

MINUTES
LANCASTER COUNTY PROCUREMENT APPEALS BOARD
COUNTY-CITY BUILDING, ROOM 112
THURSDAY, MARCH 25, 2021
1:00 P.M.

Advance public notice of the Procurement Appeals Board meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska, web site on March 23, 2021, and published in the Seward County Independent print and online edition on March 24, 2021.

Board members present: Jeff Kimble; Linda Willard; Ken Fougeron; Don Killeen

Others present: Bob Walla, Lincoln-Lancaster County Purchasing Agent; Jenifer Holloway, Deputy Lancaster County Attorney; Pam Dingman, Lancaster County Engineer; Larry Legg, Assistant Lancaster County Engineer; and Monét McCullen, County Clerk's Office

The meeting was called to order at 1:00 p.m., and the location of the Nebraska Open Meetings Act was announced.

Bob Walla, Lincoln-Lancaster County Purchasing Agent, made introductions and turned the meeting over to Jenifer Holloway, Deputy Lancaster County Attorney.

Holloway said on the record the meeting is regarding the appeal of High Plains Enterprises Inc. She said the items sent to the Board and attached to the agenda included the protest appeal, protest response, bid tab, protest received from High Plains, reference checks completed by the County Engineering Department, County Protest Policy, additional references provided by High Plains after the initial bid, High Plains bid response and all bid documents and specs provided by the Purchasing Department. She noted no new evidence will be taken or considered at the meeting today. She provided a statement on the procedures of the hearing.

1) APPEAL FROM HIGH PLAINS ENTERPRISES INC.

Mark Smith, Owner of High Plains Enterprises Inc., provided a brief overview of Bid No. 17-166 that his company was awarded in 2018. The project was not executed properly, which resulted in the County placing a two-year ban on High Plains which eliminated them from bidding any County projects as a primary contractor prior to June of 2020. He noted all liquidated damages, fines and additional costs owed to the County have been paid in full. Smith said over the course of the two-year ban, his company has made an attempt to rebuild their name, working countless projects in all surrounding counties, including Lancaster County, as a subcontractor. When the ban was lifted in June, 2020, High Plains bid on four projects as the primary contractor and have been awarded two of those contracts. When High Plains bid on the culvert maintenance project (Bid No. 21-025), It was initially the second-place bidder until an error was found on the spreadsheet, which then put High Plains as the lowest bidder by approximately \$4,000. The County awarded the project to the second-place bidder and High Plains protested that decision. During the initial protest, High Plains provided 14 additional references to the County.

Smith provided a number of additional references (Exhibit 1).

In response to Kimble's question, Smith confirmed the basis of this appeal was due to not being awarded a contract that his company was identified as the low bidder.

Willard inquired about a project High Plains was awarded with the City of Lincoln. Smith confirmed that project was in the Spring of 2020 as his company was not banned from bidding projects with the City.

Kimble asked what the primary basis was for the rejection. Walla said the basis was due to lack of applicable references in the original bid. The work resumé provided included smaller scale projects and that was what was used as the basis for determining the award. The type of work performed in the projects provided was also taken into consideration.

Kimble asked if the Purchasing Department has an obligation to follow up on every reference provided. Walla said the initial references submitted with the bid were all followed up on. The additional references were also checked that were submitted after the bid, which is out of the ordinary as the initial references are the only ones considered. Holloway said the bid documents say the County can request additional information once the bid packet is received. The County does not have to ask for additional information and the County also has no obligation to call all references provided.

In response to Killeen's question, Walla said based on the four initial references and the feedback from the County Engineering Department regarding the difference between the work of a general contractor and subcontractor and the size of the project, his decision to not award High Plains would still remain the same.

Walla said the total amount that was listed from High Plains was \$872,435.88 and the next low bidder was a little over \$876,000. In response to Kimble's question regarding Section 13.4 of the bid evaluation, Walla said the decision is made based on the lowest, responsive, responsible bidder. Holloway said by State Statute a bidder is not only selected based on being the lowest bidder. There are a number of considerations that can be evaluated when awarding a bid.

In response to Fougerson's questions, Larry Legg, Assistant Lancaster County Engineer, said references from the second lowest bidder were also followed up on.

Holloway advised the Board of their duty by reading Section (d) paragraph 2 of the bid process (Exhibit 2). She noted all new evidence provided should not be considered as part of the recommendation. The information to be considered should be what was submitted to the County at the time the decision was made.

The Board is to meet within 10 working days to provide their recommendation, which will then be provided to the County Board of Commissioners for their final decision. She noted this is an advisory Board to the Commissioners and all discussion should be held on the record as this Board is subject to the Open Meetings Act.

In response to Killeen's question, Holloway confirmed all documents provided today would be considered new evidence and should not be considered when making a decision.

Fougerson asked for clarification on the difference between work required as a prime contractor and a subcontractor. Legg explained this project is for culvert replacement projects that are located throughout the County with a total scope of work of nearly \$900,000. The original references provided by High Plains were more regarding slope stabilization work. The work required to place a culvert has more consequences if done wrong as this is under a roadway with constant traffic. The skill set is needed to properly lay and backfill the culvert as a failure with this type of work can be catastrophic. The general contractor is responsible for scheduling the work and ensure it is performed properly. A subcontractor is usually hired by the general contractor to do some of the work.

2) ADJOURNMENT

MOTION: Kimble moved and Killeen seconded to adjourn the Procurement Board meeting at 1:49 p.m. Willard, Fougerson, Killeen and Kimble voted yes. Motion carried 4-0.

Submitted by:
Monét McCullen, Lancaster County Clerk's Office