

January 27, 2009

Pursuant to adjournment comes now the Starke County Board of Commissioners and meet in special session at 10:00 a.m. in the Annex meeting room, Knox, Indiana, and the following proceedings were held to wit:

IN RE: BAUGH MIDWEST (SYSCO) HAMLET PROJECT BIDS

The meeting was called to order by President Dan Bridegroom to receive the recommendations for the Hamlet/SYSCO projects from Van Janovic, Territorial Engineering and to verify the eligibility of the bids by the County Attorney, Martin Lucas.

WATER LINE EXTENSION

Dan Bridegroom turned the meeting over to Van Janovic. Van submitted a bid tabulation spreadsheet for the water line extension. Van recommends adding alternates #2, 4, 6, 7, 8, 1 & 5 totaling \$156,674.00. The base bid for the low bidder is \$1,137,784.57. This makes the total price with the alternates included, \$1,360,624.57. The lowest bidder for the water line extension is Thomas Welding & Excavation from Argos, Indiana. Van explained why the alternates were recommended. This was also discussed with Charles Weaver, Economic Development Director via conference call as he is on vacation.

SEWER LINE EXTENSION

Van submitted the bid tabulation spreadsheet for the sewer line extension. He recommends alternates 2 & 3. The low bidder was H & G Underground from LaPorte, Indiana with a base bid of \$414,198.90. The alternates total \$29,846.00 making the total bid \$444,044.90. These recommendations were discussed with the commissioners and Charles Weaver.

WATER TOWER

Van recommended alternate 3 for this project. The low bidder was Maguire Iron, Inc. from Sioux Falls, South Dakota, with a base bid of \$898,000.00. The cost of the alternate is \$167,500 making the total bid \$1,065,500.00. Again, Van explained his recommendations to the commissioners and Charlie Weaver.

Two bids were received after the advertised time. County Attorney, Martin Lucas, stated that he must regrettably advise that the attempted bid of Caldwell Tanks on the Hamlet/SYSCO Water Tower should be rejected as untimely and not in the proper form even though the attempted bid quoted a competitive price point. Caldwell Tanks submitted its bid by a facsimile transmission to the Starke County Auditor's Office on January 19, 2009. The documents were received and read into the record at the public bid opening subject to the proviso that the form of receipt was under review. Counsel's review of the bid advertisements confirmed that the clear and unambiguous terms of the bid process required a sealed bid in an envelope. Counsel finds that the process of opening all sealed bids at a public meeting is a critical element in fostering public confidence in the fairness and integrity of the public works bidding process and that the facsimile transmission of Caldwell was not sealed and therefore failed to satisfy this requirement.

Counsel notes that no provision under Ind. Code Title 36 authorizes electronic bidding but that pursuant to I.C. 4-13.6-2-10 the State of Indiana may opt to authorize an electronic bid if (a) electronic bidding is specifically authorized in the bid solicitation, and (b) in the case of a facsimile bid the receiving system is possesses "a security feature that protects the contents of the electronic bid or offer with the same degree of protection as the content of a bid or an offer that is not transmitted by a fax machine." Counsel finds that while I.C. 4-13.6-2-10 is not bids and that the Caldwell Tanks bid would have failed to satisfy the statute's requirements. In addition, counsel finds that a substantial question exists as to the legal effect of bonds and other undertakings communicated by facsimile, absent a specific statutory authorization for that method of document transfer.

An additional packet was received on January 20, 2009. Counsel's opinion is that, regardless of the reason, the packet was not available timely for the public bid opening and should therefore be returned unopened. (Was returned unopened on Wednesday, January 21, 2009.)

Mark Milo moved to move ahead with these projects and to award the bids as recommended subject to EDA approval and certification of funds and to allow the president to sign the paperwork seconded by Kathy Norem with 3 ayes.

County attorney, Martin Lucas, stated that he found that each of the three low bids were responsive, complete, timely and substantially in compliance with the terms of the bid advertisements. Subject only to EDA approval, he knows of no reason why the above bids should not be accepted and that the bidders be promptly notified of acceptance.

Charles Weaver stated that the bids had all come in within budget and the funds are available.

Van Janovic stated that this is the second time we have gone through the bid process for these projects, which was not taken into account when his contract was signed. He would like to amend the contract in the amount of \$24,586.50 Mark Milo moved to allow the county attorney to review the contract and see if it is within the statute to do this and make a decision at the next meeting seconded by Kathy Norem with 3 ayes.

Charles Weaver explained to the commissioners how the Economic Development Foundation funds were coming in.

All paperwork submitted by Van Janovic and the County Attorney regarding these bids and projects are on file in the Auditor's office.

There being no further business to come before the board, Mark Milo moved to adjourn seconded by Kathy Norem with 3 ayes.

Dan Bridegroom, President

Kathy Norem, Vice President

Mark Milo, Member

Michaelene J. Houston, Auditor and
Secretary to the Commissioners