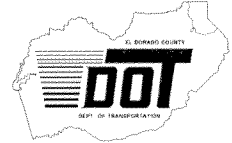




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July 31, 2012

Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

**Agenda Title: DOT 8/7/12 U.S. 50 HOV Lanes Phase 0 Award of Bid,  
Legistar # 12-0325**

**Meeting Date: August 7, 2012**

Dear Members of the Board:

Department of Transportation recommending the following pertaining to the U.S. 50 HOV Lanes Phase 0 Project, (Contract No. PW 12-30639, CIP No. 53124):

- 1) Award the Construction Contract to DeSilva Gates Construction, L.P. who submitted the lowest responsive, responsible bid of \$12,455,555;
- 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 Interim 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
- 4) Authorize the Interim 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.) (Refer 6/19/12, Item 13)

### **Background**

On June 19, 2012 the Board adopted and approved the Plans and Specifications and authorized advertisement for construction bids for the U.S. 50 HOV Lanes Phase 0 Project (Project) with the bid opening scheduled for Monday, July 23, 2012.

### **Reason for Recommendation**

On Monday, July 23, 2012 the Department of Transportation (Department) opened bids for the Project. One bid of \$12,455,555 was received. The Engineer's Estimate is \$12,865,000.

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

Following the Department's review of the bids, the Department issued the All Bidders Letter which, to comply with grant funding requirements, 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 5:00 pm, Tuesday, July 31, 2012, with no protests filed.

DeSilva Gates Construction, L.P. submitted the only bid in the amount of \$12,455,555. The Department recommends award of the Construction Contract to DeSilva Gates Construction, L.P. who submitted the lowest responsive, responsible bid.

Section 3-1.04, "Escrow Bid Documents" (EBDs), of the Contract Documents requires that at the time the successful bidder submits the signed Contract, bonds and insurance, the successful bidder shall also submit a lockable container with all documentation used to prepare its bid. Department staff and a representative of the successful bidder who is familiar with the preparation of the bid will examine the EBDs to ensure that all of the requested items are included. Failure of the successful bidder to furnish the EBDs in accordance with this special provision constitutes a failure to execute and return the Contract as required. Upon such failure to submit the EBDs as required herein, the bidder's security will be forfeited to the County. The Department would return to the Board with a recommendation to re-bid the Project.

Once it is determined that the EBDs are genuine, legible and complete, they will be placed in the lockable container and stored at the Department's office. The Contractor will maintain the key. The EBDs will be examined by both County and the Contractor, at any time deemed necessary by either County or the Contractor, to assist in the negotiation of price adjustments and Contract Change Orders, or the settlement of disputes.

Authorize Interim Director to Sign Escrow Agreement:

Pursuant to Special Provisions Section 5-1.09, "Payment of Withheld Funds," of the Contract Documents, the Department will retain five percent (5%) 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 Interim Director of Transportation to execute the Escrow Agreement. Upon substantial completion as determined by the Engineer and upon written notification from the Interim Director of Transportation, half of all retentions withheld and interest accrued may be released to the Contractor by the Escrow Agent. Thirty-five days after the recordation of the Notice of Acceptance and

upon written notification from the Interim Director of Transportation, the Contractor will receive from the Escrow Agent the remaining retention paid into the account and any interest earned thereon.

Authorize the Interim Director to sign the Dispute Review Board Agreement:  
Pursuant to Section 5-1.46, "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 5-1.46 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 its Contract Document approval. To help expedite this process, the Department requests that the Board authorize the Interim Director of Transportation to execute the DRB Agreement.

**Action(s) 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 Acting Clerk of the Board for the Chair's signature.
2. The Acting Clerk of the Board will forward the fully executed Construction Contract to the Department for further processing.

Sincerely,



Kim Kerr, Interim Director  
Department of Transportation

Attachments