

**MINUTES**  
**LANCASTER COUNTY PROCUREMENT APPEALS BOARD**  
**COUNTY-CITY BUILDING, ROOM 112**  
**FRIDAY, JULY 15, 2021**  
**2:00 P.M.**

*Advance public notice of the Procurement Appeal Board meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska web site on July 8, 2021, and published in the Lincoln Journal Star printed and online edition on July 12, 2022.*

Board Members present: Don Killeen, Sara Luther and Linda Willard

Others present: Jeff Kimble, Lincoln-Lancaster County Purchasing Agent; Candace Berens Deputy County Attorney; Pam Dingman, County Engineer; Larry Legg, Assistant County Engineer; Jordan Wipf, County Engineering, Civil Engineer; Dan Nolte, County Clerk and Meggan Reppert-Funke, County Clerk's Office

The meeting was called to order at 2:01 p.m. and the location of the Nebraska Open Meetings Act was announced.

Candace Berens, Deputy County Attorney, stated the meeting is to review an appeal filed by Dynamic Dirtworks & Demolition on Project 22-21 / Phase 2 Culvert Maintenance / Bid 22-120. She made introductions and provided a statement on the procedures of the hearing. Berens said the Board members and appellant were provided bid documents and Resolution R-10-0098 regarding the County's bid protest procedure (Exhibit 1). She noted no new written evidence will be accepted or considered at today's meeting. Berens reminded members that they are an advisory board and would be making a recommendation to the Lancaster County Board of Commissioners within ten (10) business days.

**1) APPEAL FROM DYNAMIC DIRTWORKS & DEMOLITION LLC.**

**A. Regarding Project 22-21 / Phase 2 Culvert Maintenance / Bid 22-120**

Kevin Mack, President/Project Manager of Dynamic Dirtworks & Demolition, LLC, provided comments on the company's employment history and project experience. It performed two projects within Lancaster County last year and he felt one was more detailed than the Phase 2 culvert maintenance project. Dynamic Dirtworks has also worked as a subcontractor for Petersen Earthmoving, Inc. Mack admitted the company did exceed the maximum number of work days on a previous County project due to material delays and lack of workforce related to Covid. He said Lancaster County also deemed the work unsatisfactory. Additional documents were previously provided to the Purchasing Agent that have not been included today which detail employee work history including grading and pipe installation. Mack felt Lancaster County did not perform due diligence when it came to checking references.

Mack said Dynamic Dirtworks was the lowest bid on Phase 1 of the culvert maintenance project by \$87,000. The company was also the lowest bid on Phase 2 by \$168,122.05. He said they did not receive any notice from Lancaster County after the submission of the two bids confirming that they were the lowest bidder. Mack added both projects were awarded to Midwest Infrastructure, Inc. He explained the process his company took to submit the bids and added that the projects would have an inspector onsite to make sure the work is done correctly. Mack confirmed that his company has been awarded smaller County projects.

Willard inquired about other references submitted besides Petersen Earthmoving. Mack said they would include landowners from previous projects and Hawkins Construction Company.

Luther asked about the timing of the submittal of the additional documents to the Purchasing Agent and why they were not included in the Board's materials. Kimble stated when Mack protested he provided work history and pictures of completed jobs that were not part of the original bid. These documents were used by Kimble to uphold the protest and he apologized if this information should have been provided to the Board. He did not object to them being included as exhibits. Berens confirmed that State statutes allow the Board to request additional information during the review process but they are not required to do so. She questioned if the Purchasing Agent consider this information as part of the bid process. Kimble stated no as it was received after the bid was awarded. Luther inquired if the information was part of the protest appeal. Kimble explained that he reviewed the information to get a better understanding of the company's background.

Killeen inquired about the delay on the North 14<sup>th</sup> Street project. Mack thought it was five (5) days. Luther pointed out that the email (see Exhibit 1, Tab 4) stated it was six (6) days.

Luther asked the County Engineering Department to provide a statement.

Larry Legg, Assistant County Engineer, said the information submitted during the bid process was reviewed. He added Dynamic Dirtworks provided three work examples that did not meet the character of the project. Legg described the project scope and requirements. Regarding the North 14<sup>th</sup> Street project, Legg said Peterson Earthmoving was the main contractor and Dynamic Dirtworks was not identified as a subcontractor. This project was over schedule by nine (9) working days due to material deliveries and paving contracts but County Engineering excused the overage as the reasons for the delay were outside the contractor's control.

Killeen questioned what lack of experience was reviewed. Legg stated of the three work examples provided by Dynamic Dirtworks, one was a demolition of a hospital and one was a single pipe culvert installation under a trail. He was unsure of the third example. Killeen asked what was more important in the decision-making process, the lack of experience or the project delay. Legg stated it was the lack of experience and skill set for the project requirements.

Luther inquired about the reference review process. Legg stated if contact information is provided, County Engineering will contact references. He added the County has awarded other projects to Dynamic Dirtworks and successful completion was demonstrated.

Berens inquired about the bid review and award processes. Dingman explained that Purchasing has an e-bid system which is used by contractors to submit bids. After bids close, County Engineering reviews the information provided and determines the lowest, responsible bidder.

Berens briefly reviewed all of the information provided to the Board (Exhibit 1). She inquired if any other documents were submitted or considered in awarding the bid. Dingman stated no. Berens asked if Dynamic Dirtworks was the lowest bidder but the decision was not to award them the bid. Dingman stated Dynamic Dirtworks was the lowest bidder on Phase I and Phase II but County Engineering had concerns that they did not have the resume or background necessary to meet the project requirements. She said Dynamic Dirtworks also stated that they were a consultant on the North 14<sup>th</sup> Street pipe culvert project, although, they do not appear on the contract or on the pre-construction sign off.

Killeen inquired if lack of experience was the main reason for not awarding the bid to Dynamic Dirtworks. Dingman stated yes. She elaborated that it was the lack of experience for the type of work.

Luther asked if preference is given to small contractors during the bid process. Kimble stated no.

Shawn Price, Superintendent for Dynamic Dirtworks, provided his work history and experience. Price expressed concern regarding the additional funds being spent on these projects and the savings that would be realized by Lancaster County if the bids were awarded to Dynamic Dirtworks.

2) **ADJOURNMENT**

**MOTION:** Willard moved and Killeen seconded to adjourn the County Procurement Appeals Board meeting at 3:02 p.m. Willard, Killeen and Luther voted yes. Motion carried 3-0.

Submitted by:  
Meggan Reppert-Funke, Lancaster County Clerk's Office