|  |  |  |
| --- | --- | --- |
| **Meeting Location:** | 1263 South Stewart Street | 123 East Washington Avenue |
|  | Third Floor Conference Room | Building B |
|  | Carson City, Nevada 89712 | Las Vegas, Nevada 89101 |

1. **Welcome/Call to Order**

Governor Sisolak called the meeting to order on Monday, November 18, 2019 at 9:30 AM. A roll call was conducted, and a **quorum was established**.

1. **Public Comment**

Governor Sisolak said he would be taking something a little out of order. When they get to Agenda Item 7, Consideration of Options for the Unsolicited Proposal for the Spaghetti Bowl, he will take public comment at that time on that specific item. So, if someone speaks under Agenda Item 2, they will not be allowed to speak when they get to Item 7. With that, he opened the meeting for public comment. There was one speaker.

Mr. Jim Nadeau, representing Career Nevada and the Reno Sparks Association of Realtors, said his association is in full support of expediting work on the Spaghetti Bowl. He thanked the Board for their efforts in doing so.

Governor Sisolak stated he had a request in regard to comments on Item 7. He said he would like commenters to be very specific in what they are proposing or recommending or speaking in favor of as opposed to generalities. He said everyone wants this project to be done quickly and cost effectively.

1. **Approval of the October 14, 2019 Nevada Department of Transportation Board of Directors Meeting Minutes (For Possible Action)**

There were no corrections or changes in the Minutes.

**Motion: Approve the October 14, 2019 Nevada Department of Transportation Board of Directors Meeting Minutes**

**By: Lieutenant Governor Marshall**

**Vote: Passed unanimously**

1. **Receive Director’s Report (Informational Item)**

Director Swallow started the report with the State Fatalities numbers through October 2019. There have been 215 fatalities on the roads. As in previous months, they continue to track better than last year, and that’s 74 fewer lives lost this year than last year, which is good, but it’s still 215 too many. Pedestrian fatalities continue to remain down across the state and unrestrained occupant fatalities also remain down. The Director said everyone shares a role in the safety of Nevada’s roads, and with the time change, they ask that pedestrians and cyclists wear reflective and light-colored clothing, and that drivers be aware and drive at appropriate speeds. Director Swallow reminded Members their joint forces law enforcement campaign “Click it or Ticket” is running now through the Monday after Thanksgiving.

Director Swallow updated Members on the avalanche control system on Mount Rose Highway. There were some concerns about whether or not they were going to be able to operate as effectively as they have in the past. As of a couple of weeks ago, all of the inspections were completed and there are just some minor changes to do to that system in order to run it as per usual. It is an aging system, and they are looking at trying to find a long-term fix as well.

Director Swallow updated Members on the FAST Act Rescission. The FAST Act is the surface transportation bill that the Department is currently authorized under to get Federal funding. It is set to expire in Fiscal Year 2020. As part of the budgeting process, when they passed the FAST Act, they included a budgetary item, a Rescission. They planned on at the end of the year a $7.6 billion Rescission in order to make the bill work budgetarily. And so, since the FAST Act was authorized, all the DOTs and many stakeholders have been asking for Congress to rescind the Rescission and they have yet to do that. They need to do that as part of their budget bill. Right now, they’re currently under a Continuing Resolution that expires at the end the week. The Department is hoping that they will fix the Rescission as part of their final legislation on the budget.

Two weeks ago, Federal Highways let all the states know what the estimated impact could be to each of the states. And for Nevada, it’s an approximately $106 million impact. That’s roughly one-third of the state’s Federal funding. If they don’t repeal the Rescission between now and when it happens on July 1st, the Department will be able to adjust where funding sits in the various buckets of funds that they get to make sure that they maintain the most flexibility. The Feds give the Department a budgeted amount every year, but they only allow the Department to obligate something less than that. So, the impact will be less than $106 million. What projects will this impact? Every single NDOT project is something that needs to be done; no project will be cancelled, but some projects may end up getting delayed.

Lieutenant Governor Marshall asked if the Department had been coordinating with the Congressional Delegation? Director Swallow replied that yes, they have, and will continue to do so.

Director Swallow’s last order of business was to introduce Mr. Mario Gomez, the Department’s new District Engineer in District 1. Mr. Gomez has been with the Department for 19 years and most recently was serving as the Assistant District Engineer of Construction. The Director congratulated him and welcomed him aboard in his new role.

Governor Sisolak congratulated Mr. Gomez as well and moved the meeting on to Agenda Item 5.

1. **Approval of Agreements Over $300,000 (For Possible Action)**

Director Swallow stated there were five agreements for the Board’s consideration and approval. Governor Sisolak asked if there were any questions, and there were.

Member Almberg asked about Line Item 3. This is a line item where they’ve picked three consultants to provide the Department some assistance. It’s an identical scope of work and it’s actually not even any defined work at this point in time. When you read back to the paperwork, every one of the consultants has a different overhead rate. One’s 135%, one’s 194 % and one’s 186%. What does that mean to the Department’s bottom line?

Director Swallow answered when they move forward with projects, they look at the overall cost and make sure that they negotiate with them on what appropriate costs for a project should be. Each one of these will have task orders and they will fund those as appropriate to the actual scope of work.

Member Almberg said the Department gets plenty of different overhead rates and his understanding is that they mostly apply to the wages those individuals are being paid. Was that correct? Director Swallow responded yes.

Member Almberg asked how did that affect their bottom-line price?

Mr. Cole Mortensen, Deputy Director for the Department of Transportation, said when they work with consultants, they have to have a FAR compliant audit rate and out of that FAR compliant audit rate comes the overhead rate. Each and every consultant has a different way of doing business, and some provide different benefits packages. Some provide a higher salary. All that takes into account or goes into play when you start discussing the overhead rate. So, the overhead rate isn’t necessarily indicative of the overall cost from a weighted man-hour rate.

Member Almberg said when they are provided an overhead rate, but not provided the hourly rate, they would be much better off to be getting the hourly rate and then just work with it. They’re all within the same couple percentage points in an hourly rate for that same individual.

Director Swallow said she and her staff can look into that and see if they can get Member Almberg that specific information.

Governor Sisolak asked Mr. Mortensen why are they not provided more information as it relates to that?

Mr. Mortensen replied that that’s something they will do in the future. He said he had a misunderstanding on this one and Board Member Almberg had asked him for it last week. Under their normal course of action with their on-call list, generally they do a master agreement and then they’ll go out for their phase. Mr. Mortensen said he did not realize that under this circumstance that they had already had the task orders executed. He will get those and make those available.

Member Almberg had another question on Item 4. Were they the sole proposer on that project? Ms. Sondra Rosenberg, Assistant Director for Planning, replied yes, Stantec was the only proposer on Item 4.

Member Almberg had a question on Number 2, dealing with the CAD the Department runs. The Department’s CAD is a MicroStation. There’s only one entity that uses MicroStation, and that is DOTs. Member Almberg said he realizes the Department is “very deep” into MicroStation at this point, but he is proposing that the Department should look at other options (i.e. AutoCAD) the next time it comes up to renew. AutoCAD is more of an industry standard, so if they used that, there potentially would be a larger pool of people that would be qualified to come to work for the Department, as well as consult on projects. This is something that they should plan for now so that they could actually work through any issues if that was an option that they considered doing.

Director Swallow replied it would definitely be something they would look into going forward.

Lieutenant Governor Marshall asked a question on Item 2. Did the original award identify that there would be a series of amendments that would overtake the cost of the original award so that the Board was aware of this incremental approach to these amendments adding up?

Mr. Mortensen said, in this case, they had anticipated seven phases for the project from the onset. This is one of those projects where you start off with the information that you have and that helps you determine what the next step is going to be and so that’s where they’ve taken that phased approach to amending those agreements.

Lieutenant Governor Marshall asked in the consideration of the phased approach, was there an identification that each of those phases would have a cost associated with them that would be much more than the original amount?

Mr. Mortensen replied yes. Originally they came up with an overall anticipated cost, however, as they go through these, each one of these agreements and amendments, have the budget approved independently, and so as they step through each of these phases, the size of the effort may have been a little bit larger or a little bit smaller than what they had originally anticipated but they kind of had to take those steps in order to get there to have that understanding.

Director Swallow said when they procure for these projects they have an understanding of what that whole cost will be and do from the outset know that that first contractor agreement may be significantly less than the overall cost, and it is part of the overall procurement so they communicate to the consulting community when they’re doing it that that is the intended outcome. It’s overall a $2 million project, but the initial agreement may only be $200,000.

Lieutenant Governor Marshall asked was the initial estimation of cost – where was that in relation to the current cost on this item? Director Swallow said she would have to get back to the Lieutenant Governor on that.

Lieutenant Governor Marshall said there was an original agreement amount of half a million and then a total amount of prior amendments almost a million, so in other words the creep has gotten into real money. Was that anticipated? Was it in the ballpark? The Board understood that original figure, and now they are at amendment number five or six. The Board’s at a situation where it’s like well, okay, do they just walk away from all the money spent? There’s a pressure to just say okay, another amendment, another amendment.

Mr. Mark Ditko from Zen Consultants said originally their original scope was larger. Their dollar amount was actually larger. Because the way that they had it phased, they had intended originally to upgrade the standards on the current software and they actually took that component out and upgraded the standards onto the new software, so they actually took a piece out per their evaluation.

Lieutenant Governor Marshall said so this is a lower cost? They saved the taxpayers money? Mr. Ditko said absolutely. Because of their analyses, there was a decision made to take a piece out.

Member Savage said this has been one of his pet peeves for the last several years. They have got to hold the consultants accountable for any scope creep and dollars. The Department needs to know the dollars up front. If this happened on the construction side, if there’s a bid for a house for $200,000 that ends up three times that amount, there’s going to be World War III on the construction site.

Member Savage said the consultants need to be in the same ballpark and understanding and respect the Department and the Board for getting the whole picture up front. And it’s great the consultants can save money, but again, it’s all about the transparency and getting the dollars up front. The Lieutenant Governor’s comments were spot-on.

Governor Sisolak said this is the same issue they had at the last meeting with the change orders.

Director Swallow said she will see if there’s a way that she can provide in their spreadsheet a total anticipated cost from the outset so that they can see how they’re tracking according to that.

The Governor asked if there were further questions or comments, and there were none. The Governor said he would accept a motion.

**Motion: Approve Agreements Over $300,000 under Agenda Item Number 5**

**By: Member Savage**

**Vote: Passed unanimously**

1. **Contracts, Agreements, and Settlements (Informational Item)**

Director Swallow said Item 6 was the contract and agreements that were under the approved delegated authority thresholds that were approved last month.

Member Savage said they all love to see the no cost agreements; that speaks volumes. But if there is a cost later on, there should be a question as to why it wasn’t disclosed at this point in time when there was an extension on the timeline. It’s the same point that carries on from the prior agenda.

Lieutenant Governor Marshall had a question for Mr. Mortensen. On Item 47, she had asked if they could get grad students to get some training. That’s a good pipeline for the Department. Were any grad students on that project? Mr. Mortensen replied yes, they are utilizing grad students for this research.

Member Almberg asked on the very last line, Item 106: what’s meant by the retention rate? are they changing the retention rate on that item?

Mr. Mortensen said he thought that the retention rate adjustment there was to allow the Department to utilize funding that had currently been retained to continue to move forward with their services. They’re currently working with the Department to defend them on a number of issues that have come up with some of the relocations associated with Project Neon, which is part of the reason why they have to do the extension.

Director Swallow said there’s funding in the contract. They have just retained it and the Department is releasing the use of that retention to allow the additional services.

Governor Sisolak asked if there were further questions or comments, and there were none.

1. **Consideration of Options for an Unsolicited Proposal for the Spaghetti Bowl Project (SBX) in Washoe County in the Area of I-80 – I-580, 2nd Street/Glendale Avenue & Mill Street and Wells Avenue. The options include: a solicitation of a competitive procurement; acceptance of the unsolicited proposal and negotiation of a sole source agreement; and rejection of the unsolicited proposal. (For Possible Action)**

More than three years ago, the Department initiated a competitive procurement to hire a team to complete environmental studies and preliminary design for the Reno Spaghetti Bowl. The procurement included language to allow flexibility to amend scope at a later date, to have that same consultant provide work such as final design or to support for an alternative delivery such as design build.

CH2M was the selected consultant, and the Department’s first step was to execute a smaller contract to study the corridor and better understand the level of efforts the environmental document would require. Once that was determined and the team knew what it would take to complete the environmental document, Amendment #2 was executed for $11 million.

When this was originally negotiated it was to get them about two-thirds through the project process, but their team was efficient and because of the work they did on that first agreement, they were able to complete the full process for a little bit more than $11 million.

At this point, the design build delivery method was selected and approved for SBX. The Department was approximately one year from completing environmental work, so in order to track those two efforts at the same time, a new agreement was executed. And that’s the agreement for $4.8 million. That was to assist the Department with a design build procurement.

Unfortunately, there was a minor correction that was needed. Amendment #1 was executed just a month later. It did not change the scope schedule or budget. SBX Design Build Procurement was ultimately canceled and the delivery method was changed to Design Bid Build. To support final design, the Department went back to the original agreement with Reno Spaghetti Bowl.

Governor Sisolak needed clarification. Ms. Jenica Keller said $11 million. It happened to be $11 million on Amendment#1. Now it’s $9 million?

Ms. Keller responded the amounts shown are the cost for each amendment. So, collectively the Reno Spaghetti Bowl would have the approximately $300,000, the $11 million and now the $9 million.

Lieutenant Governor Marshall asked if it was correct that the RSB contracts are for doing the environmental assessment, the scope of the project and the design and then the Spaghetti Bowl Design Build was to bid out for a project which has now been withdrawn because of the issue with all the bids. Is that right? Ms. Keller responded yes, that’s exactly right.

Lieutenant Governor Marshall asked why did the Department spend $4.8 million to put out a bid?

Ms. Keller said the $4.8 million helped the team administer the procurement. That started last May, and it ended in June of this year.

Lieutenant Governor Marshall asked so that money was spent to try and do a bid for design build and now they are resetting and starting again on that? That particular part is closed?

Ms. Keller said they have design build procurement documents that they used to advance the design build solicitation so depending upon the outcome of today’s meeting and which option is advanced, they will use those documents to continue on.

Lieutenant Governor Marshall asked for the RSB which is with CH2M, that portion of the contract, is that completed now? The Department is no longer contracting with CH2M for the scope, the environmental assessment and the design that you are focused on. Is that correct?

Ms. Keller said no, it’s not. There are three contracts that they’ve labeled Reno Spaghetti Bowl. The first one was the initial let’s take a look and see what we’re doing. The next one was the environmental document. The Amendment #2 which was the third contract, was approved by this Board last month to advance final plans, design, bid, build, delivery.

Lieutenant Governor Marshall asked was the RSB Amendment #2 for bid build? Ms. Keller affirmed. Lieutenant Governor Marshall asked if the amendment to Spaghetti Bowl DB with Amendment #1, was for design build? Ms. Keller affirmed.

Ms. Keller said right in the middle of negotiating the agreement that the Board approved last month, that’s when the unsolicited proposal came in. So, in anticipation of things changing again, staff included language in the agreement that in the event the design bid build method was changed back to design bid, the Department could make some change. They could quickly shift gears back to design build without any delay to the project and CH2M would be compensated for the work they performed up until that point and would not be entitled to their full fee.

Lieutenant Governor Marshall asked of the $9.4 million or alternatively the $4.8 million, neither of those agreements have been spent to full capacity yet, right? Those are approved amounts, not spent amounts.

Ms. Keller said for the original agreements and the environmental, those have been spent; for SBX design build that first one, the $4.8 million, it’s close to being spent. The $9.4 million they just started on that last month.

Lieutenant Governor Marshall asked if they do not continue to move forward on that, is there an amount they will be required to pay?

Ms. Keller responded yes, the Department will be required to pay for the work they’ve done up until that point.

Ms. Keller resumed her presentation. She said staff would be coming back to ask for Board approval on another agreement depending upon the outcome of today. If the design of the unsolicited proposal is selected, they will amend the design build agreement to again return to those procurement documents that are nearly complete. If the unsolicited proposal is rejected, then they will need to amend the agreement for the consultant to help them during the construction phase.

Ms. Keller reported that the environmental effort the team did was completed in July in near record time. The environmental process for projects of this size and complexity typically take an average of up to five years. The NDOT team did it in just slightly over two and a half. So, when you consider that, the project is significantly ahead of schedule. The design build procurement effort was underway from May of 2018 to June 2019.

Governor Sisolak said he had to stop Ms. Keller there. She said the project was way ahead of schedule, but the Governor has been inundated with people saying that they’re concerned that the project is delayed so much. He said he’s getting a mixed message between significantly ahead of schedule and the community that feels it is way behind.

Ms. Keller responded that what she was trying to say is that they completed a huge effort in half the time that it would normally take and for that process alone, they were ahead. But she understands the point of needing those improvements yesterday.

Governor Sisolak needed clarification: was Ms. Keller saying this project was two and half years ahead of schedule? Ms. Keller answered yes.

Director Swallow explained the project is ahead of schedule because they were able to get the NEPA done as quickly as they did. As they were getting close to seeing the NEPA completion, they were able to advance the first phase and when they advanced the first phase that set the expectations of the community, so they expected that NDOT was going to be going under construction, but overall, in the big picture, they are ahead of schedule for a typical delivery of this sort of project. But because the design build did not go through, it appears that they’ve lost time.

Ms. Keller continued the presentation by explaining the planning process, the environmental process, the design process, and then construction. The environmental process was wrapped up a few months ago in record time. That process alone is ahead, that’s all. So, in July, the Department determined that the SBX would be delivered by design bid build delivery and the Department broke the project up into two phases. Phase 1A will construct walls and relocate utilities, and that’s anticipated to start early next year. Phase 1B is the freeway and safety improvements which will follow a year later in 2021.

In September, the Department received the unsolicited proposal to design and build SBX, and they spent the last few months evaluating it. The team has not stopped designing this project or advancing it. The process to evaluate unsolicited proposals is defined in Chapter 408 of NRS. The process is very thorough and there are several points along the way where the Department has the option to reject a proposal. Its only proposals that are beneficial and important that make it here today. And this proposal is both of those.

The last step in in the process is to select one of the three options which are: solicit a competitive procurement, accept the unsolicited proposal and sole source with that proposer, or reject it and stay on the path that they’re on, delivering the project and the design bid build.

Ms. Keller went on to say the Spaghetti Bowl Xpress will demolish two structures over the railroad and build a large structure. The different design phases are submitted to the railroad for their review. Per their guidelines, they have four weeks to respond. Historically, it’s much longer than four weeks. Also, if one change is made, it comes back to the Department to make the change. The Department sends it back and the four-week clock starts over.

Work within the right-of-way (which would be to demolish the bridges and build the new ones) cannot start until the Department has executed a construction and maintenance agreement with the railroad. The railroads provided the Department written approval of the plans. The Contractors Right of Entry has been obtained. And the Public Utilities Commission has provided their authorization. Obtaining the design approvals and the agreements required to work within the railroad takes time, and there is a potential of delay.

What’s important to know when considering the unsolicited proposal option is the owner of that delay or who “owns” the risk of that delay and the impacts to the project. In design bid build projects, construction can’t start until the Construction and Maintenance Agreement has been executed. This means advertisement for bids may be delayed until that agreement is executed. Or it can mean there’s a potential to complete the overall construction of the project.

On the other hand, design build delivery allows construction to start much sooner, so while the Department is in the process of trying to obtain this Construction and Maintenance Agreement from the railroad, the contractor can be working on other elements of the project. The lesson learned from other design build projects is the railroad expects the plans to be complete including means and methods for demolition and construction. The Department experienced delays in preparing complete set of plans with the design build on a previous project that the project was delayed.

To mitigate this potential of delay, the design build procurement documents require the proposer to include a minimum of 365 days from the time they see the design for the Department to enter into the agreement with the railroad for the Construction and Maintenance Agreement. If the process takes longer than 365 days, any costs due to that delay are NDOT’s.

Lieutenant Governor Marshall asked if the Department hasn’t started that negotiation with the railroad yet for the Spaghetti Bowl and when you start you give yourself 365 days to do that negotiation and if you can’t get it done in 365 days, you’re on the hook? And the Department hasn’t started that negotiation yet?

Ms. Keller replied that whether it’s delivered by design build or design bid build, they have to work with the railroad, and they’re difficult to work with and there’s a potential to delay the project.

Lieutenant Governor Marshall asked that, as of today, nobody has begun negotiations with the railroad?

Ms. Keller said absolutely not. They have the preliminary agreements and they have received written approval from the railroad for Design A. They are working on the plans to get the next submittal in to the railroad.

Lieutenant Governor Marshall asked was this relevant to this particular issue because if the Department takes an unsolicited bid what happens to their process?

Ms. Keller replied when it’s design bid build, the Department leads the effort.

Governor Sisolak asked if the Department goes with the other option, are they going to have to start over with the railroad? Ms. Keller said yes.

The Governor said that’s a simple question. Are they going to have to start over or are they going to continue? They’ve already made progress. They are through most of it with the first plan.

Ms. Keller said the design builder would have to start over. They would have to submit their plans. The design builder may not have the exact same plans that the Department has.

Governor Sisolak said that they are eight months into this with the railroad. So, they’re going to be eight months behind if they go with this new proposal.

Director Swallow said what Ms. Keller was trying to convey was who would own that risk. So, right now, with design bid build they told the community the approximate delivery date of the final project. They’ve indicated what that date is going to be. They’ve also said that that date could shift because of any challenges they have such as railroad approval. So right now, all schedule and their related to cost risk is owned by the Department if they go design bid build.

Governor Sisolak said he understood that, but Ms. Keller represented that with the first option, most of that work is done.

Director Swallow clarified that was just for Phase A. It’s just the first step. So, if they go with the design builder, they will be able to advance their design and start work in areas outside of the railroad piece while they continue to finish the design and get the railroad approval. So, their design and construction can be concurrent with getting that railroad approval.

Governor Sisolak asked where does the Department stand on this project? Ms. Keller responded that they submitted Phase Design A, design bid build process a year ago. They received their written approval.

Governor Sisolak asked for clarification: The Department is a year into negotiations with them? Ms. Keller replied yes. The submittals are based on advancement of the design, so they have advanced the design to a point where they can submit Design A. The design gets advanced and then you submit Design B.

Lieutenant Governor Marshall asked why they were talking a lot about the railroad piece with respect to the design bid? Why?

Director Swallow said they are talking about the railroad piece because of who owns the risk to the schedule and, therefore, the cost. So, as they get into the options, if they re-procure, if they go to another design build procurement, that risk will be shared between the builder and the Department. That’s the 365 days Ms. Keller stated they put in there. So, as they go back out, they’ll put some amount in there to protect the Department.

But if the railroad doesn’t approve it in that timeframe, they will share that cost and that risk. If they go with the sole source, that cost and schedule risk is owned by the design builder, the proposer on the UP. And if they go design bid build, that cost, and schedule risk is entirely owned by the Department.

Lieutenant Governor Marshall asked did they bring this up now because this is a major piece of making this decision? Director Swallow answered it is a big component.

Lieutenant Governor Marshall said they brought the issue of the railroad and where they are with the railroad and who’s going to bear the burden of negotiating and the delay and the cost in negotiating with the railroad as a major decision maker with respect to these three options. So, what is the cost and the risk that Ms. Keller is talking about having to be borne by one or the other?

Ms. Keller said it’s a large risk. It’s a significant risk.

Governor Sisolak asked could Ms. Keller define “large” or “significant”?

Director Swallow said based on their experience with the design build proposals that they just went through, it’s tens of millions of dollars.

Lieutenant Governor Marshall said it’s tens of millions of dollars, and today they have that risk and they have completed Phase A. They have two more phases to complete with the railroad, and they are comfortable that they cannot incur the tens of millions? Is that what they’re saying?

Director Swallow said they are going to do everything they can to not incur that.

Lieutenant Governor Marshall asked if they take the unsolicited proposal, they shift the tens of millions of dollars’ risk onto the unsolicited proposal bidder, right? Director Swallow said yes.

Lieutenant Governor Marshall asked what do they get in return for having provided them with such risk?

Director Swallow responded that they fully evaluated it. They’ve given the Department a price. They understand what that risk is, and they are comfortable with the price that they’ve provided the Department. The other reason why they are doing this up front is just so that everybody on the Board understands they’ve given estimated, substantial completion dates and those are estimated because the railroad could throw any one of those dates out.

Lieutenant Governor Marshall asked if they go out and bid it out again, who’s holding the risk? Director Swallow said if they go out to a new design build procurance, that was Option 1, if they do that it will be shared risk.

Lieutenant Governor Marshall clarified that Option 1 is shared risk. Option 2, it’s their risk and Option 3 is the Department’s risk.

Lieutenant Governor Marshall asked about under the original, when they were soliciting bids, who was holding the risk? Ms. Keller responded that they allowed for one year, 365 days for that process. If it went 366 days, then it became the Department’s risk. They allowed the 365 days because the railroad doesn’t provide timely responses.

Lieutenant Governor Marshall said that was last fall, so they’ve hit that year marker. Is that correct? Ms. Keller said this would be a part of the design builders’ design. They get their design into the railroad and the Department allowed for 365 days. After that, it became the Department’s risk. Starting at, essentially at Phase B.

Lieutenant Governor Marshall said as they see it, they have 365 days before it becomes their risk.

Governor Sisolak said the time commitment, they don’t own the time commitment. The public owns the time commitment, the time delay. What, are they going to compensate the Department? Is there a penalty for every day it goes over? Ms. Keller said absolutely, the penalty is $70,000 per calendar day.

Member Valentine said she thought what they are trying to decide here is the additional risk worth accelerating the time of delivery by a couple months? Anything can go sideways on any of these with the railroad at any point. They have had experiences like that.

Ms. Keller continued with her presentation and gave some details about the unsolicited proposal. They’re proposing to design and build a project very closely to the procurement documents that they had with some important deviations. Those deviations are about relations to the railroad and the timing. So lump-sum cost estimate is within 10% of the Department’s own estimate. The proposal is a “pay as you go.” That’s typical for design bid build. So, because of the proposed deviations, the proposers schedule achieved substantial completion 9- to 12- months sooner. One year of delay is estimated to add $8 million to construction costs due to escalation. Ms. Keller then detailed the three options.

**Option 1** is to solicit a competitive bid by starting over, basically. The procurement documents that the Department built, the $4.8 million that they spent, would be modified. They would modify them by changing the timing that the proposers have to prepare their proposals and they would change the specifics to do with the railroad. They are proposing that the risk of delay due to the railroad be shared. Disadvantages are that the time it’s going to take to update those procurement documents. Also, if they go with this option, the project isn’t eligible for Federal funds.

**Option 2** is to accept the proposal and to negotiate a sole source agreement. It’s a good proposal. It provides good value. The price is known. The Department is getting everything they’ve asked for. The schedule risk for the railroad is owned. And it brings improvements to the congested area and safety improvements sooner than any other option. There’s one disadvantage and that’s they cannot use Federal funds.

**Option 3** is to reject the proposal and continue as planned. With this option they are eligible for Federal funds. It’s a design bid build project. It’s what they do, very well known in the contracting community. Disadvantages, time. This is six to nine months later than the other two. Another year of escalation could add another year. The Department would assume the railroad risks.

Member Valentine asked what was the escalation for construction figure? Ms. Keller said the escalation for construction is $8 million per year.

Governor Sisolak clarified that when they talk about economic damages, the economic impact is $1.6 million per year due to accidents. And when they say it’s not eligible for Federal funding, they don’t really lose Federal funding. Federal funding would be transferred to another project. That’s an important thing. So, when they say loss, it’s not a loss. It’s a transfer.

Governor Sisolak had a question for Member Savage. He said it was his understanding that Member Savage was recusing himself on this one. Was that right?

Member Savage said that was correct. After a Board briefing by Mr. Mortensen Thursday morning, Member Savage’s company was listed as a major subcontractor by one of the general contractors submitting on this proposal. Member Savage said for the betterment of NDOT and the State of Nevada, he would never want to subject a potential bid protest for this very important project. Therefore, he will have to recuse himself and abstain from voting on this matter. It’s in the best interest for the State and keeping this project on schedule, because time is money.

Governor Sisolak said he was going to open it up for public comment, only on this item.

An unidentified speaker said the Department did receive an email from the Reno-Sparks Indian Colony. The email was from Scott Nebesky, and he said given late notice, the Reno-Sparks Indian Colony was unfortunately unable to attend the meeting today. But they want the Board to know that the Reno-Sparks Indian Colony strongly supports the implementation of the project.

Governor Sisolak reminded speakers awaiting comment that he appreciated everybody’s support of the project. He said it’s pretty much a given; everybody wants this project to move forward. The Governor said he needed specifics as they relate to the various Options, 1, 2 or 3.

Mr. Brian Dowd, representing Granite Construction, was the first speaker. He said Granite Construction was one of the three proposers on the SBX Project. There were specific guidelines within which they were preparing their proposal and specifically with regard to the design review with the railroad. It was challenging to include that in the parameters of their proposal and meet the guidelines that were given to them, but they figured out a way to do that and the team that submitted the unsolicited proposal was disqualified because they did not comply with those requirements.

Mr. Dowd thought it was great that they then turned around and submitted as an unsolicited proposal, good for them, but it appears to him that this basically is saying well, we didn’t comply with the requirements, so we’re just going to submit it as an unsolicited proposal and change the requirements, and that would allow them to go forward with the project. So, Mr. Dowd would request that the project either be put out as a design bid build or take their proposal and put it out as a design build proposal that Granite Construction could then submit on and the Department could get other submittals from other teams.

Governor Sisolak thanked Mr. Dowd and said at the conclusion of the public comment, he was going to ask their legal counsel to give an explanation as to how this all came about with the unsolicited proposal.

Mr. Ray Lake was the second speaker. As a resident of Golden Valley, he drives this section of freeway almost every day. He said he was in favor of anything that moves this project along as rapidly as possible. He started coming down here to these meetings from Reno about four years ago, and he’s watched this project from the beginning. He experiences delays every day. There are accidents almost every day. They are affected because they sit in the traffic and they burn fuel and they’re delayed getting into town. Growth is rampant – about 18,000 new housing units have been approved already. They need this project completed and they need it yesterday.

Governor Sisolak thanked Mr. Lake and reminded everyone that he wanted specific feedback on the specific options.

Mr. Tim O’Dell, Executive Vice President for AMES Construction (one of the teams that submitted the unsolicited proposal), was the next speaker. He said he was in favor of awarding the unsolicited proposal to AMES Construction and Q&D Construction. They have given a competitive best value design build proposal to the State of Nevada. They do understand the requirements that have been discussed in regards to the railroad. They understand the risks that are involved, and they have committed a firm, fixed price along with a schedule completion date of the fourth quarter of 2022. Their track record with the Nevada DOT on alternative delivery speaks for itself with the recent completion of two major design build projects, one being USA Parkway in northern Nevada and the other one with the recent completion of the Garnet Interchange in North Las Vegas. AMES commits to the Board not only schedule, but they commit the highest of quality and on-time delivery.

Ms. Amy Cummings with the Regional Transportation Commission of Washoe County said she was at the meeting to affirm their support for NDOT and their appreciation for undertaking this effort. RTC is committed to this project. It’s their number one priority as it is the highest crash location in the state now. And RTC is committing $30 million to the construction of this project. They appreciate the partnership of the Nevada DOT.

Governor Sisolak asked Ms. Cummings which option was she selecting? Ms. Cummings said the RTC Board has not made an action on this, but she just wanted to get on the record that they are committed to being a funding partner whatever decision is made.

Ms. Neoma Jardon, a Reno City Council Member and the Vice-Chair of the Regional Transportation Commission of Washoe County, addressed the question about the timeline and whether or not this was delayed. In April of 2018, NDOT represented that the project would be under construction in August of 2019, so clearly there has already been a delay. The need for the Spaghetti Bowl improvements have been a priority at the RTC for seven years, and they have been at every monthly meeting for seven years. These improvements are not only to improve the traffic flow and improve congestion, it is to address the volume of accidents as they relate to the Spaghetti Bowl. It is the highest accident location in the state. First responders who are already stretched incredibly thin. So as a council member and a lifelong citizen of the Washoe County, Ms. Jardon supports the unsolicited proposal. Mayor Schieve also supports the unsolicited proposal.

Mr. Andrew Diss, Vice President of Government Affairs for Meruelo Gaming (which owns and operates the Grand Sierra Resort) spoke in support of Option 2 to go with the unsolicited proposal. They are one of the largest employers in Washoe County with several thousand team members commuting to work on a daily basis. They are in support of Option 2.

Ms. Sabra Smith Newby, Reno City Manager, spoke in support of Option 2. Option 2 delivers what they said they all want, which is a project that is delivered on time and on budget or at least as close as they can get it. The Reno City Council has made this project a priority and has the full support of Mayor Schieve.

Mr. Lance Semenko, President of Q&D Construction and also a joint venture partner with AMES Construction, spoke in support of Option 2. There are three things that Mr. Semenko asks that the Board consider in their proposal, the first thing being the price compared to the other numbers that were received. The second thing being the reduction in the risk on the Department and the transportation and the taxpayers. And then, last but not least, when you look at the stakeholders, the grants here being one, and what the time savings is going to allow for everyone in the industry there and in northern Nevada, they think Option 2 is going to be a big win for everybody.

Governor Sisolak asked Mr. Semenko if this would be a project labor agreement (PLA)? Mr. Semenko said they can make it that. They are both union companies.

Governor Sisolak asked would it be prevailing wage and they would use Nevada workers? Mr. Semenko said that was correct.

Governor Sisolak asked Mr. Semenko if they would participate in the apprenticeship hiring to get new people in? Mr. Semenko said absolutely.

Lieutenant Governor Marshall said if this is going to be a PLA, that would be written into the contract.

Mr. Semenko said they have not discussed the PLA being as they are both union contractors. There really isn’t a reason for it. But the apprenticeship part of it they would be more than happy to because it is a prevailing wage project.

Mr. Mike Crawford, President of ITS Logistics based in Sparks, Nevada spoke in support of Option 2. ITS Logistics is a trucking, warehouse distribution company that moves a couple hundred loads a day probably in/out within northern Nevada and the majority of them go through the Spaghetti Bowl. This project needs to move forward as soon as possible, so as not to waste anybody’s time. They appreciate the efforts of the Board to expedite the project.

There were no more public comments, so Governor Sisolak asked Mr. Dennis Gallagher to share some details about the unsolicited proposal.

Mr. Gallagher, Counsel for the Board, said the concept of unsolicited proposals as a delivery method was first authorized by the legislature for NDOT in 2003. It would appear that it laid dormant or unused for an extended period of time until recently. The Board is aware of the unique circumstances present where a particular bid was disqualified but the bidder turned around and said it’s now an unsolicited proposal, and so the Department looked at it against that backdrop in that statutory structure. There was nothing against the statute that would have prevented the bidder from resubmitting it as an unsolicited proposal. That brings them here today.

Member Valentine said Mr. Andrew Diss is on her Board of Directors. Does she need to abstain or disclose that? Mr. Gallagher said she could certainly disclose it and she will have to make the determination whether or not that relationship is sufficient enough for her to abstain. There is a Nevada statute that encourages all board and commission members wherever possible to vote. So, Mr. Gallagher thought Member Valentine’s disclosure of that relationship would be sufficient and she could choose to proceed with deciding this matter.

Member Valentine asked what was the difference in the estimated completion time between Option 1 and Option 2?

Director Swallow said the differences between Option 1 and Option 2 are really just in when they can bring the contract back for award at the Board meeting. On Option 1, they’ll have to re-procure. They will do an express procurement. It will be on the street for about two months. They anticipate coming back in April for award. Option 2 they would immediately begin negotiations and be back before the Board no later than February for approval.

Member Valentine said she was asking about completion dates. Director Swallow said the completion date would only be impacted by the award time, the time it takes for them to come to the Board to award because if they were to re-procure, they would remove that constraint, the 365 days. The bottom line is two months.

Governor Sisolak said if they go with Option 2, February is not going to work for him. That’s too long of a delay. They need to get it done in January at the latest.

Member Valentine asked if it was safe to say that no other project schedule would be impacted by this decision or does it delay other projects?

Director Swallow said it should not delay any other projects. The challenge is and why they bring up Federal funding is they prefer to spend their Federal funding first if they can. Also, the Federal funding is the most restrictive, so they like to save the state funds because they are more flexible. In this case, they don’t anticipate it will impact other projects. They have plenty of projects that we can use the Federal funding with.

Member Almberg asked was there any intention ever using Federal funds on this project or was this going to be a bonded project anyway?

Director Swallow said they were planning on bonding the project, but they may have still used some Federal funds in it.

Member Almberg asked do any of these options have to have complete railroad approval before they can proceed with those options?

Director Swallow said both Options 1 and 2 allow that flexibility. Option 3 does not because they need to have the full approvals from the railroad before they can bid the project.

Member Almberg asked if they were to choose and go with an unsolicited proposal here, then at that point in time what, since they’ve already provided the GMP, what is the Department going back and negotiating to come back into possibly their December meeting?

Director Swallow said the items that they may be looking at are the Phase 1A – doing the utilities and the walls. Staff would talk to them about that and probably continue to deliver that, so that would be part of a negotiation. Staff would now also be talking about the project labor agreement and any other aspects within there that they just need to final firm up, so the Department has a price, but they don’t have an agreement, so staff will have to negotiate the actual agreement.

Member Almberg said this unsolicited proposal was originally disqualified from the design bid. What has changed in this unsolicited proposal that now is in compliance and NDOT is comfortable with proceeding with an unsolicited proposal if that is the choosing of the Board?

Director Swallow said what has changed is they were disqualified because they did not comply with the technical provisions of the design build procurement. That noncompliance was specifically related, so they did not allow for the 365-day railroad permit approval process. Because they did not allow that full amount of time, it impacted their cost and schedule, and it was not something that the Department could just excuse out. It was a significant violation of the technical provision. That is why they were disqualified.

Ms. Keller said the other big difference is the ownership of that risk due to delay. In the design build document after the 365 days the Department was owning it. In the unsolicited proposal, they are owning all of that risk.

Lieutenant Governor Marshall asked if what Ms. Keller was stating for the record was that the third bid that was rejected in the initial RFP is now being provided as an unsolicited proposal? What the Department rejected them on has now been cured?

Director Swallow said it hasn’t been cured in that they are still not compliant with the 365 days. When they were in the design build procurement, they went back out to the two that were still in the process and asked what the Department could do if they could change to see if the Department could get those into agreement. One of the things they asked was if the Department could change the railroad provision. The Department was unable to get to an agreement, so they did not advance with the design build process. Staff has looked at it because they are owning that risk. They weren’t in compliance, period, but they weren’t owning the risk of part of the design build, so the Department is okay if they’re owning the railroad risk with changing that provision.

Lieutenant Governor Marshall asked if this bid had come in the way it is today originally, with the other two bids, would it have been kicked out for noncompliance?

Director Swallow said yes, because it’s not in compliance with the technical provisions of that design build procurement. Their change, the reason why they were kicked out, is still the same.

Lieutenant Governor Marshall asked so why is the Department okay with it now?

Director Swallow answered because they’re owning the risk of schedule and cost delays.

Lieutenant Governor Marshall asked if the other two bidders in the original bidding process, had they agreed to own the risk?

Director Swallow said they were required to allow that 365 which cost them, so they were required to allow that 365 and then beyond 365 days, it was the Department’s risk.

Lieutenant Governor Marshall asked why isn’t the Department not asking all the bidders to come back under these new rules? Why isn’t the Department not getting a competitive bid from at least these three entities under what seems to be a change in what they’re requiring?

Director Swallow said there are two parts to that answer. The first part is the Department actually did attempt to do that as part of the design build discussions when they were initially having the design build discussions this spring before they decided that they weren’t going to be able to come to agreement. So that actually was on the table this past spring. It is actually still on the table right now. If Members choose Option 1, they would go back out to the community with that change in the technical provisions to allow the contracting community to come back with proposals. So, that would be Option 1. That risk then is a shared risk. They would put a decrease time to allow for the approval, but beyond that, the Department would share that risk.

Member Almberg said he didn’t have anything else to add at this point in time other than he is supportive of going with Option 2. This is a little different proposal from the standpoint of the Department actually has numbers that are out there, and they did in a sense, design bid it to come in here and they have it, so they have something to compare it to. They didn’t just select something that came in unsolicited without taking some prior steps there. If they do accept the unsolicited proposal, Member Almberg does not want that to become a common occurrence that contractors are out there watching the Department’s STIP and saying hey, look, here’s our next project that’s coming up, let’s beat them to the punch, let’s put a proposal out there in front of them.

Governor Sisolak said that’s something that they would ask staff to look at legislatively.

Member Valentine asked Mr. Gallagher is there was anything that would prevent that from happening now, people that say you’ve got something out to bid, you get an unsolicited proposal?

Mr. Gallagher said there is nothing in the existing law that would prohibit that. If an unsolicited proposal comes in, the Department is pretty well obligated to take a look at it unless it’s on its face not doable. And it has to meet certain legislative criteria in order to qualify.

Lieutenant Governor Marshall said she is not a person that likes sole source in general. She wants to see competition. She wants to see best quality, lowest price. But then there’s the PLA. She wants Nevadans hired and doing the best job because they’re the ones driving the roads.

Governor Sisolak said he is concerned about the PLA because he doesn’t want jurisdictional disputes as it comes down to different trades delaying this project. And that is avoided in the PLA because they have to resolve those jurisdictional disputes between laborers and plumbers or electricians and carpenters, whatever it might be. This project is unusual because time is of the essence and there are a lot of accidents there. There is certainly an economic damage associated with accidents. Time is extremely important in this one and there is a sense of frustration. People already feel that this project is behind the timeframe. Businesses are affected, travelers are affected, safety is affected, and cost is ultimately affected.

Lieutenant Governor Marshall asked if she could hear a little bit more about Option 1 because it isn’t really a delay. It’s still in the fourth quarter of 2022. She said she didn’t like the fact that they all of a sudden got this railroad thing and she feels like they’re being pushed a bit.

Director Swallow said in Option 1, if the Department were to go back out and solicit competition, they would turn back to their consultant to help finalize the technical provisions for the new procurement. Some of the changes in the new procurement would include a change to the railroad timeline, so they would take out that 365 days. They are looking at actually putting a max project timeline into the procurement. So, basically dictating as best they can that end date.

They are also looking at putting a top-level cost proposal in there as well. It would be an expedited procurement, such that they could come back in April with the options. They could also put in a technical provision that they were planning for a PLA in the agreement. They might be able to do that. So, they would go back out on the street, they would allow for competition, but it would be short. They could see costs go down if they do that because there is a little bit of competition in there. They could end up being the same or slightly more. They have to give a range, but that is still an option on the table. And the only difference is they’re looking at roughly a two-month difference in the estimated substantial completion, recognizing that that can change. They spent a lot of time talking about that with the railroad, but that is still an option on the table to go back out and re-procure.

If they go with the design build procurement, they will have to pay stipends to those who are responsive. They did pay stipends previously to the two companies that were responsive this past spring. They would have to pay stipends again.

Controller Byrne asked how much would those stipends be? Director Swallow said it would be about $100,000, to $125,000 per proposer.

Governor Sisolak said he had a concern with the Department saying they are going to go with two months. What if a third proposer comes in and they have no background and they say they need more than two months? How could the Department deny that?

Director Swallow said that is one of the concerns with doing that is that it limits the competition to those who have previously applied. But it does open it to those that did previously compete.

Controller Byrne asked does that open up litigation if they choose Option 1?

Director Swallow said with any of their projects, there’s always the opportunity for litigation.

Member Almberg asked the $9.4 million that was approved last month, will that stop at this point in time?

Director Swallow said yes, correct. The $9.4 million would stop. They paid for what they’ve done so far. The Department would come back on the SBX one which was the design build procurement. That one would reactivate, and they may have to do an amendment to help get through the procurement and then the project oversight.

Lieutenant Governor Marshall asked if they did Option 1, would they have to pay the $9.4 million?

Director Swallow said Option 1 would require the design build procurement to be reactivated. Option 2 would not require either, but they might need an amendment for design build oversight because they’d still need the design build oversight. Option 3 they would continue with the $9.4 million.

Governor Sisolak asked if there were any more questions, and there were none. He said he would accept a motion.

Member Almberg made a motion to accept Option 2, and there was some discussion about the motion.

Member Valentine said she was going to support the motion, but she has reservations about this becoming another way of delivering a project. She’s not completely comfortable with the extra risk, a two-month earlier delivery, but she will support the motion.

Governor Sisolak said it is unusual to have this proposal unsolicited. He asked staff to work with his legal team so that that this doesn’t become a habit. This project is unique in so much as there’s such an incredible outcry to have this happen for safety reasons, for convenience reasons, for whatnot. The Governor said they do need to get it moving and hopefully it won’t become a standard procedure.

Lieutenant Governor Marshall said she agreed with the comments made so far. She thinks that the people up north have been stepping up to the plate and they’re asking the Board to respond. In her gut, she doesn’t like sole source, but there are a lot of variables in Option 1 and Option 3 that the Department can’t control even if they’d like to try to control it. And she’s very happy that Lance said that he would be willing to do a PLA. She thinks PLAs are important. The Lieutenant Governor will also be in support of Option 2.

Controller Byrne said she is in support of Option 2. She doesn’t like sole source, but she’s in support of Option 2.

Governor Sisolak said it’s important to him that PLA will avoid any jurisdictional disputes between contractors which is really important. That can cause extensive delays when you get into different folks arguing about whose job it is. The Governor said they had a motion on the floor and no further discussion.

**Motion: Accept Option 2 for the Unsolicited Proposal for the Spaghetti Bowl Project (SBX)**

**By: Member Almberg**

**Vote: Passed unanimously (Commissioner Savage abstained)**

The Governor thanked everyone for such a thoughtful discussion and moved on to Agenda Item 8.

1. **Public Comment**

Ms. Judy Price, a former NDOT employee, took to the podium to talk to the Board about her solutions to battle harassment in the workplace. There’s a document that an employee can find on the Nevada Personnel Commission website. It is called an NPD-54 and what it is, is a state employee’s right for an appeal following a dismissal, a suspension, a demotion or an involuntary transfer. To the best of her knowledge this is not in the state employee manual. By inserting the NPD-54 into state manuals, that will help the state employees. It will help the Department with equal rights claims. There will be fewer claims if the Department will allow the employee to go before an appeal, somewhere outside of NDOT for help.

Ms. Laurie Rodriguez said she is concerned about the phasing on the SBX project. The whole project started in August of 2015. Phase 3 is now scheduled to start in 2028, so they are being asked to wait another eight years. Is there any way the Department could move up the Phase 3, which is the 395 corridor? The 395 connector is a six-lane freeway that’s going to be connecting to the 395 South. With 18.000 new homes coming in, she hopes that Phase 3 can be ramped up on the Department calendar.

Mr. Bob Sulliman, a resident of Henderson, had some comments about the westbound drive as you leave Las Vegas Boulevard and you’re driving westbound on West Sahara. As soon as you approach the I-15 overpass, you’re on West Sahara, there’s a sign that says Los Angeles, I-15 South and lane only. There’s no lane there. So, what happens is the three lanes that go westbound, most of the lanes are going towards West Sahara, going past the exit to get onto the I-15 southbound. And that creates a real traffic nightmare, and there’s no reason for it because all you’d have to do is kick up a little bit of paving and reconstruct that over there and you have the solution to head south. The left lane would become another left lane and it would be south and case closed, cleared, it’s as simple as that.

Mr. Bob Sulliman also had some comments about the 24/7/365 HOV lanes in Las Vegas. Most state’s HOV lanes are restricted to early morning, 6:00 a.m. to 9:00 a.m., afternoon, 3:00 p.m. to 6:00 p.m., approximately those times. Why isn’t this the case in Las Vegas? People are getting tickets because they use the HOV lanes to avoid accidents. Please reconsider the 24/7/365 restrictions.

Director Swallow said in December, she plans on starting to provide the reports on the HOV operations. It won’t be monthly, but she will do it periodically starting in December.

Ms. Patricia Messinger said she’s just an average citizen who’s been living in Las Vegas since 1980. The HOV lane is just a nightmare. She has three friends who got tickets because of avoiding an accident. If there’s an accident, let drivers go over and use that HOV lane. If you can’t utilize that lane, it gets stupid. Please look at that part of the HOV restrictions.

Governor Sisolak said he had one comment to make to the Director. He doesn’t know how quickly she can get that item back to them, but he certainly doesn’t want to wait until February. He would prefer doing it in December if they could. He asked if somebody was there to represent Q&D, please?

Mr. Tim O’Dell with AMES Construction, AMES and Q&D, said they will dedicate as many resources as necessary to get this contract finalized.

Governor Sisolak said he knew he could count on Mr. O’Dell to get together either by phone or in person with Department staff maybe this afternoon and get the ball rolling. He said he would like nothing better than this Board to bring this back in December if at all possible. He appreciates Mr. O’Dell helping them out in moving that along.

1. **Adjournment (For Possible Action)**

The Governor thanked everyone and said he would accept a motion to adjourn.

**Motion: Adjourn the November 18, 2019 Nevada Department of Transportation Board of Directors Meeting**

**By: Lieutenant Governor Marshall**

**Vote: Passed unanimously**