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March 8, 2011

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

**Agenda Title: DOT 3/15/11 Green Valley Road at Tennessee Creek
Award of Bid, Legistar # 10-0299**

Meeting Date: March 15, 2011

Dear Members of the Board:

Department of Transportation recommending the following pertaining to the Green Valley Road at Tennessee Creek - Bridge Replacement Project (Contract No. PW 09-30407, CIP No. 77109):

- 1) The Board find that incomplete execution of the Equal Employment Opportunity Certification at the time of bid submittal is not an irregularity; and award the Construction Contract to A. Teichert & Son, Inc. dba Teichert Construction, who submitted the lowest responsive, responsible bid of \$2,705,553.90;
- 2) Authorize the Chair 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 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;
- 4) 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; and
- 5) 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. (Est. Time: 5 Min.)

Background

On January 11, 2011 the Board adopted and approved the Plans and Specifications and authorized advertisement for construction bids for the Green Valley Road at Tennessee Creek - Bridge Replacement Project (Project) with the bid opening scheduled for February 18, 2011. Originally, the bid opening was scheduled for Monday, February 14, 2011, but due to the number of requests received from potential bidders for an extension, the Department postponed the bid opening to Friday, February 18, 2011.

Reason for Recommendation:

On February 18, 2011 the Department of Transportation (Department) opened bids for the Project. Seven bids were received ranging from \$2,705,553.90 to \$3,422,683.26. The Engineer's Estimate for the Project is \$3,648,427.30.

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

The Equal Employment Opportunity Certification (EEO Cert) included in the Proposal includes the locations where the Bidder inserts its name and the names of its subcontractors to certify whether or not each has participated in previous contracts subject to equal opportunity clauses. A. Teichert & Son, Inc. dba Teichert Construction's (Teichert's) EEO Cert included only its name and not the name of its subcontractors. Since the statutes requiring EEO Cert allow the certification to be executed with the Contract execution, the Department recommends that the Board find the incomplete execution is not an irregularity. The Department will ensure that Teichert executes a new EEO Cert as part of the Contract execution.

Teichert submitted the lowest bid in the amount of \$2,705,553.90. The Department recommends that the Board award the Construction Contract to Teichert, who submitted the lowest responsive, responsible bid.

The Underutilized Disadvantaged Business Enterprise (UDBE) goal for the Project is 9.29%. Per the Contract Documents, if the top three bidders did not submit their UDBE information with their bid, they were required to submit this information by 4:00 pm the fourth business day after the bid opening, which for this Project was February 25, 2011. Teichert submitted a UDBE Commitment form which shows that Teichert has committed to a UDBE goal of 9.4%. The Department has reviewed Teichert's UDBE Commitment form submittal and finds that the firms listed are certified DBEs under the California Unified Certification Program and meet the criteria for a UDBE; that Teichert provided sufficient written confirmation from each UDBE firm that each is participating in the Contract; and, that Teichert has slightly exceeded the Contract goal of 9.29%. The Department's review of Teichert's Good Faith Effort documentation indicates that it has also demonstrated that a Good Faith Effort was made.

Following the Department's review of the UDBE information, the Department issued the All Bidders Letter which initiated the bid protest period and included the Department's recommendation for award and the procedures for filing a bid protest. The bid protest period ended at 4:00 pm, Monday, March 7, 2011, with no protests filed. Therefore, the Department recommends award of the Construction Contract to Teichert as having 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 \$147,778. This authority is requested provided the cumulative cost of all CCOs is maintained within the funding limits for the Project.

Authorize Director to Sign Escrow Agreement:

Pursuant to Special Provisions Section 5-1.13, "Payment of Withheld Funds," of the Contract Documents the Department will retain ten percent of the value of work done from each Contractor payment (excluding mobilization payments) as security for the fulfillment of the Contract. Alternatively, 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 days after the recordation of the Notice of Acceptance of the Contract at which time these funds will be released to the Contractor.

Authorize the Director to sign the Dispute Review Board Agreement:

Pursuant to Section 5-1.22, "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. 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.

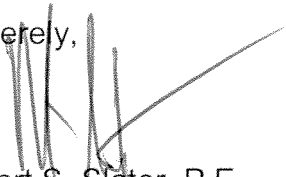
The DRB is comprised of three members: one member selected by the County and approved by the Contractor; one member selected by the Contractor and approved by the County; and, one member selected by the other two members and approved by the County and the Contractor.

A copy of the DRB Agreement to be executed by the County, the Contractor, and the three DRB members is included in Section 5-1.22 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 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 'Robert S. Slater', with a long, sweeping horizontal stroke extending to the right.

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

Attachments