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August 4, 2011

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BOARD OF SUPERVISORS
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Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Agenda Title: DOT 8/9/11 Ice House Road Bridges - Maintenance Project Contract Award, Legistar # 11-0319

Meeting Date: August 9, 2011

Dear Members of the Board:

Department of Transportation recommending the following pertaining to the Ice House Road Bridges - Maintenance Project, Contract No. PW 09-30469, CIP No. 77121:

- 1) Adopt the factual findings as stated in the Department of Transportation's August 4, 2011 letter responding to Myers and Sons Construction, L.P.'s protest and, based thereon, deny the protest;
- 2) Waive the inconsequential irregularities contained in Victory Engineers, Inc.'s bid and described herein;
- 3) Award the Construction Contract to Victory Engineers, Inc. who submitted the lowest responsive, responsible bid of \$351,350;
- 4) Authorize the Chair to sign the Construction Contract, subject to review and approval of the final Contract Documents by County Counsel and Risk Management; and
- 5) Authorize the Director of Transportation to execute Contract Change Orders consistent with the Public Contract Code limits, provided the cumulative total of all Contract Change Orders is within the funding limits for the Project. (Est. Time: 5 Min.)

Background:

On May 17, 2011 the Board adopted and approved the Plans and Specifications and authorized advertisement for construction bids for the Ice House Road Bridges - Maintenance Project (Project) with the bid opening scheduled for June 13, 2011. Bids were opened on June 13, 2011. On June 20, 2011 the Department of Transportation (Department) submitted a recommendation letter to the Board. In accordance with the Department's recommendation, on June 28, 2011 the Board found all bids non-responsive, rejected all bids, and authorized the Department to re-advertise the Project. The June 20, 2011 recommendation letter to the Board stated that the bid opening for the second bid period would be July 18, 2011; however, the Department determined that the federal funding requires a three-week bid period. Therefore, the bid opening was

scheduled for July 25, 2011.

Since the products specified for the bridge deck surfacing are temperature dependent, the contract working days were reduced from 40 to 30 working days in order to increase the likelihood that the specified temperatures will occur.

Reason for Recommendation:

On July 25, 2011 the Department opened bids for the Project. Victory Engineers, Inc. submitted a bid of \$351,350 and Myers and Sons Construction, L.P. submitted a bid of \$378,700. The Engineer's Estimate is \$260,600. Although the low bid is 35% higher than the Engineer's Estimate, the Project's direct construction costs will not exceed the anticipated proportionate share of the Fiscal Year 11-12 appropriation for the direct construction cost line item.

The Department concludes that the bids are higher than the Engineer's Estimate due to the remote location of the bridges and the lack of historical cost data for this type of bridge maintenance.

Adopt the factual findings as stated in the Department's August 4, 2011 letter and deny the bid protest:

On July 27, 2011 following the Department's review of the Underutilized Disadvantaged Business Enterprise (UDBE) information, the Department issued the All Bidders Letter notifying bidders of the Department's intent to recommend award of the Project to the lowest responsive, responsible bidder: Victory Engineers, Inc.

On August 1, 2011 the Department received via fax a response to the All Bidders Letter from Myers and Sons Construction, L.P. (Myers) protesting Victory Engineers Inc.'s (Victory's) bid and requesting that the Board award the bid to Myers. A more thorough discussion of the bid protest can be found in the attached copy of Myers' letter and the Department's response. In short, of the three issues raised by Myers, only one arguably constitutes a bid irregularity—Victory's omission of certain corporate information on Page 13 of its proposal.

Your Board is permitted to waive an irregularity in a bid "if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential." (Valley Crest Landscape, Inc. v. City of Davis (1996) 41 Cal.App.4th 1432, 1440-1441.) Although Victory did not include the legal name of its corporation and place of incorporation where requested on the Proposal, the Department has verified from the California Secretary of State's website that Victory is a California Corporation whose legal name is "Victory Engineers, Inc.," as indicated on the Proposal. This is no different than a bidder's omission of the business location for a listed subcontractor, which the Attorney General has found to be a waivable irregularity since the required information can be easily obtained upon inquiry. (86 Ops.Cal.Atty.Gen. 90 (2003).) Omission of the corporate

information, therefore, is an irregularity which the Board of Supervisors has the discretion to waive. The Department recommends that the Board waive this inconsequential irregularity. Additionally, the Department recommends that the Board adopt the factual findings in our response letter and, based thereon, deny Myers' protest.

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

Though not raised in Myers' protest, the Department also recommends that the Board waive another minor irregularity in Victory's bid. In order to avoid question as to who made any changes to a bid, the Department includes in the Proposal instructions that bidders shall not use correction fluid in filling out their bids; rather bidders are instructed to line through the error, write the correct information, and initial adjacent to the error. Victory used correction fluid in its Proposal, but initialed adjacent to each location at which correction fluid was used. Since this approach satisfies the intent of the instructions and does not otherwise affect the amount of the bid or afford Victory an advantage not given to other bidders, the Department recommends that the Board find that Victory's use of correction fluid in conjunction with initialing the changes is an inconsequential irregularity that can and should be waived.

The UDBE goal for the Project is 1.73%. The Contract Documents require that if the bidder's UDBE Commitment form shows that it has met the goal, in order to protect its eligibility for award of the contract in the event the Department finds that the UDBE goal has not been met, the bidder must also submit good faith efforts documentation by 4:00 p.m. on the fourth business day after bid opening. Victory submitted a UDBE Commitment form which shows that Victory has committed to a UDBE goal of 1.9%. Victory's good faith efforts form does not list good faith effort measures taken; rather it only states that it has "met requirements". The Department has reviewed Victory's UDBE Commitment form submittal and finds that the firm listed is a certified DBE under the California Unified Certification Program and meets the criteria for a UDBE; that Victory provided sufficient written confirmation that the UDBE firm is participating in the Contract; and that Victory slightly exceeded the Contract goal of 1.73%.

Victory submitted the lowest bid in the amount of \$351,350. The Department recommends that the Board award the Construction Contract to Victory, who submitted the lowest responsive, responsible bid.

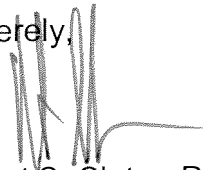
Request for Additional Contract Change Order (CCO) Authority:

Public Contract Code (PCC) Section 20142 allows the Board of Supervisors to authorize the County Engineer or other County officer to order changes in the work of a public contract. The Department is requesting that the Director's authority be increased pursuant to the limits set in the PCC, which for this Contract amounts to \$30,068. This authority is requested provided the cumulative cost of all CCOs is maintained within the funding limits for the Project.

Action to be taken by the Department following Board approval:
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 Chair's signature.

Action to be taken following Board approval:
The Board Clerk will forward the fully executed Construction Contract to the Department for further processing.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Slater', with a long horizontal flourish extending to the right.

Robert S. Slater, P.E.
Assistant Director of Transportation

Attachments