

SPECIAL MEETING
FRIDAY, SEPTEMBER 23, 2016

Present: Don Bennetts, Chairman Rob Drier, Commissioner
Roy D’Antonio, Commissioner Dan Siirila, Commissioner
Darren Pionk, Engineer/Manager Patricia Hagstrom, Secretary

ALSO PRESENT: 7 public attendees

- I. **Call to Order** ~ Chairman Bennetts called the meeting to order at 2 pm.
- II. **Pledge of Allegiance**
- III. **Approval of Agenda** ~ A motion was made by Siirila, 2nd by D'Antonio, to approve the agenda.
- IV. **Public Comment** ~ None
- V. **Old Business**
 - a. **Bid Tabulations & Award for 2016 Lake Road Culvert Replacement** ~ Tom Schneller brought up the bid tabulations for the work to be done on Lake Road. He stated his company, Snow County Contracting, would like to do the repairs on Lake Road. He stated that as a resident of the area he has some concerns about the repairs getting done due to past experience with the repairs done by Smith Construction that took forever. He added that weather was an issue. He stated that his company bid the job at a significant amount of risk and was surprised that his company was outbid on the project. His claim is that after he reviewed the bid tabulations is that the bid from MJO is an unbalanced bid. He states that MJO bid the rock and excavation at an extremely low price and feels that they have covered themselves in another section of the bid items to cover the cost of the rock and he feels this is the definition of an unbalanced bid. He added that in other pay items, which are guaranteed to get paid, is where the rock will be paid from. He presented and explained an example of figuring the quantities and costs to the Board. D'Antonio stated that if what Mr. Schneller has presented is accurate and true it does bring some disparity to the bids. Darren stated that Mr. Schneller is looking at some items being low however some items could go the opposite way. Darren has spoken with Randy VanPortfliet with MDOT and the MDOT Contracts Department regarding unbalanced bids. Their side to this issue is that they allowed the project to be bid locally to get the repairs done as soon as they could. Darren added that GCRC has to be in concurrence with FHWA and MDOT on this contract and can't do anything to look into the unbalanced bid until they receive the letter from Mr. Schneller that disputes the award to MJO. They asked if Darren had identified anything wrong with the bid from MJO. He advised them that he doesn't see anything wrong with MJO's bid. He stated that the next step is for the bid tabulations to go to MDOT for review upon the recommendation from the GCRC Board to proceed with the lowest bidder. MDOT will review all of the bids for any discrepancies.

D'Antonio asked if Mr. Schneller's letter will be forwarded to MDOT. Darren stated that it will be sent with the resolution and MDOT will review all of the bids. Siirila asked if MDOT has the final say and if the Board awards the bid to Snow County Contracting if MDOT could reject the award. Darren state that they will reject it and the GCRC could possibly be looking at a claim from MJO. Mr. Schneller stated that Darren is not following the MDOT specification book. He added that the dollar amounts have nothing to do with the unit prices and that his claim is not a materials claim. He said that the bottom line is that MJO's bid is unbalanced and should be tossed out. He stated that Randy VanPortfliet can't argue that and he knows everyone in the room wants the work done. He is not sure that it will get done with someone else. He stated that the bottom line is that GCRC bid the project underneath the rule book and that GCRC is violating the rules by approving the bid from MJO. He asked if Darren can dig a yard of rock for \$3.63. Darren stated that he can't himself. Mr. Schneller proceeded to ask Mike Foley from Coleman Engineering if he or anyone could. Mr. Foley asked Mr. Schneller if he could dig the rock for \$34. Mr. Foley stated that unbalanced bids are all over the place and that Bruce Kaszban with MDOT has indicated that when the concurrence letter is received from GCRC, MDOT will check for any unbalanced bids. MDOT has a process for reviewing the bids and will perform the steps needed before MDOT will concur with the award to MJO. Mr. Schneller asked why what Mr. Foley just stated isn't in the spec book. He added that if GCRC wants claims there will be one from either MJO or Snow Country Contracting. Darren stated that MDOT has a process in reviewing the bids and that both FHWA and MDOT have to concur with the award before the GCRC Board can sign the final documents. Mr. Schneller stated that there is no way anyone can scrape 6" of rock for \$3.63. He added he doesn't like this rule and doesn't follow when he bids on USDA projects as it is not part of USDA' process but it is the process of MDOT. He stated that the bid from MJO is a non-responsive bid if you follow the MDOT spec book. Siirila stated that if the Board awards the bid to MJO, Snow County Contracting will probably file a claim against the GCRC. Darren stated that he has Tom's letter disputing the bid from MJO. Siirila asked if the bid is awarded to MJO and MDOT concurs does Snow County still have a claim and if MDOT states that Snow Country doesn't have a claim is this issue over. Darren read the following out of the 2012 MDOT Standard Specifications for Construction Manual; *Section 102.12 Item B. Appeal to the Commission* "The Commission will review the information provided by the Department and the Bidder and make a decision. The Commission's decision is final and binding". Siirila stated that he feels that he should be taking the word of Mr. Foley and Darren however the Board is the one voting on the issue. Mr. Foley added that the funding for this project is public money and the bid has to be awarded to the lowest bidder. He suggested that the Board's motion has to state that the award is contingent upon concurrence from MDOT and FHWA. He stated that the Board should request to have the bid reviewed by MDOT officials for an unbalanced bid. He stated that a claim from MJO is much stronger than the claim presented by Mr. Schneller. He added that MJO would submit a claim for 10% of their anticipated profits and lawyer fees. He thinks the notice should be put on MDOT to go through their process and decide if the bid is unbalanced. Darren stated that the resolution presented outlines that concurrence is needed from MDOT and FHWA prior to any notice to proceed. Siirila asked that if the Board awards the bid to MJO and the recommendation goes to Lansing will MDOT review the dispute from Snow Country and not just concur with the Boards award and move forward. Darren and Mr. Foley stated that MDOT will review the dispute. Mr. Foley added that MDOT has the bid tabulations and they

have been reviewing them since Thursday afternoon. Darren added that MDOT is aware of the dispute from Snow Country Contracting and Mr. Schneller's formal complaint letter will be forwarded to MDOT. Siirila asked Mr. Schneller if he has spoken with MDOT. Mr. Schneller stated that they are waiting for his dispute letter before discussions will begin. Mr. Schneller added that Randy VanPortfliet told him to give the letter to Darren because the bid was a local bid through GCRC. D'Antonio suggested that the resolution should state that there is a disputed bid and the award is contingent on concurrence with MDOT and FHWA reviewing the bids. Mr. Schneller asked if MJO's bid is not accepted that MDOT would award the bid to him so no more time is wasted. Darren stated that he will wait for MDOT's direction as they may throw his bid out also. Mr. Schneller stated that would be fine because then GCRC would be at square one. Mr. Schneller stated that awarding the bid to the next responsive bidder should be added to the motion and he would be acceptable to that. Darren recommended that the Board wait for MDOT's review. Mr. Schneller stated that when MDOT gets his letter they will take the easy route and rubber stamp it. A public attendee asked Darren if in the last 10 years the rules changed indicating that the award has to go to the lowest bidder and that the road commission could step in and pay the difference to get him (Tom Schneller) to do the work. Darren stated that this can't be done on this project because there is federal aid funding involved. The public attendee stated he thought it was just state money through the department of transportation. Darren stated the funding is federal. The public attendee asked so they won't do it, they can't do it. D'Antonio stated that there should be some parameters where the Board could do this if the bid was skewed or flawed. Darren again advised to let MDOT decide as it is their ruling. The public attendee stated that what if MJO comes back and says that they can't dig the rock for \$3.63 a yard. He asked if MJO is bonded and insured to get the job done. Darren stated that they are bonded and insured. The public attendee asked what is it going to take to get them mobilized opposed to a local contractor. Darren stated that mobilization is a bid item in the bid package. The public attendee asked when this project is actually going to get going and how much more time is it going to take the department of transportation to get all the stuff lined up and back to the GCRC. Darren stated that discussion held yesterday with MDOT they indicated that they are anticipating having everything approved and ready to go on Monday or Tuesday. The public attendee asked how much is the work going to be held up now because the dispute. Darren stated at this point it is in the hands of MDOT in Lansing. D'Antonio asked Darren that he doesn't suggest that the Board include in the resolution that if MDOT finds the bid from MJO unbalanced that Board would accept Mr. Schneller's bid. Darren feels that if MDOT agrees with the dispute the Board should meet after the decision to discuss this issue. Mr. Schneller asked why the Board can't just state the award would go to the next responsive bidder. He is just trying to leave an opening because that is what the intent is. If MDOT finds his bid non-responsive that is fine with him then the award would go to the next responsive bidder in MDOT's opinion. D'Antonio asked what the consequences would be or the harm in revising the resolution and that it seems reasonable. Darren stated he sees it this way-the bid is awarded to the lowest bidder, the information is forwarded to MDOT and if MDOT comes back indicating that MJO's bid is unbalanced then this issue should be brought back to the Board for discussion. D'Antonio asked if the bids could be reopened. Darren stated that MDOT could throw all bids out. Siirila stated MDOT could not if the Board makes the motion. Darren stated that MDOT has the final say. Bennetts stated that if the Board doesn't do something what MDOT

requires that the project could be a week or two behind again. Schneller stated that the biggest problem is the culverts. He thinks that the manufacture started making the culverts, that they are three weeks out and feels there is time to get this issue worked out. Schneller commented on the great job GCRC did managing Smith Paving he feels they should have been out finishing the job and doesn't want to see that again. He stated that it snowed on a Saturday night and he was out Sunday morning plowing so his guys could work and doesn't feel that GCRC is going to get that service with MJO. Schneller stated that MJO's workers live in Houghton and anyone with common sense is going to know that they are not going to have a guy's sleeping on the job site. Schneller stated he can't speak for MJO but with the past experience with contractors working on Lake Road things were not rosy with the management of MDOT and GCRC. Carl Maki asked Mr. Schneller if he has enough manpower to do the job. Mr. Schneller he does and that they would run over the November 19th deadline. He thinks MJO will also to due to the availability of culverts. He stated that his crew will work through a snow storm. D'Antonio asked if the Board has concerns with MJO and can the Board make a resolution with the stipulation that the disputed bid be reviewed. He added that he has concerns if someone out of Houghton can do this job. He asked in all reality can they do it three hours away based on the circumstances. Mr. Foley stated that there is a pre-qualification process through MDOT for contractors. The contractors don't obtain the pre-qualification unless they prove to MDOT that they can do the work for a project this size. He has work with MJO on numerous jobs and they did great work. D'Antonio asked Mr. Schneller if the contractors have talked about teaming up. Mr. Schneller stated that there has been no discussion and that he thinks MJO is a good contractor but there are not enough teeth in the spec book to get them to work three hours a day after a snow storm. They will ask for a delay and the spec book says MDOT has to give it to them. He feels that the spec book is loose enough that MJO will continue to ask for extensions. Siirila stated that the Board has to give it to them and stated that there are penalties (liquidated damages) if the project is not complete by November 20, 2016. Schneller stated that if they don't finish this year it is \$225,000 which is a huge amount of money to everyone in attendance but if you are in the business they don't give a dam if there is fire protection and that is the problem. Mr. Schneller added that the residents along the repair locations don't have fire protection right now. The public attendee asked if it is up to the contractor to decide where the work starts. Darren stated that the contractor will present a progress schedule which will be reviewed. The schedule will have a lot to do with the pipe availability. Darren stated that the foundation work can begin at the open site to prepare for the conspan structure. The attendee asked if that bridge will be installed by November 20, 2016. Darren has talked with the supplier and the conspan structure should be on site the first week of November. D'Antonio asked if GCRC has a disputed bid that the Board knows for a fact why does the road commission or why should the road commission decide on this. Darren again stated that the bid packages and the letter of dispute are going to MDOT for their decision. D'Antonio asked if MDOT is going to review the disputed bid and come to a conclusion. He then asked if Mr. Schneller dispute the bid after that and then a commission would be set up to deal with that dispute. Darren stated again that the Appeals Commission would review the information provided by the department and the bidder and make a decision and the commission's decision is final and binding. Mr. Schneller stated that what Darren is reading is only if MJO doesn't get the job and that doesn't affect him and he doesn't have a claim after the final decision is made awarding the bid to MJO. He added that if the Board sends the resolution

without his name included and makes their vote contingent on MDOT reviewing his dispute and bid, MJO supposedly is the lowest bidder if they approve it. He doesn't believe MDOT will get through MJO's bid and determine it to be a responsive bid knowing their history. D'Antonio stated that if the Board accepts MJO's bid and puts on record that Mr. Schneller is disputing the bid and MDOT makes their decision is GCRC still liable. Mr. Foley stated that if MDOT doesn't concur with the Board's decision due to an unbalanced bid the Board would need to hold a meeting to award the bid to the next lowest bidder. He again advised on having MDOT make the decision. Mr. Schneller added that there is nothing stating that the Board can't award the project to him right now and make a motion on the basis that the Board feels MJO's bid is unbalanced. He added that if MDOT comes back indicating that it isn't an unbalanced bid then the Board would award the bid to MJO. Darren stated he doesn't see a problem with MJO's bid. Mr. Schneller stated that it isn't Darren's decision. Darren stated that it is MDOT's. Siirila asked that if federal funds are paying for the project then why is MDOT involved. Darren explained that the federal funds run through MDOT and MDOT is the governing body for the project. The FHWA advises MDOT when the bid can be awarded. D'Antonio asked why the Board can't put in the motion that if MDOT finds MJO's bid unfair that it is the Board's desire to award the bid to the next lowest bidder. Siirila agreed indicating that then the Board wouldn't have to wait another 18 hours to post a special meeting to award the bid to the next lowest bidder. Darren stated that the problem with this is done MJO could appeal MDOT's decision. D'Antonio feels that adding the wording above to the motion puts MDOT on notice that the Board has decided to award the project to the next lowest bidder if they find that MJO's bid is unbalanced.

A motion was made by D'Antonio to present the resolution as presented but specifically add with the stipulation that the Board recognizes that the bid is disputed by Snow County Contracting and that the Board wants an opinion from MDOT and to review the disputed bid. If the bid is found disputed the GCRC Board agrees to award to bid to the next responsive lowest bidder which is Snow County Contracting. The motion was supported by Siirila with a roll call taken: Ayes ~ Siirila, D'Antonio, Drier, Wegner & Bennetts. Motion passes.

- VI. Public Comment** ~ Carl Maki asked how much longer the delay is going to be for construction to start. Darren stated right now he doesn't know. Siirila stated that there may not be a delay. Mr. Maki asked if the results of the meeting go to Lansing. Darren stated that the addition to the resolution needs to be added, the resolution needs to be signed by the secretary and it will then be forwarded to MDOT.
- VII. Adjourn** ~ A motion was made by Siirila, 2nd by D'Antonio to adjourn the meeting at 2:42 pm.

BOARD OF COUNTY ROAD COMMISSIONERS