

TRANSPORTATION COMMISSION OF WYOMING

The Transportation Commission of Wyoming met in the Commission Room of the Transportation Headquarters building in Cheyenne on October 4, 2012. The teleconference meeting was convened at 8:30 a.m. by Chairman Latta. The following members were present constituting a quorum:

Jim Latta, Chairman, Pinedale (via telephone)
Ted Ertman, Vice Chairman, Newcastle (via telephone)
Milt Coulter, Commissioner, Gillette (via telephone)
Clair Anderson, Commissioner, Riverton (via telephone)
Bruce McCormack, Commissioner, Cody (via telephone)
John F. Cox, Director
Sandra J. Scott, Commission Secretary

Also present at and participating in the meeting were: Gregg Fredrick, Assistant Chief Engineer of Engineering and Planning; Ken Shultz, Assistant Chief Engineer of Operations; Jackson Engels, Assistant Attorney General; Doug McGee, Public Affairs Manager; and Joe Dailey, Division Administrator, Federal Highway Administration.

Others present: Valerie Sawyer, Secretary, Mountain Valley Hydroseed, LLC, of Grand Junction, Colorado (via telephone); David Rael, President, and Kaycee Shatz, Estimator, S & L Industrial, Inc., of Cowley, Wyoming (both via telephone); Boris Lopez, President, and Mote Mouna, Vice President, of American Contracting, of Cheyenne, Wyoming; and Ken Spear, Contracts and Estimates Engineer.

Those absent: Commissioners Cactus Covello, Jr., of Torrington, and K. John Dooley, of Laramie; Delbert McOmie, Chief Engineer; Tom Loftin, Support Services Administrator; Colonel John Butler, Highway Patrol Administrator; Dennis Byrne, Aeronautics Administrator; and Kevin Hibbard, Budget Officer.

1. Mr. Fredrick presented the Engineering and Planning report, beginning with the bid tabulations from the letting held September 27, 2012, in Casper.

COMMISSION DISTRICTS 1 and 7 Cactus Covello - Commissioner Clair Anderson - Commissioner

State project SSP-TO-B129093, involving sign installations and miscellaneous work at various locations on I-25, in Transportation District 2, in Converse, Natrona and Platte counties.

Engineer's Estimate	\$260,735.00	
Mountain Valley Hydroseed, LLC d/b/a Mountain Valley, LLC, Grand Junction, CO	\$230,140.00	-11.7%
Plus 5% for Comparison	\$241,647.00	
Irregular Proposal		
S & L Industrial, Inc., Cowley, WY	\$258,045.00	

Mr. Fredrick noted that the Form E-91 provided by Mountain Valley Hydroseed was not printed as a single document, but rather as three separate draft documents. He provided the Commission with these three documents. The first document consists of three pages. Page one contains the project and contractor information. It is signed and notarized, and it guarantees the contractor's bid bond for the project. Page two reflects the extended bid prices, and page three contains the contractor's total bid amount for award consideration. This document has a creation date of September 26, 2012, at 4:54:40 p.m. The second document, consisting of two pages, contains the Non-Collusive Bidding document, the Secretary of State Registration, and the Certification of Suspension or Debarment. This was printed on the same date at 4:54:46 p.m., 6 seconds after the first three pages were printed. He also brought to the Commission's attention that these are draft documents. All five pages were submitted as Mountain Valley Hydroseed's proposal. Mr. Fredrick noted that another page contains the certification of Non-Discrimination and the Covenant and Agreement Certification, and it was not submitted with the original bid proposal. Mr. Fredrick provided the commissioners with an example of this document via e-mail before the meeting for their reference.

In accordance with the WYDOT Standard Specifications for Road and Bridge Construction, Section 102.7 - Irregular Bids, "The Department will not consider or publically read bids with an improper or missing signature, or notarization on the 'Proposal' (Form E-91) or bids that lack printed numerical values. The Department will publicly read at the bid opening, but may reject, bids with any of the following irregularities: . . . 3. Alteration, deletion, loss, or substitution of any page or part of the 'Proposal' (Form E-91) or the addition or attachment of conditional provisions." Mr. Fredrick noted that because the statement of Non-Discrimination and the Covenant and Agreement Certification was deleted, this is a basis for rejecting the bid.

He also noted there was not a check digit on the proposal because it was printed as a draft. He referred again to Section 102.7, paragraph 6, which indicates that the commission may reject a bid when there is "A nonmatching check digit on any page of the Proposal (Form E-91)." Mr. Fredrick noted that because it was entirely printed in draft form, that this could also be the basis for rejecting the bid. He also noted that the Commission has rejected bids in the past that were printed entirely in draft form, and noted that these two errors, if overlooked, will compromise the integrity of the bid process.

It was recommended by Mr. Fredrick that the Commission reject the irregular bid proposal from Mountain Valley Hydroseed, LLC, and that **S & L Industrial, Inc., Cowley, Wyoming**, be awarded the contract.

Chairman Latta asked Ms. Valerie Sawyer of Mountain Valley Hydroseed to present her case to the Commission. Ms. Sawyer explained a series of events that led to the presentation of her bid on September 26, 2012. She prepared the bid using a new computer. The font size that she used was too large, which prohibited her from printing the proposal in the required manner. In her rush to have the bid delivered on time, Ms. Sawyer stated that the last page of the bid proposal was omitted. Ms. Sawyer also stated that her company would stand by its bid. Ms. Sawyer also acknowledged that she was aware of the method of printing a complete bid proposal.

Mr. Rael spoke in support of his company's bid, S&L Industrial, Inc. He advised that its bid was prepared in accordance with WYDOT Standard Specifications, and stated that awarding the contract to Mountain Valley Hydroseed would set a precedent for future omissions from other contractors and that would void the integrity of the bid process.

Mr. Spear advised that setting the computer's print resolution was an issue that Ms. Sawyer must address when preparing her bid, and that it was not an issue with WYDOT's bidding software.

It was moved by Vice Chairman Ertman, seconded by Commission McCormack, and unanimously carried to award the contract to **S & L Industrial, Inc., of Cowley, Wyoming**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract.

Ms. Sawyer, and Messrs. Rael and Shatz left the meeting.

COMMISSION DISTRICT 2
K. John Dooley - Commissioner

State project IRP-CN05074, for widening of the existing roadway and new construction, involving grading, draining, placing crushed base and bituminous pavement surfacing, and miscellaneous work on 4.15 miles of US 30/287 (Jonathon Quarry Road), beginning at reference marker 0.00, just north of Laramie, in Albany County.

Engineer's Estimate	\$3,582,590.50	
Knife River, Cheyenne, WY	\$3,053,289.00	-14.8%
Simon Contractors and Subsidiaries, Cheyenne, WY	\$3,582,005.00	
Irregular Proposal		
McGarvin-Moberly Construction Company, Worland, WY	\$3,746,536.06	
Oftedal Construction, Inc., Miles City, MT	\$3,842,412.00	
High Country Construction, Inc., Lander, WY	\$3,900,072.23	
McMurry Ready-Mix Co., Casper, WY	\$4,017,988.32	

It was recommended by Mr. Fredrick, moved by Commissioner McCormack, seconded by Commissioner Coulter, and carried that **Knife River, Cheyenne, WY**, having prequalified in

accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder.

COMMISSION DISTRICT 3
Jim Latta - Chairman

Federal project STP-1211001, involving grading, milling plant mix, hot plant mix, guardrail installation, and miscellaneous work on 4.01 miles of WYO 89, beginning at reference marker (RM) 11.59, between the Utah State Line and Sage Junction, in Lincoln County.

Engineer's Estimate	\$1,454,108.80	
HK Contractors, Inc., Idaho Falls, ID	\$1,395,583.77	-4.0%
LeGrand Johnson Construction Co., Logan, UT	\$1,461,385.03	
McGarvin-Moberly Construction Company, Worland, WY	\$1,492,195.50	
Mountain Construction Company, Lovell, WY	\$1,591,940.21	
McMurry Ready-Mix Co., Casper, WY	\$1,749,592.72	
W. W. Clyde & Co., Springville, UT	\$1,960,014.44	
Consolidated Paving & Concrete, Inc., Ogden, UT	\$2,483,097.12	

It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner McCormack, and carried that **HK Contractors, Inc., Idaho Falls, ID**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder. The Federal Highway Administration concurred with this decision.

Federal project BROS-0C19034, for bridge replacement, including grading, draining, placing crushed base, structural steel, and miscellaneous work at RM 0.80 (bridge over the Blacks Fork River) on County Road 221, in Uinta County.

Engineer's Estimate	\$558,541.25	
Reiman Corp. and Subsidiary, Cheyenne, WY	\$641,565.20	+14.9%
Cannon Builders, Inc., Blackfoot, ID	\$706,917.50	
Gerber Construction, Inc. and Subsidiary, Lehi, UT	\$731,630.50	
Albin Carlson & Co./Dietzler Construction Corp., a joint venture, Lisle, IL	\$769,690.00	
W. W. Clyde & Co., Springville, UT	\$991,032.76	

It was recommended by Mr. Fredrick, moved by Commissioner McCormack, seconded by Vice Chairman Ertman, and carried that **Reiman Corp. and Subsidiary, Cheyenne, Wyoming**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder. The Federal Highway Administration concurred with this decision.

COMMISSION DISTRICT 4
Milt Coulter - Commissioner

Federal project NH-DR41302, for a slide repair, including grading, draining, and miscellaneous work on US 16 at RM 65.30, west of Buffalo at the Caribou Slide, in Johnson County.

Engineer's Estimate	\$1,032,755.00
Oftedal Construction, Inc., Miles City, MT	\$ 831,000.00 -19.5%
Mountain Construction Company, Lovell, WY	\$1,014,685.00
Intermountain Construction & Materials, Gillette, WY	\$1,365,040.00

It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner McCormack, and carried that **Oftedal Construction, Inc., Miles City, Montana**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder. The Federal Highway Administration concurred with this decision.

COMMISSION DISTRICTS 4 and 6
Milt Coulter - Commissioner
Ted Ertman - Vice Chairman

Federal project HSIP-SEP-B124028, involving guardrail upgrades and miscellaneous work at various locations in Transportation District 4, including Campbell, Crook and Sheridan counties.

Engineer's Estimate	\$709,690.13
American Contracting, LLC., Cheyenne, WY	\$890,593.00 +25.5%

Mr. Fredrick noted that the bid from American Contracting, LLC, was significantly higher than the engineer's estimate, and that there was only one bidder on the project. Based on the fact that the one bid received was so much higher than the engineer's estimate, Mr. Fredrick felt it was in the best interest of the Wyoming citizens to reject the bid and to advertise the project again at a later date.

Mr. Fredrick introduced Messrs. Boris Lopez and Mote Mouna, of American Contracting, to present their case in the matter.

Mr. Lopez stated that he had researched past WYDOT bids where there was only one bidder and the bid amount was as much as 25 to 30 percent over the engineer's estimate. Mr. Lopez stated that "most of those proposals with one bidder . . . have been awarded to that contractor." Mr. Lopez brought copies of examples of bid results where one bidder was awarded the project under similar circumstances. Mr. Lopez noted that American Contractor, LLC, is a DBE contractor, and it's neither the contractor's nor the state's fault that there was only one bidder. Mr. Lopez

believes their company put in the effort to prepare its bid and the project should be awarded to their company.

Mr. Fredrick stated that there were four instances during the past year where there was only one bidder on a project. One project was 4 percent, and another was 13 percent more than the engineer's estimates. Both of those projects were awarded. The third project had a bid that was 68 percent over engineer's estimate, and the fourth project was 71 percent over the engineer's estimate. Mr. Fredrick stated that the Department's goal in reviewing bids is to ensure that no more than 50 percent of the low bids are more than 10 percent off from the engineer's estimate. During the past year the low bids were within 10 percent of the engineer's estimate 54 percent of the time. Also, the engineer's estimates should vary by more than 25 percent on no more than 10 percent of the projects. During the past year, Mr. Spear's estimates varied more than 25 percent from the low bid on only 8 percent of the projects let. Overall engineer's estimates have varied by less than 1 percent from the low bid.

Mr. Mouna stated that he has prepared most of the estimates that American Contracting has provided for WYDOT projects this year. His company provides bids at a price that they feel they can do the job for and still realize some sort of profit. Mr. Mouna believes that their bid is accurate and fair. According to Mr. Mouna, from January through September, WYDOT had 59 jobs with only one bidder. They have found discrepancies on many of those bids, but Mr. Mouna claimed that, of those 59 jobs, American Contracting has been the only company with bids that have been rejected. Mr. Mouna also claimed that some of those jobs were as much as 70 to 80 percent higher than the engineer's estimate.

Mr. Lopez indicated that his company has been a single bidder on two occasions this year. His company provided documents from six different jobs where companies were allegedly awarded jobs that were well above the engineer's estimates. Mr. Lopez also stressed the importance that the job be awarded to his company because they are a Disadvantaged Business Enterprise firm, and that this job is very important to its future.

Mr. Spear explained to the commissioners that the documents that were provided by Messrs. Lopez and Mouna were the last page of the bid analytics that are found online. The documents are from the last contractor on each job, not the low bidder on the project.

Mr. Spear also noted that projects are sometimes awarded, even though the bids are higher than the engineer's estimate, based upon the nature and timeliness of the work that must be done. This particular project is a guardrail project that could be postponed for a month with little affect on the safety or the welfare of the traveling public.

Chairman Latta advised the delegation that the Transportation Commission does not single out contractors. It looks at projects job by job and its responsibility is to spend taxpayer funds in the most sensible and fair manner possible.

Mr. Fredrick stated that the Department must look at the job from a perspective of its value and whether the Commission is awarding the project with the public's best interest in mind. Mr. Fredrick offered to meet with Messrs. Lopez and Mouna to discuss the four WYDOT projects this fiscal year that have had only one bidder, two of which were awarded and the other two rejected.

Chairman Latta asked Mr. Fredrick if he knew of a reason that there weren't more bidders on this project. Mr. Fredrick indicated that two bid envelopes were issued for this project, and he believed that two lettings in one month may have contributed to not receiving a second bid. Mr. Fredrick was fairly optimistic that if the project was let again that it would gain more interest.

According to Mr. Mouna, his company took the time to bid the project, and they did their job by preparing a bid. He believed that they are being "punished because they did due diligence in doing their work", and that the Department is ". . . taking away this job because they were the only bidder . . .", and he didn't feel ". . . it was justified."

Mr. Dailey asked the delegation, "Did I hear you correctly? Are you alleging that WYDOT is discriminating against you as a small business?" Messrs. Lopez and Mouna replied, "No." Mr. Dailey offered to investigate such allegations if that is what was implied by the delegation's comments.

Mr. Dailey stated that it is unfortunate that American Contracting was the only bidder on this project, but WYDOT is responsible for getting the best value for the funds that are entrusted to them by the public. Mr. Dailey concurred with Mr. Fredrick's recommendation to rebid the project later.

It was recommended by Mr. Fredrick, moved by Commissioner Coulter, seconded by Commissioner McCormack, and unanimously carried to reject the bid from American Contracting, LLC., and rebid the project later. The Federal Highway Administration concurred with this decision.

Chairman Latta asked Mr. Fredrick to meet with Messrs. Lopez and Mouna to explain the four projects that had only one bidder on them, and why two were awarded and the other two were rejected.

COMMISSION DISTRICT 5
Bruce McCormack - Commissioner

Federal project STP-DR50920, for erosion repair, including grading, placing bituminous pavement surfacing, concrete, riprap and miscellaneous work on US14A (Yellowtail Reservoir causeway), between Lovell and Burgess Junction, in Big Horn County.

Engineer's Estimate	\$1,692,890.80
American Contracting, LLC., Cheyenne, WY	\$1,382,731.00 -18.3%

Wilson Bros. Construction, Inc., Cowley, WY	\$1,413,580.50
Oftedal Construction, Inc., Miles City, MT	\$1,445,000.00
Donnes, Inc., Shepherd, MT	\$1,636,560.00
Mountain Construction Company, Lovell, WY	\$2,155,514.01
Mountain View Building, Inc., Sheridan, WY	\$3,080,774.00

It was recommended by Mr. Fredrick, moved by Commissioner McCormack, seconded by Vice Chairman Ertman, and carried that **American Contracting, LLC., Cheyenne, WY**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder. The Federal Highway Administration concurred with this decision.

Federal project STP-DR50962, for slide repair involving crushed base, milling plant mix, installation of steel H-pile, and miscellaneous work at RM 4.75 on County Road 47, in Washakie County.

Engineer's Estimate	\$271,305.00
Reiman Corp. and Subsidiary, Cheyenne, WY	\$301,302.50 +11.1%
CC&G, Inc., Lander, WY	\$332,299.90
Mountain Construction Company, Lovell, WY	\$335,100.00
Albin Carlson & Co. / Dietzler Construction Corp. JV Lisle, IL	\$368,756.50

It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner Coulter, and carried that **Reiman Corp. and Subsidiary, Cheyenne, WY**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder, contingent upon Washakie County concurrence. The Federal Highway Administration concurred with this decision.

COMMISSION DISTRICT 6
Ted Ertman - Vice Chairman

Federal project AML-1401007, involving grading, draining, placing crushed base and bituminous pavement surfacing, chip seal, signing, fencing, and miscellaneous work on 3.44 miles on WYO 270, beginning at RM 104.41, between Manville and Lance Creek, at the Wyatte Creek Section, in Niobrara County.

Engineer's Estimate	\$5,131,573.95
High Country Construction, Inc., Lander, WY	\$5,467,827.86 +6.6%
Oftedal Construction, Inc., Miles City, MT	\$5,739,119.80
Kirkland Construction, RLLP, Rye, CO	\$6,163,093.75
McMurry Ready-Mix Co., Casper, WY	\$6,682,067.58
Simon Contractors and Subsidiaries, Cheyenne, WY	\$7,839,311.40

It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner Coulter, and carried that **High Country Construction, Inc., Lander, WY**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder. The Federal Highway Administration concurred with this decision.

COMMISSION DISTRICT 7
Clair Anderson - Commissioner

Federal project AML-W258022, involving the installation of an Intelligent Transportation System (ITS) and miscellaneous work at various locations on WYO 220 and WYO 258, in the town of Casper, in Natrona County.

Engineer's Estimate	\$617,066.25	
Modern Electric Co. and Subsidiary, Casper, WY	\$471,682.00	-23.6%
Casper Electric, Inc., Casper, WY	\$498,977.96	
Custom Lighting Services, LLC. d/b/a Black and McDonald and Subsidiaries, Sandy, UT	\$577,177.50	
Electrofab, Inc., Gillette, WY	\$595,400.00	
W.L. Contractors, Inc., Arvada, CO	\$626,752.50	

It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner McCormack, and carried that **Modern Electric Co. and Subsidiary, Casper, WY**, having prequalified in accordance with rules and regulations adopted by the Transportation Commission of Wyoming, be awarded the contract as low bidder.

2. It was recommended by Mr. Fredrick, moved by Vice Chairman Ertman, seconded by Commissioner McCormack, and carried to approve a letter/lease amendment with Bentley Systems, Incorporated, of Exton, Pennsylvania, for the Enterprise Subscription License Amendment and SELECT Program Agreement for the period of November 1, 2012 through October 31, 2013, for the sum of \$351,432.40.

3. It was moved by Commissioner McCormack, seconded by Commissioner Coulter, and carried to adjourn the meeting. Chairman Latta adjourned the meeting at 9:28 a.m., on Thursday, October 4, 2012.