

**MUKILTEO WATER AND WASTEWATER DISTRICT
SPECIAL BOARD OF COMMISSIONERS MEETING**

Minutes of April 6, 2009

The April 6, 2009 Special Meeting of the Board of Commissioners was called to order at 7:00 PM in the District office.

PRESENT

Commissioners -- Dick Andrews, Ed Caine, Mike Johnson, Thomas Rainville and Joan Thomasson

Attorney – John Milne of Inslee Best Doezie & Ryder P.S.

Attorney – John Parnass of Davis Wright Tremaine LLP

Staff -- Dan Hammer and Joann King

Audience –Pete Weber and Camp Fuller of Hammond Collier Wade Livingstone (HCWL), and Jim Hopkins, representing The HDD Company Inc.

***APPROVAL OF
AGENDA***

Commissioner Thomasson made a motion to approve the Agenda as presented. Commissioner Andrews seconded the motion. The motion passed unanimously.

Commissioner Caine made a motion to excuse the absence of Commissioner McGrath since he informed the Board of his inability to attend this meeting at the April 1st meeting. Commissioner Johnson seconded the motion. The motion passed unanimously.

BUSINESS ITEMS

***CONSIDER AWARD
OF BID FOR BIG
GULCH SEGMENT
#3 PUBLIC WORKS
CONTRACT***

Mr. Hammer introduced John Parnass of Davis Wright Tremaine LLP. Mr. Parnass is the construction attorney the District has been working with in regard to the Big Gulch project. Mr. Hammer then introduced Mr. Hopkins who was attending the meeting representing The HDD Company Inc. He also mentioned the engineers Camp Fuller and Pete Weber of Hammond Collier Wade Livingstone (HCWL) were present to report on the bid status.

Mr. Hammer outlined the project bid process and the bid protest documents the Board had been given. Mr. Hammer stated Mr. Fuller and Mr. Weber were there to report on the qualification criteria review they had completed. The Commissioners had been given the Qualification Checklists for both HDD and IMCO. Commissioner Caine asked if HCWL had reviewed the qualifications of Granite Northwest Inc., to which Mr. Weber said no.

Mr. Hammer explained The HDD Company (HDD) had submitted the low bid of \$3,569,409 including tax. IMCO General Construction (IMCO) had submitted the second lowest bid of \$3,961,784 including tax.

Mr. Parnass stated the District received a bid protest from IMCO alleging that HDD's bid didn't comply with the specifications because addenda's 1 & 2 were not signed indicating that they had not been received, and an electrical sub-contractor was not listed in the HDD Company's bid proposal.

Mr. Parnass advised that HDD's attorney had responded to IMCO's

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protest, IMCO's attorney had responded to HDD's response and HDD had then further responded to IMCO's position letter.

Mr. Fuller reported each bidder needed to demonstrate they were responsible and met the supplemental bidder responsibility requirements set forth in the bidding specifications.

Commissioner Johnson asked if the geotechnical soils report and the geological baseline report had been included in the plans and specifications which were given to the contractors who bid the project. Mr. Fuller responded they had been included in the plan specifications.

Mr. Fuller explained the process of reviewing the qualifications for HDD and IMCO, such as checking references and determining if each item in the specifications of responsibility criteria had been met. Then he advised that the checklists showed that HDD had met all of the required criteria but that based on the information that IMCO/Frontier Pipeline (IMCO's sub-contractor) had submitted, IMCO did not meet the responsibility criteria.

Mr. Fuller stated he had notified IMCO of the deficiencies and that HCWL needed more information. He indicated IMCO had failed to provide the information necessary and therefore didn't meet the supplemental requirements.

It was acknowledged by the Board that there was no representative present for IMCO. At that time the Board asked Mr. Hopkins who was representing HDD if he wished to speak. Mr. Hopkins responded to the IMCO claim and explained HDD didn't believe an electrician was needed or required because the job shack they will be using is powered by a generator. He then stated that HDD had acknowledged receiving the addenda's, and therefore IMCO's bid protest had no basis and should be denied.

Mr. Milne then requested an Executive Session to discuss potential litigation and legal risks of any proposed action relating to IMCO's bid protest and the possible award of the project contract. Commissioner Andrews made a motion to convene an Executive Session on that basis for an estimated 20 minutes. Commissioner Caine seconded the motion. The motion passed unanimously.

Before convening the executive session at 7:20 p.m., Commissioner Rainville advised that the Executive Session would be concluded at 7:40 p.m. At 7:40 p.m., the Executive Session was concluded and open public meeting was reconvened.

**EXECUTIVE
SESSION 7:20 P.M.**

**RECONVENE TO
REGULAR SESSION
7:40 P.M.**

Mr. Parnass recommended the Board vote to deny the bid protest made by IMCO, because there was no electrical work required on the project and HDD had indicated they received addenda's 1 & 2 in their bid package by signature receipt.

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Commissioner Caine made a motion to deny the bid protest made by IMCO. Commissioner Thomasson seconded the motion. Commissioner Caine remarked that IMCO did not satisfy the supplemental bid qualification criteria. Commissioner Andrews stated that after legal review and on the advice of legal counsel that he supported the motion to deny the protest. The motion was put to a vote and passed unanimously.

Commissioner Rainville invited a motion to award the contract to the HDD Company Inc. Mr. Milne remarked that he, Mr. Parnass, and the engineering firm representatives all recommend the motion.

Commissioner Caine stated he understood that the soonest the contract can be executed by the District is Friday April 10, 2009. Mr. Milne and Mr. Parnass confirmed that understanding.

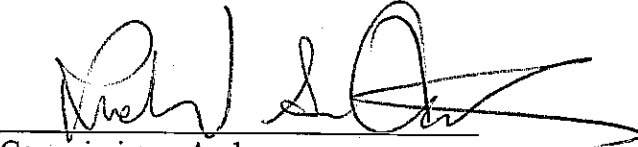
Commissioner Caine made a motion to approve Resolution 095-09 awarding the Big Gulch Trunk Sewer Emergency Repair and Stream Restoration Project - Segment #3: Horizontal Directional Drilling Contract to The HDD Company Inc. as the lowest responsive responsible bidder, and to authorize the General Manager to sign the contract on behalf of the District. Commissioner Andrews seconded the motion. The motion passed unanimously.

ADJOURN

There being no further business the President of the Board adjourned the special meeting at 7:48 p.m.



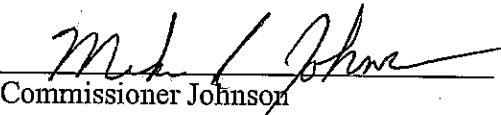
President/Commissioner Rainville



Commissioner Andrews



Vice-President/Commissioner Caine



Commissioner Johnson

Secretary/Commissioner McGrath

Commissioner Thomasson