

AGENDA
STATE TRANSPORTATION BOARD MEETING
9:00 a.m., Friday, July 17, 2009
Town of Payson Council Chambers
303 N. Beeline Hwy.
Payson, AZ 85541

Pursuant to A.R.S. Sec. 38-431.02, notice is hereby given to the members of the State Transportation Board and to the general public that the State Transportation Board will hold a meeting open to the public on Friday, July 17, 2009, 9:00 a.m., at the Town of Payson Council Chambers, 303 N. Beeline Hwy., Payson, Arizona 85541. The Board may vote to go into Executive Session, which will not be open to the public, to discuss certain matters relating to any items on the agenda. Members of the Transportation Board will attend either in person or by telephone conference call.

EXECUTIVE SESSION OF THE STATE TRANSPORTATION BOARD

Pursuant to A.R.S. 38-431.03 (A)(3), notice is hereby given to the members of the Arizona State Transportation Board and to the general public that the Board may meet in Executive Session for discussion or consultation for legal advice with legal counsel at its meeting on Friday, July 17, 2009. The Board may, at its discretion, recess and reconvene the Executive Session as needed, relating to any items on the agenda.

Amendments to the State Transportation Board Agenda are as follows:

CHANGE TO AGENDA

Non-Interstate Federal-Aid (“A” “B”) projects do not need FHWA concurrence, but must comply with DBE regulations; other projects are subject to FHWA and/or local government concurrence and compliance with DBE regulations)

*ITEM 32:	BIDS OPENED:	July 2		
	HIGHWAY:	GLOBE DISTRICT		
	SECTION:	SR 177, SR 288		
	COUNTY:	Statewide		
	ROUTE NO.:	SR 177, SR 288		
	PROJECT:	ARRA-999-A(242)A 999 SW 000 H784601C		
	FUNDING:	100% Federal		
		Low Bid		Second Low Bid
	LOW BIDDER:	Grady’s Quality Excavating, Inc.		Cactus Transport, Inc.
	AMOUNT:	\$ 410,680.92		\$ 454,393.78
	STATE AMOUNT:	\$ 544,605.00		\$ 544,605.00
	\$ UNDER:	\$ 133,924.08		\$ 90,211.22
	% UNDER:	24.6%		16.6%
	NO. BIDDERS:	5		5
	RECOMMENDATION:	Allow Grady’s Quality Excavating, Inc. to withdraw its bid without forfeiting the bid bond; award the contract to Cactus Transport, Inc.		

COMMENTS:

At the bid opening, Cactus Transport, Inc. was read as the apparent low bidder with a bid of \$454,393.78. Grady's Quality Excavating, Inc. was read with a bid of \$567,782.04.

Subsequent to the bid opening, the Department's review of Grady's bid showed a discrepancy in the unit price and extended amount for Item 4040074 – Emulsified Asphalt (CRS-2) and Item 4040078 – Emulsified Asphalt (SS-1). It appears Grady's may have intended to bid \$455.00 and \$288.00 for the unit prices based on the extended amounts of \$131,040.00 and \$27,648.00, respectively for the referenced items. However, the unit prices submitted were clearly written as \$4.55 per Ton and \$2.88 per Ton, which would result in extended amounts of \$1,310.40 and \$276.48 respectively, and reduce the total bid by \$157,101.12. This results in Grady's Quality Excavating being the apparent low bidder with a total bid of \$410,680.92.

The Department notified Grady's that it was the new low bidder. Grady's requested to withdraw its bid due to a clerical error and submitted documentation supporting the request.

Staff recommends that the new low bidder, Grady's Quality Excavating, Inc., be allowed to withdraw its bid and that the contract be awarded to the second low bidder, Cactus Transport, Inc. Grady's is legally justified in withdrawing its bid due to a clerical error. The error stems from writing unit prices in the bid schedule different than what was on the bid worksheet. The error is of such grave consequence that to enforce a contract would be unconscionable since the amount of the error is more than 38% of Grady's bid. In addition, the mistake relates to a material feature of the contract, i.e., the proposed contract price. The error did not come about because of a violation of positive legal duty or from culpable negligence. Finally, the State is placed back to the status quo to the extent that the State suffers no serious prejudice except the loss of the benefit of the bargain. *See, Marana Unified School District v. Aetna Cas. and Sur.* 144 Ariz. 159, 696 P.2d 711 (App. 1985).

Therefore, staff recommends allowing Grady's Quality Excavating, Inc. to withdraw its bid without forfeiting its bid bond and recommends that the contract be awarded to Cactus Transport, Inc.

Interstate Federal-Aid (“A” “B”) projects do not need FHWA concurrence, but must comply with DBE regulations; other projects are subject to FHWA and/or local government concurrence and compliance with DBE regulations)

***ITEM 36:** BIDS OPENED: May 8
HIGHWAY: EHRENBERG – PHOENIX HIGHWAY (I-10)
SECTION: Verrado Way to Sarival Avenue
COUNTY: Maricopa
ROUTE NO.: I-10
PROJECT: ARRA-010-B(205)A 010 MA 120 H721101C
FUNDING: 100% Federal

	Low Bid	Second Low Bid
LOW BIDDER:	Fisher Sand & Gravel Co. DBA Southwest Asphalt Paving	Pulice Construction, Inc.
AMOUNT:	\$ 21,800,000.00	\$ 22,797,101.80
STATE AMOUNT:	\$ 28,864,260.00	\$ 28,864,260.00
\$ UNDER:	\$ 7,064,260.00	\$ 6,067,158.20
% UNDER:	24.5%	21.0%
NO. BIDDERS:	7	
RECOMMENDATION:	AWARD TO FISHER SAND AND GRAVEL CO. DBA SOUTHWEST ASPHALT PAVING	

COMMENTS:

The second low bidder, Pulice Construction, Inc., filed a protest, claiming that Fisher was non-responsive and non-responsible. Pulice claimed that Fisher failed to fully describe its federal tax fraud indictment and related circumstances, as provided in Sub-section 102.03 of the Standard Specifications. Pulice also argued that because the statement submitted by Fisher was not physically attached to the bid (electronic bid), the bid must be rejected as non-responsive.

Pulice also argues that Fisher is not a responsible contractor. Fisher entered into a deferred prosecution agreement with the federal government, paying tax, penalty, and fine, and admitting to items amounting to tax fraud. Fisher states that it has either fired or bought out all of the participants in the tax fraud, and that the current management is innocent of any wrongdoing.

Fisher claims that Pulice’s protests were too late, because they were filed more than 7 days after a reasonable bidder could have determined the cause for a protest.

The Department elected to perform an independent inquiry, regardless of Pulice’s protest.

In its June 19, 2009, meeting, the Board delegated this matter to the State Engineer to hold a hearing and make a recommendation. That hearing was held July 10, 2009. The Board has received the State Engineer’s detailed recommendation, a hearing transcript, and exhibits. As set forth in greater detail in the recommendation memorandum, the State Engineer recommends:

1. Reject Pulice's protests as untimely;
2. Find that Fisher's bid is responsive.
3. Find that Fisher is a responsible contractor.
4. Award the contract to Fisher Sand and Gravel Co. dba Southwest Asphalt Paving

*Regarding *ITEM 36, please note that a hearing transcript, accompanying exhibits and a recommendation memorandum are available for viewing at the office of the ADOT Director, 206 S. 17th Avenue, Phoenix, Arizona 85007.

Dated this 15th day of July, 2009.
STATE TRANSPORTATION BOARD
By: Mary Currie