



Joint Exercise of Powers Agency

City of Antioch City of Brentwood City of Oakley County of Contra Costa

Special Meeting of the Board of Directors

Wednesday, May 31, 2006
6:00 p.m.

Tri-Delta Transit Meeting Room
801 Wilbur Avenue
Antioch, California

1. Call to Order
2. Public Comment
3. Closed Session

Conference with Legal Counsel - Anticipated Litigation

Significant exposure to litigation pursuant to Government Code section 54956.9 (b) (one potential case).

4. Determination Items

A. RECONSIDER the actions taken by the Authority on May 11, 2006 and approve one of the following options:

1. **RESCIND** the actions taken by the Authority on May 11, 2006 to reject bids and authorize rebidding of the Segment 3 construction project; **REINSTATE** the bids for the Segment 3 construction project; and **DIRECT** the Secretary or his designee to send letters to each of the respective bidders requesting that they reaffirm their bids are valid through July 6, 2006, consistent with the bid documents for the State Route 4 Bypass Segment 3 Construction Project.

OR

2. **REAFFIRM** the following actions taken by the Authority on May 11, 2006:

- A. **REJECT** all bids previously submitted for the project.
- B. **APPROVE** the plans and specifications and **AUTHORIZE** the rebidding of the project.
- C. **DIRECT** the Secretary or his designee to publish a Notice to Contractors in accordance with the procedures in Public Contract Code Sections 20390-20393 inviting bids for the work.
- D. **AUTHORIZE** the Secretary or his designee to issue bid addenda as needed for clarification of contract bid documents.

Board of Directors:

Mary N. Piepho, Chair
Donald P. Freitas, Vice Chair
Annette Beckstrand
Brad Nix

Authority Staff Office:

Contra Costa County
255 Glacier Drive
Martinez, CA 94553
(925) 686-0619

5. Board Member Comments

6. Correspondence

7. Adjournment

The Authority will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Program Manager at least 24 hours before the meeting, at (925) 686-0619.

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STATE ROUTE 4
BYPASS AUTHORITY

DATE: May 31, 2006

TO: Board of Directors

FROM: *for* Dale Dennis, Program Manager *NEW*

SUBJECT: **RECONSIDER** the actions taken by the Authority on May 11, 2006 regarding the Rejection of Bids and the Authorization of Rebidding the SR4 Bypass, Segment 3 Construction Project

Recommendation: **RECONSIDER** the actions taken by the Authority on May 11, 2006 and approve one of the following options:

1. **RESCIND** the actions taken by the Authority on May 11, 2006 to reject bids and authorize rebidding of the Segment 3 construction project; **REINSTATE** the bids for the Segment 3 construction project; and **DIRECT** the Secretary or his designee to send letters to each of the respective bidders requesting that they reaffirm their bids are valid through July 6, 2006, consistent with the bid documents for the State Route 4 Bypass Segment 3 Construction Project.

OR

2. **REAFFIRM** the following actions taken by the Authority on May 11, 2006:
 - A. **REJECT** all bids previously submitted for the project.
 - B. **APPROVE** the plans and specifications and **AUTHORIZE** the rebidding of the project.
 - C. **DIRECT** the Secretary or his designee to publish a Notice to Contractors in accordance with the procedures in Public Contract Code Sections 20390-20393 inviting bids for the work.
 - D. **AUTHORIZE** the Secretary or his designee to issue bid addenda as needed for clarification of contract bid documents.

DD:nw
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ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED ___ OTHER ___

VOTE OF DIRECTORS

UNANIMOUS (ABSENT _____)

AYES: _____ NOES: _____

ABSENT: _____ ABSTAIN: _____

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Directors on the date shown.

ATTESTED: Maurice M. Shiu, Secretary to the Authority

By _____

Discussion:

Smith and Brockhage, LLP submitted a letter dated May 10, 2006 (attached) on behalf of DeSilva Gates that was relevant to the May 11, 2006 Board item, whereby the Authority Rejected Bids and Authorized Rebidding the SR4 Bypass, Segment 3 Construction Project. Unfortunately, the timing of receipt of the letter did not allow sufficient time to provide the letter to the Authority prior to the Board taking action on May 11, 2006. As such, this item is being brought back to the Board for reconsideration.

SMITH & BROCKHAGE, LLP

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PLEASANT HILL, CALIFORNIA 94523

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Facsimile: (925) 296-0640

RANDALL M. SMITH
rmus@smithbrock.com

May 10, 2006

VIA FACSIMILE TRANSMISSION – (925) 756-2385 and OVERNIGHT DELIVERY

State Route 4 Bypass Authority
c/o Parsons Brinckerhoff
3260 Lone Tree Way, Suite 104
Antioch, CA 94509
ATTN: Craig Carney

Re: Project: State Route 4 Bypass – Segment 3
Our File No. 7502.1

Dear Mr. Carney:

We represent DeSilva Gates Construction, LP ("DGC"), the low bidder for the above-referenced project.

In a letter dated April 28, 2006, the third low bidder, RGW Construction, Inc. ("RGW"), protested the bids of the two low bidders, DGC and Bay Cities Grading and Paving ("Bay Cities"). RGW's protest is frivolous.

The sole basis for the protest is RGW's argument that DGC and Bay Cities unbalanced their bid price for Asphaltic Emulsion (Paint Binder), in that the bid price for that bid item was too low. Yet, there is no provision in the contract documents or any California law which prohibits a bidder from bidding a bid item below its actual cost or for a nominal amount. The owner is of course not allowed to add to or otherwise change the terms of the bid solicitation after bid. See, e.g., *Pozar v. Department of Transportation*, 145 Cal.App.3d 269 (1983); *Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208 Cal.App.2d 803 (1962). Accordingly, the Authority cannot retroactively impose restrictions on bidding which were not set forth in the bid solicitation documents.