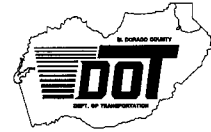




**COUNTY OF EL DORADO
DEPARTMENT OF TRANSPORTATION**



INTER-OFFICE MEMORANDUM

Date: June 13, 2007
To: Board of Supervisors
From: Richard W. Shepard, Director, Department of Transportation

A handwritten signature in black ink, appearing to be "R. Shepard", written over the "To:" and "From:" lines.

Subject: Additional Information Related to Legistar File ID Number 07-838 - Bid Irregularities in the Proposals for the Christmas Valley Phase 1 Erosion Control and SEZ Enhancement Project (JN 95151/95188)

On June 8, 2007, the Department opened bids for the Christmas Valley Phase I Erosion Control and Stream Environment Zone Enhancement project (Project). The Department received six bid proposals, with the apparent low bidder, V&C Construction, Incorporated (V & C), submitting a bid of \$835,232.20. Recommendations regarding award of the Construction Contract have previously been submitted to the Board in Legistar File ID Number 07-838.

After review of the bids it was determined that there is a minor irregularity in the two lowest bids received. The apparent low bidder and second lowest bidder did not list themselves in the "DBE Program Bidders List information" form as required in Section 3-1.01A of the Project contract special provisions.

The Department, in consultation with County Counsel, evaluated this irregularity to determine the Board's ability to waive the irregularity as inconsequential and to determine if the irregularity affects the County's ability to comply with federal and Caltrans DBE requirements.

With respect to the Board's ability to waive the irregularity as inconsequential, the Department has concluded that V&C's failure to list itself in the "DBE Program Bidders List Information" form does not appear to give V&C a competitive advantage as it does not impact its pricing, nor is it a "mistake" that would allow V&C to withdraw its bid under Public Contract Code Section 5103. Additionally, the Department has concluded that the failure to list itself in the "DBE Program Bidders List Information" form does not appear to defeat the goals of competitive bidding.

With respect to irregularity affecting the County's ability to comply with federal and Caltrans DBE requirements, the Project is not funded by Federal Highway

Administration (FHWA) funds, though the Project received federal-assistance during the planning stage through the U.S. Forest Service Lake Tahoe Grant Program. The U.S. Forest Service, through 7 CFR 3016[e], has DBE requirements for its contracts and grants; however, the provision at issue was inserted in order to comply with the County's reporting requirements under the County's DBE Implementation Agreement, which reflects the FHWA requirements of 49 CFR 26.11. The County's DBE Implementation Agreement requires that the County collect certain data required to maintain a bidders list; however, the Agreement does not specify the method to do so. The requirement of 49 CFR 26.11 states that the bidders list information may be obtained in a number of ways, including collection from all bidders either before or after the bid due date.

Accordingly, despite the requirement of the Project contract documents, there is not contractual or regulatory prohibition on collecting the information after the bids are opened.

Pursuant to the recommendations previously offered by the Department in Legistar File ID Number 07-838, should the Board elect to make an award to the apparent low bidder; the Department will require the contractor to provide the DBE information prior to issuing the Notice to Proceed.

In closing, along with the recommendations previously submitted under Legistar File ID Number 07-838, the Department requests that the Board make the following findings:

- 1.) Find that the irregularity created by V&C's failure to list itself in the "DBE Program Bidders List Information" form is nonsubstantive and inconsequential in that it does not appear to give V&C a competitive advantage over other bidders nor otherwise defeats the goals of insuring economy and preventing corruption in the public contracting process, and,
- 2.) Make a finding that the irregularities within the DBE bid information are minor and do not materially affect the bid.