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November 6, 2009

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Agenda Title: DOT 11/9/09 Mo Flat 1B Award of Bid, Continued from 11/3/09 regular Board meeting, Legistar # 09-1101
Meeting Date: November 9, 2009 (special meeting)

Dear Members of the Board:

The Transportation Department (Department) is recommending the following pertaining to the US 50/Missouri Flat Road Interchange Improvements - Phase 1B Contract No. 71336 (Project):

- 1) Adopt/Ratify Department's findings and conclusions regarding DeSilva Gates/Viking a joint venture of De Silva Gates Construction L.P. and Viking Construction Company, Inc. (DSG-V) good faith efforts to obtain UDBE participation; reject the bid protest from Nehemiah Construction, Inc.; and award the Construction Contract to DSG-V who submitted the lowest, responsive, responsible bid of \$23,834,107.00;
- 2) Authorize the Chairman to sign the Construction Contract, subject to review and approval of the final Contract Documents by County Counsel and Risk Management;
- 3) Authorize the Director of Transportation to sign an Escrow Agreement, if requested by the Contractor and in accordance with Public Contract Code Section 22300, for the purpose of holding Contract retention funds;
- 4) Authorize the Director of Transportation to execute Contract Change Orders with an individual value up to \$150,000, provided the cumulative total of all Contract Change Orders is within the contingency budget established for the Project;
- 5) Authorize the Chairman to sign Contract Change Orders in the total amount of \$550,000 for the County's share of certain supplemental items of work (4/5 vote required per PCC 20137); and,
- 6) Authorize the Director of Transportation to sign the Dispute Review Board Agreement with the Contractor, the County, and the Dispute Review Board Members for the purpose of assisting in the resolution of disputes and/or potential claims.

FUNDING: State Transportation Improvement Program regional grant funds; State Highway Operations and Protection Program state operation funds; American Recovery and Reinvestment Act - Transportation Enhancement federal grant funds; Transportation, Community, and System Preservation federal grant funds; Congestion Mitigation and Air Quality regional grant funds and Missouri Flat Master Circulation and Funding Plan local funds.

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BUDGET SUMMARY:		
Total Estimated Cost		\$41,815,000*
Funding		
Budgeted	\$18,903,000	
New Funding	\$	
Savings	\$	
Other**	\$22,912,000	
Total Funding Available	\$41,815,000	
Change To Net County Cost		\$0

* Savings will be reallocated in a future Board action.

** Multi-year Project costs to be included in subsequent years' budgets.

Fiscal Impact/Change to Net County Cost:

The current engineer's estimate for the construction phase of the U.S. 50/Missouri Flat Road Interchange Improvements - Phase 1B Project (Project) is estimated at \$33,651,607 which includes the bid of \$23,834,107, supplemental items of work at \$1,617,500, construction management, survey and materials testing of \$5,800,000, and a contingency of \$2,400,000. The Department anticipates there will be a savings on this Project. Future coordination among the State, El Dorado County Transportation Commission, and the County will determine how the savings will be reallocated.

Budgeted funding for the Project includes \$27,506,000 in State Transportation Improvement Program (STIP) regional grant funds, \$2,950,000 in State Highway Operations and Protection Program (SHOPP) state operation funds, and \$4,126,000 in Missouri Flat Master Circulation and Funding Plan (MC&FP) local funds. New funding includes \$5,174,000 in American Recovery and Reinvestment Act - Transportation Enhancement (ARRA-TE) federal grant funds, \$533,000 in Transportation, Community, and System Preservation (TCSP) federal grant funds, and \$1,526,000 in Congestion Mitigation and Air Quality (CMAQ) regional grant funds.

Authorization to spend Federal ARRA-TE, CMAQ and TCSP funds obligated to this Project has been approved. State SHOPP and STIP funds have been obligated and approved for this Project. The Department has been awarded California Integrated Waste Management Board (CIWMB) grant funds to supplement the existing Project funds and will return to the Board for authorization to enter into the contract for those funds. There is no Net County Cost.

Background:

The Project consists of widening of U.S. 50 and the Weber Creek Bridge, reconstruction of U.S. 50/Missouri Flat Road on and off ramps, roadway improvements, retaining walls, bicycle and pedestrian facilities, and traffic signal improvements.

On September 15, 2009 the Board adopted and approved the Plans and Specifications and authorized advertisement for construction bids for the Project with the bid opening

scheduled for Friday, October 16, 2009. The bid opening was postponed to Wednesday, October 21, 2009 to allow bidders time to consider addenda resulting from Requests for Information from bidders.

Reason for Recommendation:

Award and Sign Construction Contract with Lowest Responsive, Responsible Bidder:

On May 14, 2009 the California Transportation Commission (CTC) allocated \$30,456,000 in STIP and SHOPP funds for this Project. CTC timely use of funds policy requires the administrating agency begin utilization of those funds within six months of allocation.

Nine bids were received ranging from \$23, 834,107 to \$30,435,301.25. The Engineer's Estimate for the Project is \$32,081,370.75. DSG-V's bid is 74% of the Engineer's Estimate.

At the November 3, 2009 Board meeting the Board voted to continue the award of the contract for the Project to allow staff time to review DSG-V's UDBE submittal and to receive UDBE submittals from the fourth through ninth positioned bidders. The Board also authorized staff to make the determination as to whether DSG-V demonstrated adequate good faith efforts in seeking UDBE participation for the Project.

In reviewing the DSG-V's good faith effort Department staff looked at the UDBE information submitted by DSG-V as well as the UDBE information submitted by the other bidders. The Department researched DSG-V's track record for UDBE participation and thoroughly reviewed all of its submittal. Staff spot checked areas to confirm the validity of elements of the submittal. However, staff did not second guess the strategy of the bidder; rather staff only confirmed that the bidder provided appropriate evidence demonstrating its decisions and that the decisions were consistent with the federal requirements. Staff found that DSG-V met the standards for demonstrating a good faith effort.

Attachment A contains a step-by step account of Staff's review of DSG-V's Good Faith Effort and our findings.

Authorize Director to Sign Escrow Agreement:

Pursuant to Special Provisions Section 5-1.06, "Payment of Withheld Funds," of the Contract Documents the Department will retain ten percent (10%) of the value of work done from each Contractor payment (excluding mobilization payments) as security for the fulfillment of the Contract. Alternatively, Public Contract Code (PCC) Section 22300 provides that the Contractor may request that payment of retentions earned be made directly to an Escrow Agent. The Contractor will receive the interest earned on the investment.

In accordance with these provisions, the Contractor may request in writing that the County make payment of retention funds directly into an escrow account, which would necessitate an Escrow Agreement. To help expedite this process if requested by the Contractor, the Department requests that the Board authorize the Director of Transportation to execute the Escrow Agreement. Upon satisfactory completion of portions of the Contract and upon written notification from the Director of Transportation, the Contractor will receive

incremental releases from the Escrow Agent of retention paid into the account and any interest earned thereon. A portion of the retention and interest will be retained in the escrow account until thirty-five (35) days after the recordation of the Notice of Acceptance of the Contract at which time these funds will be released to the Contractor.

Request for Additional Contract Change Order (CCO) Authority:

PCC Section 20142 allows a Board of Supervisors to authorize the County Engineer or other County officer to order changes in the work of a public contract. This ability to delegate is capped at \$150,000. The Board, by Resolution No. 106-93 has utilized this provision and delegated to the Directors of Transportation and Environmental Management and the Chief Administrative Officer CCO authority not to exceed \$50,000.

Given the magnitude of the subject Contract and the exposure to the County should work be delayed due to a needed change, it is requested the CCO limit for this Contract be increased to \$150,000, which is consistent with the limits set in the Public Contract Code. This authority is requested provided the cumulative cost of all CCOs is maintained within the contingency budget established for the Project.

Approval of CCOs for Supplemental Items of Work (4/5 vote required):

The Project Contract has been prepared in conformance with County and State of California Department of Transportation (Caltrans) bid item payment procedures. In doing so, certain items of work, necessary to complete the Project and which require a variable work effort to complete, are identified in the Contract Documents as supplemental items of work to be performed and paid for on a time and material basis, using standard Caltrans force account billing procedures. The work is authorized by issuance of a CCO, which also encumbers the funds anticipated to be needed for each of the planned supplemental items and is billed against as the work progresses. The amount of each CCO is based on an evaluation by Department staff of the Project components, area, and time frame. Due to the magnitude of the Project, the value of some of the supplemental items of work will/may exceed the Department's authority for individual CCOs. Approval is therefore requested for the following two large supplemental items of work CCOs totaling \$550,000.

1) Water Pollution Control	\$300,000
2) Extra Work Associated with Pier Construction	\$250,000
TOTAL:	\$550,000

For the bridge widening portion of the Project six excavations approximately eight-foot (8') wide by fifteen-foot (15') long and approximately thirty feet (30') below the creek bed will be required to construct the rectangular concrete piers that will support the new bridge sections. The Geotechnical Report anticipates difficult excavation due to the presence of rock. The Department is requesting CCO authority associated with pier construction supplemental funds.

The remaining supplemental items of work are anticipated to remain within the Department's authority for CCOs.

Authorize the Director to sign the Dispute Review Board Agreement:

Pursuant to Section 5-1.34, "Dispute Review Board," of the Special Provisions, a Dispute Review Board (DRB) shall be established by the Engineer and the Contractor cooperatively upon Contract approval. Caltrans requires that this provision be included in the contract documents of any project with an estimated cost of over \$10,000,000 and 100 or more working days. The DRB will serve as an advisory body to assist in the resolution of disputes or potential claims when dispute or potential claim resolution at the project level is unsuccessful. Although not binding to the parties in dispute, the DRB considers disputes and/or potential claims referred to it, and furnishes written reports with findings and recommendations to the parties to aid in the resolution of their differences.


The DRB is comprised of three members: one member selected by the County and approved by the Contractor; one member selected by the Contractor and approved by the County; and, one member selected by the other two members and approved by the County and the Contractor.

A copy of the DRB Agreement to be executed by the County, the Contractor, and the three DRB members is included in Section 5-1.34 of the Contract Documents. The DRB provisions state that the County authorizes the Engineer to execute and administer the terms of the Agreement. County Counsel has reviewed and approved these provisions as part of their Contract Document approval. To help expedite this process, the Department requests that the Board authorize the Director of Transportation to execute the DRB Agreement.

Action to be taken following Board approval:

1. Upon approval by County Counsel and Risk Management, the Department will forward the Construction Contract, together with the required bonds and insurance, and the approved Contract Routing Sheet to the Board Clerk for the Board Chairman's signature.
2. The Board Clerk will forward the fully executed Construction Contract to the Department for further processing.

Contact:



James W. Ware, P.E.
Director of Transportation

Concurrences: N/A

Attachments

ATTACHMENT A
GOOD FAITH EFFORT ANALYSIS AND FINDINGS OF UDBE SUBMITTAL
FROM DE SILVA GATES – VIKING A JOINT VENTURE OF DE SILVA GATES
CONSTRUCTION L.P. AND VIKING CONSTRUCTION COMPANY INC. FOR THE
US 50/MISSOURI FLAT ROAD INTERCHANGE IMPROVEMENTS – PHASE 1B

Standards

- It is up to the County to make a fair and reasonable judgment whether a bidder made adequate good faith efforts.
- The determination of the sufficiency of a bidder’s good faith efforts is a judgment call by the local agency—meeting quantitative formulas is not required.
- What constitutes a showing of adequate good faith efforts in a particular procurement is an intrinsically fact-specific judgment that recipients must make. Circumstances of procurements vary widely, and good faith effort determinations must fit each individual situation as closely as possible.

Review of Good Faith Effort

- The bidder showed that it took all necessary and reasonable steps to achieve a UDBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- Typical factors the County may consider in evaluating good faith efforts include the following:

Solicitations

- The bidder sufficiently solicited, through reasonable and available means, the interest of all certified UDBEs who can perform the work. The bidder provided interested UDBEs with adequate information about the project in a timely manner to assist interested UDBEs in responding to the solicitation.
- DSG-V contacted relevant agencies to obtain assistance in contacting UDBEs. DSG-V researched Caltrans Civil Rights website in order to locate UDBEs certified to perform the work DSG-V made available to UDBEs.
- DSG-V advertised on the Small Business Exchange (SBE) website, in the SBE Today Newsletter, in the SBE Weekly Newspaper, in the trade publication “Construction Update, Inc”, in the focus publication “Minority Bidders Bulletin”, in the Daily Pacific Builder, on the “Construction Star, Inc.” and the “Weekly Bid Flash”. DSG-V advertised early in the bid process and promptly notified the entities of the postponement of the bid opening date.
- DSG-V solicited approximately 200 UDBE firms, evidenced by confirmations of fax transmittals. The record shows that fax transmittals were sent on by DSG on 10/5/09 and by Viking on 10/7/09.

- DSG-V followed its initial solicitation with one or, in many cases, two phone calls to ascertain interest and offer assistance. The follow up phone calls by Viking took place on 10/9/09, and those by DSG on 10/13/09 and 10/19/09.

Break Out of Items of Work and Amount of Work Made Available

- The bidder selected appropriate portions of work to be performed by UDBEs in order to increase the likelihood that UDBE goals would be achieved. The bidder made sufficient work available to UDBEs.
- DSG-V broke-out work items into various sizes to accommodate UDBEs of various size and capacity. For example DSG-V solicited bids from UDBE suppliers of erosion control materials as well as soliciting UDBE subcontractors who could both supply and install the erosion control materials. DSG-V made 27 items of work available to UDBEs.
- These 27 items constituted approximately 40% of work on the project made available to UDBEs. The range of the percentage of work made available by other bidders ranged from just under 8% to 74%.
- Out of the approximate 200 firms solicited by DSG-V, DSG received 16 bids from UDBEs from which to consider. Many solicited UDBEs failed to provide bids for various reasons, including distance to project site, insufficient resources to prepare a bid, and cessation of operations.
- DSG made information available through solicitations and advertisements as described previously.

Assistance with bonding, insurance, etc.

- The bidder made efforts to assist interested UDBEs in obtaining bonding, lines of credit, or insurance. The bidder made efforts to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- DSG offered assistance through solicitations and advertisements.

Negotiations

- The bidder negotiated in good faith with interested UDBEs and, to the extent agreement could not be reached, the bidder provided evidence why. If the bidder rejected a UDBE based on price, the record indicated reasonable decisions by the bidder (i.e., the price difference was excessive or unreasonable). The bidder did not reject a UDBE as being unqualified.
- DSG sufficiently demonstrated reasonable justification for rejecting certain UDBE bids. Such reasons include excessive price compared to other bidders or in-house cost and impractical and unduly burdensome coordination and scheduling.

Other Factors

- Other factors the County may consider in evaluating good faith efforts include the following:
 - The performance of other bidders in meeting the contract goal
 - Bidders’ UDBE commitment percentages spanned a wide range. DSG-V’s commitment percentage is consistent with the commitment percentages obtained by other bidders, including those with much higher bids:

BIDDER	UDBE Commitment
DSG	0.7%
CC Myers	2.6%
Nehemiah Construction	7.6%
Teichert Construction	0.76%
Golden State Bridge	11.3%
Granite Construction	1.43%
Q&D Construction	0.96%
Diablo Contractors	Did not submit
Flat Iron West	Did not submit

- Nehemiah’s and Golden State Bridge’s commitment percentage includes a large amount of UDBE trucking work that may not be realized.
- The bidder’s history of UDBE compliance on other projects
- DSG has met the goal or demonstrated good faith efforts on recent projects awarded by Caltrans:
 - (a) SR160 Interchange: Goal = 0%, Commitment = 1%;
 - (b) Hwy 50 HOV: Goal = 8%, Commitment = 2.1%, good faith effort made;
 - (c) Rubberized HMA Overlay: Goal = 5%, Commitment = 5.2%

U.S. 50 Missouri Flat Rd. Interchange Improvement Project
Attachment A

- The current bidding climate
- There is a narrow margin between bids, which influences bidders' decisions regarding reasonableness.
- State of the economy
- The economic downturn has caused some UDBEs to cease business operations, while the economic stimulus funds have allowed the remaining UDBEs to enjoy a robust business resulting in a scarcity of available UDBEs.
- Time allotted for preparing and submitting the bid

Conclusions and Recommendations

DSG-V has met the federal requirements and demonstrated adequate good faith efforts. DSG-V is the lowest, responsive, responsible bidder. The recommendation is to award the contract to DSG-V.