

CASS COUNTY DRAINAGE BOARD MEETING
Special Meeting Concerning Bids on (131) Dehaven Tile Reconstruction Project
October 19, 2015

The Cass County Drainage Board met in a Special Meeting at 9:45 am in room 203 of the Cass County Government Building. Those in attendance were Chairman Ralph Anderson, Vice-Chairman Jim Sailors, Member Jeff Ledonne, Surveyor and acting Secretary Jenny Clark, and Attorney Brad Rozzi was present for the absent John Hillis. Others present included Jeff Healy, PE, Banning Engineering and Kirk Ingram, Ingram Excavating.

Anderson: I call the meeting of the Cass County Drainage Board to order. Okay, how do we want to do this? Do you want to explain it or Jeff do you want to explain it?

Healy: Good morning. Jeff Healy, Banning Engineering, 853 Columbia Road, Plainfield for the record. I guess I probably pushed a little bit for this meeting so that you could take advantage perhaps of the reasonable weather and get this fairly large Dehaven Regulated Drain Reconstruction Project launched. There is still some unfinished business with INDOT that has to transpire with that agreement and so that they know exactly what their share is going to be. They pressured Jenny a little bit and we've gone back and forth about that and it sort of depends on the award of the contract and then we can finalize what their share is going to be. What you have in front of you is a bid tabulation for the four bids that were received. Three of the four were under the engineer's estimate and I probably could recommend from that perspective award any of those three. Ingram Excavating has done work for the Cass County Drainage Board before. B & S Excavating ah, Ingram was on Trib D of Jones Ditch -- was the project that he had performed. I believe that may have been the first one for Cass County. Kirk Ingram is in the audience this morning. B&S Excavating did the Powell Tile Reconstruction a couple of years ago. ADI, I am not familiar with their work. Their bid package, from an engineering perspective, showed adequate experience and capability. I think they may even manufacture their own tile. So that would be an interesting perspective from that direction. Like I say, any of those three bids were under the engineer's estimate. Let's see, Ingram posted a bid bond that the attorney (Hillis) had an opinion about whether or not it was properly executed. ADI sent in a cashier's check. It was appropriate. B&S sent in a cashier's check. That was an appropriate amount. Deichman executed a proper bid bond form in the process. So we had a conversation shortly after the bid opening. John Hillis, basically we took the bids back as you recall and you accepted them under advisement. We then scanned them and forwarded them on to Jenny and Mr. Hillis for review and Mr. Hillis provided an opinion on the Ingram bid bond that you have in front of you via email. I don't know if you want me to read that into the record or your attorney read that into the record.

Rozzi: Yah. I think that's a good idea. Yes sir.

Healy: Mr. Hillis emailed on October the 7th which was I believe two days after your meeting.
"Jenny/Jeff: I have reviewed the bids of Ingram Excavating and B&S Excavating, the two lowest bidders on the DeHaven reconstruction project and find the following: 1) the surety bid bond of Ingram is lacking in substance in that the bond form does not have a power of attorney for the signatory of the bond: SBA

is the listed insurance carrier and I don't think SBA is an insurance carrier: the dollar amount of the bid bond has been altered. For these reasons I would disqualify Ingram and proceed with the bid of the second lowest bidder, B&S Excavating." That's Mr. Hillis', that was your attorney of record on the day of the bid opening. So, with that, I kind of put that out there to you as to what you would like to do.

Rozzi: Also, just to let the record reflect, on October 15 that there was a cashier's check submitted by, well in favor of the Cass County Drainage Board, submitted by Ingram Dispersal. Well it's tabbed, I guess that's the memo or the regarding line is Ingram Dispersal from the First National Bank of Monterey for \$429,349.00.

Healy: I believe that's how Kirk bonded the first project. It was much smaller in amount, the Trib D to Jones. I believe he also posted a cashier's check for that amount that you held for the duration of the contract.

Anderson: That is a valid bid bond?

Healy: It's not, it's not necessarily a bid bond and I point you to in the, and I'm sure you haven't read this. In fact I have to go back and read them from time to time. The General Conditions for the purposes of bonds. Okay? The bid bond is to secure the bid; to validate the bid and that is in a penal sum form five percent of the total bid. So about \$25,000.00 is the, \$20,000 to \$25,000 is the range of that bid bond. Again its five percent of the total bid. So that can either be a cashier's check or it can be a bid bond form, properly executed bid bond form. When it comes down to performance and payment bonds for the execution of the contract Article 6 of the General Conditions reads: "Contractor shall furnish a performance bond and a payment bond," that's two bonds, "each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later," Basically that's your one year warranty period that bonds technically stay in effect. So, I'm not sure what you would do with a cashier's check for \$429,000 for that period of one year. That's probably something that you'd need to factor in if you choose to accept Mr. Ingram's bid.

Anderson: So the bid bond is still lacking?

Healy: The bid bond was never executed, according to Mr. Hillis. That was his recommendation. It wasn't executed properly.

Anderson: Can the cashier's check as itself, as far as the performance, that be a performance be construction bond?

Sailors: Mmm huh, performance in construction the other one's payment.

Healy: Yah performance is to guarantee the performance of the work. Payment bond is to make sure that the suppliers and subcontractors get paid. So the perform, the payment bond can be released with proper documentation of payment for materials and supplies and then the performance bond remains in effect for a year. Almost, almost, it it does provide you the guarantee, your guarantee of the work.

Anderson: This cashier's check does cover that or not?

Healy: If you would want to hold it for a year. I'm not; it does it does require two, technically, performance and payment. I suppose we've done that in the past.

Clark: Yah but still though, go ahead.

Rozzi: But this check is not right yet. I mean you haven't approved any of the bids yet. Which you would get this after you select a successful bidder. Then this would come. So in a way it's kind of putting the cart before the horse. Is that fair?

Healy: That's fair.

Rozzi: So it's not really relevant to your decision today if you will. I just was making a note that there was a submission that was ten days after the due date on the bid bond and it's in the form of a performance bond, I'll say generally.

Anderson: So everything in a nut shell, our County Attorney is telling us that the bid that was submitted was not really submitted correctly.

Rozzi: It's not a responsible bid I think would be the legal phrase that would he would use.

Sailors: Well and in the past we've had bids that were not turned in in a timely manner and we haven't taken the bids because it says in there; it gives a date, it gives the things that are due in that bid and if they weren't turned in; we've had that happen.

Clark: I did email John Hillis and let him know that this check was received and on what date and for what amount and if this was supposed to be in lieu of the bond, it was still tardy in its submission. So even with its submission, if it was supposed to be for in lieu of the faulty bond it was still ten days after

Sailors: Yah

Clark: when the bond should have been presented with the original bid. That was John's opinion as well; that it was tardy.

Anderson: Okay. So essentially the advice of counsel is that that bid

Sailors: That we take the B & S

Anderson: that when we took them under advisement that one should have been pulled out.

Rozzi: That would be rejected.

Anderson: Yah, I mean, that's the advice of counsel?

Rozzi: Yes, sir. I had a chance to talk with John about this before he left. I had forgotten until Jenny mentioned it but,

Anderson: But we approved, we approved; it went beyond, it came under advisement and it was snared back to us to approve the bid and we approved the bid when under advisement it should have been pulled.

Sailors: No

Anderson: No?

Rozzi: No you just took it under advisement now

Sailors: No, right now all we're doing now is accepting bids and we are advised to take B&S Excavating because of this and that's my motion that we take B & S Excavating because that was not turned in in a timely manner.

Rozzi: Well because they are recognized as the lowest responsible and reputable bidder on the project.

Sailors: And actually

Anderson: Okay do we want to hear from Mr. Ingram before we do that or not?

Sailors: I just made a motion so you can do that.

Anderson: Huh?

Sailors: I made a motion so you can do that.

Anderson: Do you want to speak?

Ingram: Uh, only I'd like to say sir I'm very sorry this happened. The individual that told me he could get bonds had no idea how to do it. He totally misrepresented himself and that's why I brought the check in.

Rozzi: Let's let the record reflect, could you state your name please?

Ingram: Kirk Ingram

Rozzi: And I'm assuming you are with Ingram uh ...

Ingram: Excavating

Rozzi: Excavating? Okay thank you.

Anderson: Do you understand why we are doing what we are doing?

Ingram: I understand it completely.

Anderson: There's been a motion do I have a second?

Ledonne: Second.

Anderson: There's been a motion and a second, all those in favor?

Ledonne: Aye

Sailors: Aye

Anderson: Aye So is that it for today?

Sailors: That's it.

Anderson: Do I have a motion to adjourn?

Sailors: Motion to adjourn.

Anderson: Second?

Ledonne: Second

Anderson: All those in favor?

Sailors: Aye

Ledonne: Aye

Meeting was adjourned at 10:05 AM.



Ralph Anderson, Chairman



Jenny Clark, Surveyor
Acting Secretary