Action As Noted)

*ITEM: 12a BIDS OPENED: September 14, 2012 PAGE 147

HIGHWAY: CORDES JUNCTION – FLAGSTAFF HIGHWAY (I-17)

SECTION: Copper Canyon, Phase 1

COUNTY: Yavapai ROUTE NO.: I-17

PROJECT: HSIP-IM-017-B(211)T 017 YV 280 H702701C

FUNDING: 94% Federal 6% State

Low Bidder Second Bidder

BIDDER: FANN Contracting, Inc. Fisher Sand & Gravel Co. DBA

Southwest Asphalt Paving

 % UNDER / OVER:
 20.2% Under
 6.6% Over

 PROJECT DBE GOAL:
 3.36%
 3.36%

 BIDDER COMMITMENT:
 3.44%
 3.53%

NO. BIDDERS: 6

RECOMMENDATION: REJECT LOW BID, AWARD TO SECOND BIDDER

COMMENTS:

Subsequent to the bid opening, FANN Contracting submitted letters and documentation to show that it had made a clerical error in preparing its bid. Also subsequent to bid opening, Fisher Sand & Gravel submitted a formal protest of the potential award to FANN Contracting, claiming that FANN's bid is mathematically unbalanced.

This project includes a bid item for 413,860 cubic yards of Roadway Excavation, of which 373,045 cubic yards is waste material. That waste material must be hauled off several miles to two disposal sites shown in the project plans. Roadway Excavation is the largest single bid item in this project, at roughly 50% of the total project cost. Hauling the waste material to the disposal sites is a significant cost within that item of work. The clerical error by FANN resulted in omission of a significant portion of the hauling cost from its bid, or an amount of about \$2,000,000. Because of its clerical error, FANN Contracting bid a total of about \$3.5 million for Roadway Excavation while the next two bidders were both at \$5.8 million for Roadway Excavation and the other bidders even higher.

In its letter, FANN Contracting offered to honor its bid, despite the clerical error, provided the Department concur with an interpretation of the contract documents proposed by FANN Contracting related to earthwork. The request concerned a provision on page 31 of the Special Provisions which allows "excavated material" to be used as a source for "construction items". FANN Contracting sought an interpretation which would allow it to use excess material to "fatten slopes and extend embankments to facilitate a balanced project, thereby eliminating waste and associated haul-off". FANN Contracting went on to request that its bid be withdrawn if the Department did not agree with its proposed interpretation.

The documents submitted by FANN Contracting clearly show that FANN did not rely on this new interpretation in preparing its bid and in fact meant to include in its bid the cost to haul excess material to the waste sites indicated in the plans. Further, this is not the proper time for FANN Contracting to make a request for an interpretation. Requests for interpretations must be made before bid opening, as required by Subsection 102.07 of the Standard Specifications. FANN Contracting did not submit its request before bid opening. The Department will not entertain this request.

The Department did, however, give consideration during design to fattening slopes and extending embankments. Due to environmental, right-of-way, scheduling and other constraints, those ideas were ultimately rejected because doing so would have significantly delayed construction of this important project which addresses current operational constraints and safety issues within this section of I-17. The Department therefore will not entertain proposals from any bidder on this project to extend embankments or fatten slopes after award, except possibly to address minor issues that were not apparent during design.

Based on analysis of all bids and the documentation submitted by FANN Contracting, the Department is satisfied that FANN Contracting made a clerical error in determining its unit price for Roadway Excavation. FANN submitted documents showing it estimated 27,260 rental truck hours for earthwork but only entered 7,260 hours into software used to calculate its unit price. The rental truck cost of those missing 20,000 hours at \$90 per hour amounts to \$1,800,000 with no allowance for overhead and profit. This error amounts to more than 20% of FANN's total bid for the project. This error is of such grave consequence that enforcing this contract would be unconscionable for an item of work that is a material feature of the contact. We further find that this error did not result from a violation of positive legal duty or culpable negligence. Finally, the State is placed back to the status quo to the extent that the State suffers no serious prejudice except the loss of the benefit of the bargain created by the error. See, Marana Unified School District v. Aetna Cas. and Sur. 144 Ariz. 159, 696 P.2d 711 (App. 1985).

Due to the nature and magnitude of this clerical error, the Department recommends that FANN Contracting be allowed to withdraw its bid as requested without forfeiting its bid bond. The result is that Fisher Sand & Gravel Co. dba Southwest Asphalt Paving becomes the apparent low bidder. The Department recommends award to Fisher Sand & Gravel Co.

*ITEM: 12b BIDS OPENED: September 28, 2012 PAGE 152

HIGHWAY: GILA COUNTY
SECTION: Various Rural Roads

COUNTY: Gila ROUTE NO.: N/A

PROJECT: HRRRP-GGI-0(209)T 0000 GI GGI

SH48601C

FUNDING: 100% Federal

PROJECT: STP-GGI-0(210)T 0000 GI GGI

SS98101C

FUNDING: 94% Federal 6% State LOW BIDDER: Roadsafe Traffic Systems, Inc.

LOW BID AMOUNT: 272.841.98 \$ STATE ESTIMATE: \$ 347,513.26 \$ UNDER ESTIMATE: \$ 74,671.28 % UNDER ESTMATE: 21.5% PROJECT DBE GOAL: 0% N/A BIDDER COMMITMENT: NO. BIDDERS: 3

RECOMMENDATION: REJECT ALL BIDS

COMMENTS:

Three bids were received for this project. Roadsafe Traffic Systems, Inc. was the apparent low bidder at \$272,841.98. Sunline Contracting, LLC was second low at \$362,420.30 and Pavement Marking, Inc. was third at \$643,252.04.

The low bidder included a unit price of \$0.00 for two items on the bid schedule, Item 7016075 Flagging Services (Civilian) and Item 9240132 Shadow Vehicle w/ Flashing Arrow Panel (Cone Placer/Retriever). Subsection 102.08(B) of the Standard Specifications requires bidders to specify a unit price for every item. Zero is not a price. In accordance with Subsection 102.10(B)(4), bids that do not include a unit price for every item are considered irregular bids and will be rejected by the Department. Further, zero does not reasonably reflect the cost to perform the work associated with those two items, which makes the bid mathematically unbalanced, to the potential detriment of the Department. Under Subsection 102.10(A)(5) this also is cause for rejection of the bid.

However, in our analysis of the low bid and the other two bids, the Department has found that the bid documents contain multiple errors and do not adequately represent the work to be performed in this contract. For example, the bid schedule calls for 440,376 lineal feet of 0.090" White Extruded Thermoplastic line, which is about 90,000 lineal feet more than identified on the two plan summary sheets (Drawing 2 of 21 for SH48601C and drawing 2 of 36 for SS98101C). Likewise, the bid schedule calls for 242,080 lineal feet of 0.045" White Sprayed Thermoplastic line, which is about 100,000 lineal feet less than identified on the two plan summary sheets, which the plans further describe as 0.040" thick line. These two items alone represent more than half of the total cost of

the project, so are significant errors in major items and not the only inconsistencies noted in our review.

Subsection 103.01 of the Standard Specifications states in part that: "The right is reserved to reject any or all proposals, to waive technicalities or to advertise for new proposals if, in the judgment of the Department, the best interests of the Department will be promoted thereby." It does not serve the best interests of Gila County, the Department, the public or the contractor to award a contract in which the bid documents contain errors and conflicting information of such significance that the bid documents do not adequately represent the intended work.

The Department therefore recommends that all bids on this project be rejected to allow time for to revise the plans, specifications, bid schedule and other bid documents as needed and to readvertise the project.