

Minutes of Nevada Department of Transportation
Board of Directors Construction Working Group Meeting
May 13, 2013

Len Savage
Kim Wallin
Frank Martin
Rick Nelson
Yvonne Schuman
Jeff Shapiro
Megan Sizelove
John Terry
Rudy Malfabon
Mary Martini
Tracy Larkin
Thor Dyson
Sharon Foerschler
Paul Schneider
Pierre Gezelin
Denise Inda
Bill Wheldon
Dennis Gallagher
Bill Hoffman
Claudia Castillo

Savage: Madam Controller is remote from the telephone here. So let's go ahead and get started with Agenda Item No. 1, public comment. Is there any public comment here in Carson City?

Nelson: I guess there's a couple of announcements to make. I think -- Rick Nelson for the record. You'll notice that Lucy isn't here taking Minutes. Lucy was promoted, and so she's no longer in the Director's office. She's working in administrative services. And we have Claudia here, and she'll be filling in. Actually she'll be assuming Lucy's duties with the Construction Working Group. And also we'd like to point out that Todd Montgomery who was Assistant Chief Construction Engineer of Southern Nevada has retired, and we're in the process of recruiting for his position. So hopefully by the time the Construction Working Group meets again, we'll have his replacement and we'll be able to introduce that individual to the Construction Working Group.

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- Savage: Thank you, Mr. Nelson, and welcome Claudia.
- Claudia: Thank you.
- Savage: There's a seat right here. Any public comment in Las Vegas?
- Martin: No, sir.
- Savage: Elko, Nevada?
- Kevin: No. Thanks.
- Savage: Okay. Moving onto Agenda Item No. 2, approval of the Minutes from March 11, Construction Working Group meeting. Are there any comments or discussions on the minutes? If not, I'll accept a motion for approval.
- Martin: Move for approval.
- Savage: First by Member Martin, and a second by Madam Controller. All in favor say aye.
- Group: Aye.
- Savage: We'll move onto Agenda Item No. 3, the legislative update.
- Nelson: For the record, this is Rick Nelson. What I've done is included the summary of live bills as they existed on May 1. The legislature is fairly dynamic environment, and bills are changing daily, but I did provide that summary in your packet, and of that, there's eight bills that I've been following that deal specific with construction-related issues. Some of them are making their way through the system, and some seem to be stalled out, but the -- I think the biggest one that's been of interest to us is the --
- Wallin: Excuse me, can you go speak where Member Savage is because you're breaking up, and I can hear him fine.
- Nelson: We're going to readjust the -- we'll readjust the phone here a little bit. Okay. Is this a little better?
- Wallin: That's a little better, yeah.
- Nelson: Okay. So of all the bills that we've been tracking in the legislature, there's eight bills that are construction related that I've been paying particularly close attention

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to, and the one that we're having the most discussion about is Assembly Bill 247, which is the Buy America Bill. And we've been tracking that fairly closely. What that bill would do is, it basically put the federal Buy America requirements for iron and steel on state-funded projects. While on one hand because we do deal with Buy America, with our federal -- on our federal projects, there are some unique elements to AB 247 that would make things a bit difficult for us, particularly the waiver process and that sort of thing. So we've been engaged and participating in the development of that bill as it makes its way through the system. It's been heard by the Assembly of Government Affairs, and it's been referred to Ways and Means. So there's 22 days left, and there's an awful lot of work to be done, so we'll continue to watch that bill.

There's also several assorted DBE, a bit of preference bills that are making their way through the system, and of course our concern is to make sure that if there are any laws passed that they don't conflict or complicate our receiving federal funds. So we will accept whatever they send our way, but we need to be sure we get all our federal funds and so we're monitoring those. So I don't know -- Rudy, do you have anything you'd like to add to that?

Malfabon: The only thing that I would add is that definitely we are trying to stay on top of the bills that are being heard, and if you look at -- at this time compared to previous sessions, they had a lot more passed and signed. So it's going to get very energetic over there to meet their deadlines. So we're definitely available. Sometimes we do our best to get there at a moment's notice, but we'll keep the Board apprised through those regular emails with Ed Wilson.

Savage: Thank you Mr. Director, and thank you Mr. Nelson. Any comments on Agenda Item No. 3? If not, we'll move onto to Agenda Item No. 4, a briefing on the civil rights programs.

Nelson: You know, through the course of the last year or so, we've been spending a lot of time talking about our process, and the different elements that are part of our construction program, and really, the remaining piece that really fits into the construction program has to do with civil rights, and we've asked Yvonne Schuman to be here to make a brief presentation about a few topics that are working their way through the system here at NDOT with respect to civil rights. So Yvonne, you want to come on up and -- yeah. Why don't you come a little farther up this way so the people can hear you.

Savage: Welcome, Yvonne.

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- Schuman: Thank you. And welcome Member Savage and Rick Nelson (inaudible). I'll be very brief, and just highlight some of the civil rights issues that we are working on and the relevance to them. I did include in your package however, a larger presentation and I think it's some good reference material that (inaudible).
- Nelson: And that might have been -- was that emailed out separately last week? Because it wasn't part of the packet.
- Savage: It was not emailed separate.
- Schuman: Okay. All right. I'll follow up on that and get it to you. So there are about three or four different things that we're working on. A disparity study, wages, the DBE program, and good faith effort initiative. On the disparity study, it got under way in September or October actually, and it's proceeding on schedule with the data collection, and the consultant expects to have a draft report for the board at the September meeting. After the September board meeting, it will then be released to the public for their public input, and then a final report would be issued in December sometime. And there is a website where you can keep up to date with what's happening with the disparity study in terms of data, news, anything that's really relevant to that study, and it's at www.ndotdb.com, and you can go there and get lots of really useful real time information on what's happening with the disparity study, and I would encourage you to visit that when you have a moment.
- Malfabon: And this is Director Malfabon. Just to point out, the disparity study really is the defense that we need. It gives us all the data that's relative to our state and our department per contract unit and looking at disparities with minority-owned or (inaudible) . But when we get challenged on the DBE program, which is a federal requirement, we need this type of data to have an adequate defense, and it's based on findings -- rulings from other cases involving state DOTs that courts have said you have to have it narrowly tailored to your program. So that's why we do a disparity study, and we have to update it periodically. So the last one was from data up to 2006, and this disparity study that we're doing continues from that period of time from 2006 forward for I think last year.
- Schuman: That's correct. To September 2012. And to date there have been four meetings held with the consultant, two with our internal stakeholder group, and two with our external stakeholder group, and our next meeting with the internal stakeholder group is coming up soon. It will be June 18, and we anticipate that there will be two more meetings with the external group as well prior to the completion of the disparity study.

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On wages, not really a civil rights issue, but it is a compliance issue, and we're required to monitor several things as it relates to the Davis-Bacon Act, as well as prevailing wage laws. We need to ensure that contractors submit their certified payrolls in a timely manner, and when they don't, we need to take action to make sure that that does happen, and that involves us writing determination letters about the status of their submission that it was late, how late it was, how many employees were involved, and coming up with the statutory penalty for that. We also monitor to make sure that the correct wage classification was used for a particular job, that they use laborer when really what they should have used is cement mason. We make sure that that is correct and again, make a referral to the Labor Commissioner when we find that not to be correct. Same thing with the 410 rule. If there isn't compliance with the 410 rule, we'll also submit that to the Labor Commissioner for work.

And then the DBE program, all of you are fairly familiar with that. As you know we have a 10.48 percent annual goal, and that goal is one of the by-products of the disparity study. So we've had the 10.48 percent goal for the last three years. Fiscal year 11, 12, 13 is the final year of that goal. And we have never actually met that goal. The first year, fiscal year 11, we achieved 4.7 percent. The second year, fiscal year 12, we achieved 7 percent, and right now we're tracking at 7 for fiscal year 13. So we're making additional efforts to try to actually achieve our 10.48 percent goal because federal highway requires us to provide a letter that analyzes why we didn't meet the goal, and what steps we plan to take to actually meet the goal in the current year. So that's where we are now. And not meeting the goal could result in some sort of sanctions against NDOT, so we're working really hard and trying to communicate with the construction community that they should not be surprised to see higher goals because one of the reasons we didn't meet our goal (inaudible) is because our average goal sets -- goal amounts were between zero and five percent. And if you do the basic math, you can't get to 10.48 percent setting zero to five percent goals. So obviously we're going to have to set higher goals, but they will always be based on the work that is to be performed in the project, how much of that work is capable of being subcontracted out, and whether there are DBEs who can perform that subcontracting work. So we may need a 10 or 15 percent goal, but we won't just set one just because we need it. It has to be a situation where we believe that the data that we have indicates that it can be achieved. And that usually means that the goal that we set is 50 percent lower than what we think is actually achievable because we're not trying to set stretch goals, we're trying to set goals that are

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readily achievable and meet the requirements from the federal highway. In connection with the DBE program, when a contractor fails to meet the goal commitment, we look at their good faith effort to trying to achieve that goal, and as Rudy pointed out in the board meeting earlier today, there's no checklist, but there is a list of a lot of activities that we should look for when a contractor is (inaudible). And if you wanted to boil down the main essence of what good faith effort requires, is -- and this is from the rule that requires that the bidder actively and aggressively try to obtain the DBE participation sufficient to meet the DBE contract goal. The must have really tried to meet the goal. So simply putting an ad in a newspaper somewhere is not active, it's not aggressive, and hard to argue that too would be designed to actually meet the goal. Mere -- and again this is from the rule, mere (inaudible) efforts are not good faith efforts to meet the DBE contract requirements. So we're looking for examples of what did they do to really try to meet the goal, and it could be a lot of things, but it will almost never be one single thing. One single thing I think will fail to meet the active and aggressive requirements that are in the rule. And so we can provide, and have provided to a number of contractors a list of a variety of activities that they might undertake to try to demonstrate that they were trying to meet the goal. I guess I should back up for a second and just say we don't want them to look at these activities as a way to demonstrate that they tried to meet the goal, but to actually use them to try to meet the goal, and that in doing that that will provide their good faith effort.

Malfabon: And just to point out -- this is Director Malfabon -- that Yvonne has provided training to the contractor on (inaudible) what is it, what we look for, so that contractors can understand (inaudible) is. There's a perception that they must meet the goal or else we're never going to award it to them, and that's not accurate. We can see that everybody, you know, the current low bidder did a tremendous amount of effort and it's demonstrated and documented. We are willing to look at that in determining whether to award a project or not.

Schuman: And the last thing I'll say about good faith effort is that the federal highway has just completed a (inaudible) process review of how NDOT administers the good faith effort or requirement, and we expect to receive their findings soon, and I think that's all I have unless if you have questions I'd be happy to address any questions or concerns you have.

Savage: Are there any questions Member Martin or Madam Controller?

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Martin: None here, sir.

Savage: Madam Controller?

Wallin: No. I don't have any either at this time, thank you.

Savage: Anybody from staff (inaudible)? Thank you very much, Yvonne.

Rudy: Yvonne, could I ask that you send that power point presentation to all the Board members? Just send it to Claudia, and she'll get it to all the Board members. That way it'll be in advance of our formal presentation of an update to the Transportation Board probably next month on good faith effort on the update on the disparity study status.

Schuman: Yeah. I think I sent it to Lucy.

Rudy: She must have just started her new job and job forgot to...

Schuman: Okay. Yes I'll be happy to do that.

Savage: Okay. Moving onto Agenda No. 5, the CWG discussion regarding future direction and frequency of possible meetings and any other discussion pertaining to the Construction Work Group. Mr. Nelson.

Nelson: Well, the -- we've been meeting for a bit over a year as a construction working group, and we've spent almost every meeting devoting a large portion of the meeting to presenting the ins and outs of how would do construction, the program. We've covered everything from the bid review analysis team, now all the way through the DBE program. And when the Construction Working Group was created, there were nine priorities that were listed that they came out of the Board meeting that spanned the Construction Working Group. And in going through those nine priorities, we've spent some time talking about each one of those, and I think it's probably an appropriate time for the Board to have some discussion about where you all would like to see us go. There were some really good and appropriate ideas that were listed in that list of nine priority topics that we really haven't rolled our sleeves up, if you will, and actually started tackling those. So really this Agenda item gives the Board an opportunity to discuss and deliberate on where you'd like to see us move so with that regard, it's really you're opportunity to discuss and debate where you'd like to see us progress.

Savage: And as Chairman, I believe it's been very engaging with both the department and staff as well as the Board Members on trying to do something more efficient and

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hold people more accountable. I think that has been accomplished, and I really want to compliment everybody...

Wallin: Member Savage, can you move to where Rick's been speaking, please?

Nelson: I think she wants you to speak up, Mr. Chairman.

Savage: Anyway, I just wanted to start off, Madam Controller, that I personally believe that the CWG has been very positive, and I believe it's been very productive, and I know it's been a year, and I think we can roll our sleeves up a little bit more and engage further on some of the items that do come up, and I know we currently meet twice a quarter right now, and it's okay with myself to meet once a quarter if that is discussed by others. But I'm also here to work every other meeting as well. So I think depending on the workload as to what's out there and what's on the table, I'm very open to hear from both Madam Controller and Member Martin.

Wallin: Okay. I'll go. I tend to agree that, you know, I think that what we've done has been a great job. I think we really hit all the issues that we started out to hit. I think meeting every other month like we're doing right now is probably too much, probably once a quarter or, you know, make it once a quarter, or if we get a special project like if the EPA issue gets put into our work group, then I guess we'd be meeting a little bit more often. So that's my feeling on it. I tend to agree with you, Member Savage, that once a quarter is fine and be available if other projects come up.

Savage: Thank you, Madam Controller. Member Martin?

Martin: I'm good with meeting once a quarter as well, Len. I did have a couple of things that I wanted to kind of speak about. I met with Rick and I think we've done some -- made some differences and we've certainly improved the reporting and accountability. I just question if we've made any real change. In other words, we had talked about closeouts, we've talked about pay requests. When I do my math on closeouts, we've got about the same number of jobs open now as we had when we started a year ago, and the aging is about the same. And so I'm a little concerned is that one is -- did we really make any progress on it. We had talked once about the pay request being prepared by the contractor rather than the district -- or the resident engineer. We talked as well about paying once a month rather than twice a month. And so I just -- I wanted to kind of get a feeling from staff, and maybe from you Len and Madam Controller on where are they seeing us going from this point. We got a lot of good handy reports right now that tell us all

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the statuses, and all of which we didn't have when we started, which that's a great thing. Now where do we take it? Do we take it another step and make sure that this record on closeouts gets improved, that we take a positive look at the pay request deal. I got -- there's a couple of instances, four of them as a matter of fact where we overpaid, and -- by doing it the way we're doing it. And so I'm just kind of wondering what the next step -- the way that you guys are seeing it, would be for us. Should we stay involved in these things or depend on staff to carry out whatever we edict. I don't know.

Savage: Thank you, Member Martin. And I agree. I believe that we've been here a year and more work could be done, and I too thought for examples on the retention discuss, the once a month pay, I felt we were heading in the right direction, and low and behold, it wasn't discussed anymore, so myself, I went down the road thinking that we were going to proceed in that direction. And I think if we don't proceed in those directions, you know, Member Martin and myself, we're kind of on the same page there, I think there needs to be discussion and debate during these meetings so that the Board members can fully understand the direction of the department and why that direction is being taken. And I think there needs to be a good faith discussion on both sides on matters, for instance, of examples. But at the same token, the summaries, the printouts, we've come a long ways.

Martin: Yes, sir.

Savage: And I really compliment the Director and the staff and Mr. Nelson and Mr. Shapiro for getting where we are, but there's a lot of work to be done, and I thank Member Martin and Madam Controller. I agree with both of them.

Larkin: This is Tracy Larkin. I just want to be sure I'm not cutting someone else out. I just wanted to say on a couple things that we are working on, and I know that, Len, I've spoken to you about it, and certainly Rudy knows and Rick and Jeff. Not all the items, but we have started really looking at not only the change order requests, I mean, process -- the close out process, the preconstruction and the resolution conflict. Those are our four top priorities we're truly looking at. We've done work with our crews taking internal, there should be something out on the contractors' bulletin asking for some input this next week. And then also with other areas within the other division within the department so that we're truly taking a lot of the process and trying to find out where areas are systemic and where they're just isolated. And we'll be happy to share those results as we get them.

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Savage: That's great, Tracy. I think that's very informative and we'd like to see some of these surveys and reports from the Director's perspective. Any other comment from Mr. Director or Mr. Nelson or Shapiro on the...

Wallin: This is Kim again. Kind of following up on Member Martin's comment, one thing that I, you know, if we go to the quarterly meetings, which, you know, I agree we should do, but I think that we still have to keep our focus on, you know, where are we at with the closeouts, and continue to look at them and to see if there's progress, and comment whether or not there's progress being made as well. And then to his comment about yes, we've actually overpaid some people, that triggered something I remembered that I had asked for that at a previous Board meeting. We have these auditors that come in and audit contracts. Actually, they audit the consultant to see if they've been paid the right amount, and I know that I'd asked at a Board meeting, are we following up with these consultants to collect the money, and I had asked for a report of that, and I just realize that I never got that. So I think that this group, you know, needs to continue asking the questions and maybe Member Martin, you had gone through and looked at the percentage of contracts where we're at closing out and comparing where we were and was it the same. Well, maybe that should be something that is a number, a performance measure that we talk about each quarter as well, or every six months, but I think it's every quarter.

Savage: Thank you Madam Controller.

Malfabon: This is Director Malfabon. Just to clarify, Madam Controller, the report that you had requested...

Wallin: There was -- and it's been a while. I'd have to go back in my notes, but there was a report -- you guys had hired an outside auditing firm to go over contracts to make sure that contractors -- and these were more or less consultants that they were paid the proper amount, and there were cases of auditing firms, they were actually paid based on the number of contracts that -- it was a dollar amount on what they found that had been overpaid, and I had asked to see if we had gone out to collect these numbers and stuff, and I never recall getting that report.

Hoffman: Rudy, that was me. This is Bill Hoffman, Deputy...

Wallin: But I have to get back -- yeah. But I have to get back to my office to get you the details on that.

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- Hoffman: You want me to come over to the hot seat?
- Malfabon: Yeah. Bill Hoffman's got something to add.
- Hoffman: All right. So again, for the record, Bill Hoffman, Deputy Director. So Madam Controller, what I had done is I had forwarded you the internal audit report as we discussed and it did capture I think approximately \$743,000 that we felt was due back.
- Wallin: Right.
- Hoffman: And I did make several requests to our accounting division to find out how we go through that process of then billing the consultants for those dollar amounts, and I never received anything back. So I apologize. That...
- Wallin: Well, that's okay, and I'm -- shame on me for not staying on you.
- Hoffman: Well, we should have just -- we should have just gone ahead and compiled that report for you when you originally asked for it. So that's not on you, that's totally on me. So I apologize for that, but we'll get you that information.
- Wallin: Okay. Thank you. And then, I guess to follow up with Member Martin, what about these contractors that we've overpaid? Where are we at with getting the money from them as well?
- Shapiro: Madam Controller, this is Jeff Shapiro, construction division. We have to get that money back. That's not optional. Most -- so we will -- well, we deal in quantities, so we are working on that issue right now, but, you know, it's -- because...
- Malfabon: We've gotten paid from some.
- Shapiro: Yeah. We get them from -- we actually have gotten them from all. I know there's one on the close out list where I'm still working on, but we will get that money back. They get paid for what they do. We don't -- nothing more.
- Wallin: Yeah. But just to follow up, okay?
- Shapiro: Yeah. But it is -- I have to say, it's -- from my perspective it was a little bit embarrassing because we should be processing these payments accurately.
- Wallin: Yeah. I agree.

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Savage: And I know during the last meeting Member Martin had talked about, I believe it was Contract 3290 or 3390.

Shapiro: 3390, yes, sir.

Savage: And there was a 600,000 overpayment on that and what was the contract...

Shapiro: Oh, the 3290. That was Plant Mix. That's another job, yes.

Savage: That was Plant Mix, okay. It was 3267 that the 400K had been paid...

Shapiro: Correct.

Savage: ... to I believe FHB.

Shapiro: That's (inaudible) Highway Builders, yes sir. And that's the one that's in high court right now.

Savage: But is there a reason that they haven't returned that money -- those monies in good faith?

Shapiro: Some of it's under dispute, and we're trying to work through that right now. So that's basically the reason.

Kaiser: One of the problems in that job was where they overpaid them was on the asphalt. So what they did in turn was they paid their asphalt supplier a certain dollar amount. So when they (inaudible) they're going to be out that money they paid their asphalt supplier.

Savage: But in our world that happens, and...

Kaiser: It does, but (inaudible)

Savage: In our world, I mean, whether it's a wholesaler, they can always credit and debit in good faith. And if these contractors and suppliers are up-front, ethical people, I think it would be a real quick and easy...

Shapiro: Right.

Savage: ... credit to the department. So I think that that's a major concern on everybody's plate right now.

Dyson: Well, I think time -- Thor Dyson, District Engineer for NDOT. I think time is a concern. I know this contract's been out there a while. Everything is closed up

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expect for the final payment issue. So that holding up the contract close out. Is there a certain time frame where that money becomes moot and we can't go get it?

Savage: Is there a statute of limitations that's involved on something like this?

Shapiro: Not that I'm aware of. Jeff Shapiro. Not that I'm aware of.

Gezelin: The statute of limitations is six years on a written contract, and I don't know when this substantial completion was done.

Dyson: 2008.

Shapiro: Yeah. It's getting old.

Dyson: So we're at five.

Malfabon: This is Director Malfabon. We have to be aware of that and take appropriate actions just to...

Shapiro: 2009. (Inaudible)

Malfabon: ...make sure it doesn't lapse as far as the statute of limitations on that.

Wallin: Well, (inaudible) debt offset if they're doing other work we just hold the check for their other job.

Shapiro: Madam Controller, we can do that. There's a little bit of a process involved with that, and basically we'd have to get them the opportunity to pay, and if they refuse to pay then we can garnish their wages so to speak. But...

Wallin: Right. Yeah. Our office does that with vendors all the time. We give them so many days to pay and then we hold the check.

Shapiro: But they are -- they are not -- they're not disputing that they -- we overpaid them, but like Mr. Kaiser said, when we paid them, they paid the money to somebody else, and now it's -- now they've got to go back and get that when we send them the bill. But they are disputing some other aspects of the total overpayment. And they'll still be writing us a check, it just won't be as big as the \$400,000 one. They'll be writing us a check for 150,000. But we need to reopen some claims issues in regards to traffic control and stuff like that.

Wallin: Okay.

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- Martin: Don't you guys go after their payment and performance bond? I mean, it's been, what, four or five years. At what point do you just say, okay, this is it. We're going to -- one, we're not going to accept any more bids from you, and two, we're going to go after your payment and performance bond. That's what happens in my world.
- Shapiro: Well, part of the problem, Member Martin, is, for lack of a better phrase, NDOT's caused the problem. So I don't know how we can go after their -- because we're the ones that made the mistake to be quite -- to be honest. I almost said frank, but anyways. No disrespect intended, sir.
- Martin: No, sir.
- Shapiro: So that's, you know, I in good conscious couldn't go after a bonding company when it was our -- we're the ones that caused it.
- Savage: But let me just say one thing, Mr. Shapiro. I think it takes two to dance, and I believe the contractor works with the department, and the department supports the contractor.
- Shapiro: Okay.
- Savage: And I believe that as a contractor, if we see an overpayment on a contract, we send up a red flag to whoever made that payment, and have a good ethical, open discussion. And I just believe that -- I know this has been discussed a lot, but I think it's both sides, and I really look and hope that that contractor can step up and get this resolved to the satisfaction of the department.
- Shapiro: Mm-hmm. No, Chairman Savage, I agree. Some contractors are better than others in our industry as to letting you know when you screw up if you overpay them. And this contractor is, I think, an honest contractor, it's just been one of those things with bad economy and, you know, there's all kinds of -- I don't want to say excuses, but there's all kinds of issues here that are complicating this mess. Plus, it was old when we got it. So it's just something we're working through right now.
- Savage: Thank you, Mr. Shapiro. So moving forward, is there someone at these meetings that will take these issues and document as to what's to be responded to the Board? Do we have an ongoing list? For instance, I remember the letter that Jeff was going to send Rudy that Member Martin had requested regarding closeouts, and we wanted to see a copy of that letter. And this wasn't just construction

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closeouts. This is all federal closeouts on how the department was doing, and I think it would just be proactive for someone to maintain a running list of items that we talk about during these meetings that the Board members requested. Because there's a lot discussed, and I just think we need to be consistent in responding to some of those requests. And it's only a few that get lost, because the majority of the time things are responded to.

Shapiro: Chairman Savage, you're just basically asking for an action item list or something like that?

Savage: Absolutely. Absolutely. Yes.

Nelson: Well certainly -- we'll formalize that that list so we know what's on there and check them off when we've done them. So we'll make an action item list to do that.

Savage: The first one is that the contractor is going to payback that \$400,000. Okay?

Shapiro: I will -- not to promise anything, but I'll make sure that -- I'll get that -- I'll put that up a notch. We'll get that going.

Savage: Thank you. Mr. Director?

Malfabon: I was just going to add we'll do a better job with that with this action list, but we kind of keep the list from the Transportation Board meetings we do that. So typically we'll just have to document it better and make sure we check those off as we respond. I wanted to also mention, based on the discussion at the Transportation Board meeting earlier, I think that we wanted -- I suggested that we have this stone water compliance issue and the EPA audit issue discussed at this meeting. It's construction related, but it's also maintenance related and designer related as far as how we're going to address the audit findings. But I would say that we'll have it kind of as a standing item of discussion at these meetings.

Savage: As a future Agenda item I think is what you're saying.

Malfabon: Yes. Yes.

Savage: Consistently until (inaudible).

Nelson: This is Rick Nelson. I guess a question that I would have for Dennis, when we formed the Construction Working Group, it was my understanding that the

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Board's intent was to keep it construction related, and so as we've gone through our Agendas here, we've tried to keep it somewhat focused on construction related issues. Now, if the CWG starts to branch out into more operational issues, do we need to have some clarification from the full Transportation Board, or can the Construction Working Group sort of go where they, dare I say, want to go, but -- because of course they can, but should there be some clarification back to the full Transportation Board with respect to meeting frequencies and if we want to broaden the scope a little bit to include some of these other operational areas?

Gallagher: For the record, Dennis Gallagher from the Attorney General's office. The committee -- the working group (inaudible) Transportation Board. The Transportation Board requested this committee cover certain matters. If the committee is not comfortable with its authority at this point, it should go back to the full Transportation Board. If the committee feels its area of inquiry are related to construction, they don't need to go back for it. But if they felt uncomfortable, like they're branching out into a new area boldly going where no man has gone before, or whatever the case may be, again, they could go back and should go back for a grant of additional authority. But, you know, without knowing more of the details between construction activity and maintenance activity regarding the federal audit that has been discussed earlier, I'm somewhat hesitant to say no, they don't need to go back, or yes they do need to go back. But if there is a colorful discussion that one can have that says all the activities related to this federal EPA audit are construction related, then this committee does not need to go back to the full Board.

Nelson: I just want to be sure we don't get haywire with any open meeting laws or intent from the Board or anything like that.

Gallagher: The Board, as well as this committee, for purposes of the open meeting law is required to publish in a timely fashion an agenda with sufficient detail of the items to be discussed. The scope of this particular committee's activities were directed by the full entire Transportation Board. Now, I would just offer this observation. Perhaps this is something many of you have already thought of. I suspect if this committee wants to go look at something that's related to the Department of Transportation, the full Board is going to back them up a hundred percent, and wish them well on their endeavors, and look forward to the committee's report back.

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- Savage: I think too, from a member standpoint, if we don't have a comfort level of something, I know I would be the first one to say something, and I appreciate Member Martin and Madam Controller's input as well, but I don't think any one of us wants to get outside of our box.
- Shapiro: Chairman Savage, if I may. Jeff Shapiro. As a chief construction engineer, we're responsible for the construction program for NDOT. This EPA audit involved both construction and our facilities and our maintenance folks, and some of those activity. We're more than happy to help out and look into the issue, but we would really need to bring in some other folks, the chief of maintenance and asset management, and some of those other folks, because there's a lot of other -- the district engineers. There's a lot of other players involved. But other than that, we're more than happy to help. But it's much more than a construction-related issue.
- Savage: But I think so as the Director had mentioned, I think this is a good format to engage in some of the preliminary EPA concerns regarding the construction maintenance facilities. Like Member Martin had said, he has a lot of experience from the general contracting side on the vertical side, and I would look forward to some preliminary presentation.
- Terry: For the record, John Terry. We simply don't want to be limited. If we're going to deal with the issue, we don't want to be limited to construction, because really the findings in construction were probably less than the findings in other areas. So just to be clear, if we're going to deal with this issue, we don't want to deal with only our construction contracts. We need to go beyond that, because that's where the issues are. This group is appropriate to deal with it, but I'm saying the bigger issues are more in the training, the maintenance, the other areas. Not in the -- not just in construction. It wouldn't be productive to only deal with the construction issues of that audit.
- Savage: And I agree Mr. Terry. So I would have to defer to the Director.
- Malfabon: We just thought that it was a good forum for discussion of the details of the audit findings and the details of how NDOT has taken steps to respond to those. And as John Terry mentioned, it goes beyond construction and program level activities of mapping watersheds and what waters feed into these streams, or dry washes, and the things that we're doing in different programs other than construction, but in the design phase too, and how we're implementing some of these audit findings. We think that we're going in the right direction, but it will be good to

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bounce these activity that we're doing before just bringing them to this formal group just for discussion and definitely we will be getting direction from our Transportation Board on that, but it definitely is a lot larger issue than the construction, even larger than construction and maintenance. It's several program activities that are under consideration here at NDOT to respond to the EPA audit. And we'll get into the details later, but definitely the report that was sent out late last week had a lot of information and we expect that it's going to take you a couple of weeks just to read through that and digest it and have your questions prepared for us so that when we -- I would say at the next Construction Working Group meeting, we'll kind of give you an overview of the findings and what we're doing, and then get some interaction and discussion going and receive some direction that we can take back to the formal Transportation Board meeting for definite direction from our board on what to do.

Savage: Okay. Very good. So I think before we leave this Agenda item though, there will have to be a discussion or maybe a motion as to when and how often we're going to meet. Member Martin or Madam Controller?

Wallin: I was on mute, sorry. I make a motion that we meet on a quarterly basis going forward unless a special project comes up that we need to meet more frequently.

Martin: And I second that.

Savage: Thank you. All in favor say aye.

Group: Aye.

Wallin: You said aye, we said aye.

Savage: Thank you. So we'll meet on a quarterly basis unless the project (inaudible). Moving onto to Agenda Item No. 6, old business.

Nelson: I guess, if I could indulge you a little bit to go back to item number five again for a second. One of the things that Member Martin talked about were these four items that were of particular interest, and that's where the contractor prepares the pay estimate, paying twice a month, continued work with closeouts, and the retention item. I guess the question I would have is how would you like us to proceed in addressing those four specific topics? Do you have a sense that -- after the work that we had done with you Chairman Savage on the Freeway Service Patrol, there was quite a bit of staff interaction as we sort of hung meat on those bones as far as reporting out. Is that something you would like to see us continue

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with these four projects, maybe increase some staff time and start interacting with a member or two in getting feedback and that sort of thing before we present things before the CWG, or are those the four items that you really want us to kick in and work on from a priority point of view? I guess, where do you think the low hanging fruit might be to take the CWG and affect some positive impact on the department's operation?

Savage: Well, I think a lot of it has to do with timing. I know for instance, you know, we're too late for the legislature on some of the things that are dictated by the Nevada Revised Statutes, and I know retention is one of those. So that's really a moot discussion at this point. But I think engaging in other issues regarding payments and things, I think the Director has the authority to take a look at that, and I think a lot of these can be discussed in future meetings.

Nelson: Okay. Just wanted to get clear what our primary focus is going to be for the next few meetings. You know, we have the list of the nine priority items, and we sort of worked our way through that, and want to be sure we're focusing our energies where you'd like to see us do that.

Savage: And I think that if you can reach out to Member Martin and Madam Controller, and I don't know if you have anything at this time, but if you can reach out individually and possibly discuss some of the items of concern then we can make an agenda for the next meeting. Thank you, Mr. Nelson. So now we'll move onto old business, Agenda Item No. 6.

Nelson: We meet quarterly with the construction industry, and we've made a commitment to get those Minutes into the hands of the Construction Working Group as quickly as possible. What we've attached to the packet for the CWG are the draft Minutes from our last meeting which was held on March 20. Tracy Larkin Thomason and (inaudible) co-chair that, and Tracy's there, so if there are any questions about what had taken place at the industry liaison meeting, I'm sure she would be happy to answer any questions you might have.

Savage: Member Martin or Madam Controller, any questions?

Wallin: I don't have any.

Martin: None for me right now, sir.

Savage: I too do not have any. So with that being said, I have a couple questions on the old business side, items of clarification. Back on Page 5 of last meeting Minutes,

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there was a discussion of the total cost for the three districts in construction to be 25 million, and I need some clarification on that.

Malfabon: This is Director Malfabon. What we've done in the past few years is allocate \$25 million of state funding for the districts who are -- they are very engaged in seeing what condition their -- the roads that they take care of are in, and they have a regular process of working with maintenance on chip seals and such, surface treatments, keeping the system together. But they also have other needs such as (inaudible) safety improvement such as extending pipes or extending box culverts for safety purposes, and so flattening projects. They have -- each district has maintenance personnel that are in charge of bridge maintenance. So we have people that go out and inspect the bridges, come up with recommendations on repairs, and the districts have the people that can work with those divisions and headquarters to develop those contracts to basically do bridge maintenance projects. So it's a combination of working with the headquarters divisions and maintenance, bridge, roadway, or using their staff at the district that can help in designing of smaller maintenance projects. And we used to -- what we do is there's \$25 million that has to be expended in the fiscal year, but we -- maintenance and asset management division keeps track of what's in the works already, when's it going to -- when are those bills going to become due, basically those payments, so they're -- it's a constant flow of information between the districts and maintenance and asset management for tracking that \$25 million as a target. There's -- the idea is to do the projects that are submitted by the districts. Some of them are done using state forces like a flush seal project, and the \$25 million is more the contract side -- construction contracts. So we're trying to do more with contractors for our maintenance program, but it's really to address the maintenance needs within the district, and that \$25 million is -- it used to be somewhat flexible, but now that we're watching our cash flow, it's very stringent that we stick within that budget target so we don't exceed our goal of \$25 million. We track what's in the pipeline, what's going to be paid and what fiscal year it's going to hit in.

Savage: Very good. Thank you very much for the clarification.

Malfabon: We could also -- we'll bring to the -- as part of the work program approvals, the Transportation Board does get basically our work program, so those projects are included in that work program.

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- Savage: Okay. Okay. Very good. Thanks for the clarification, and another old business item that -- I know Tracy was kind enough to stop by the office and give me a survey from the RE responses. I don't know if the other members have received any of those survey responses or not, from the RE meetings.
- Martin: I had not got it, sir.
- Savage: You had not received anything, Member Martin?
- Martin: No. Tracy and I were just talking about that, and we'll get a time set up for her and I to get together to review it.
- Savage: Madam Controller, have you had a chance to review any of those survey items on the RE?
- Wallin: No, I haven't. No, I haven't.
- Savage: So maybe we...
- Wallin: And I don't recall seeing them.
- Savage: ... can have -- at the next meeting we can have an Agenda item regarding some of the responses from the REs to some of the surveys conducted at the (inaudible) and what action management has taken, and what discussion the REs have had. That would be helpful. Because I know one of the concerns was the plans not meeting the expectations of the REs or the contractors, and I know that that's a statement that's made by a lot of contractors and a lot of engineers, and I know nothing is perfect, but again, I just want to revisit that at some point.
- Larkin: Member Savage, I was hope -- this is Tracy Larkin, Deputy Director in South. The next meeting would be good, because we have met with all three districts following up on that initial -- what with all the RE -- each of the three districts, following up on that initial survey to get specific on questions on that, and there has been some discussion with other divisions. But I also want to be fair to them that they also have their side of the story out there so to speak.
- Savage: Yes.
- Larkin: So they have input. So in another -- if we're doing it once a quarter, so in other three months, that would be a good -- that's a good time frame for me to get the rest of the feedback.

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Savage: Very good. Thank you, Tracy. And as an old business item regarding CMAR projects, the GMP amount that the contractor is -- has bid and submitted, are there any cost savings back to the department historically on either a cost plus fixed fee project, or a GMP project? Have there been any cost savings (inaudible), and is there a specification standard saying is it a 60/40 or 70/30 shared savings. Is there any savings come back to the department on any of these GMP projects?

Malfabon: This is Director Malfabon. Now, you would be asking if, let's say, a contractor came up with a value of engineering proposal on a CMAR project and there's a split or...

Savage: No.

Malfabon: I don't know how we would get money back other than contractor comes up with an idea after the design is done and has a savings that we want to participate in.

Savage: No. It's not so much the value of engineering. It's a -- we have a GMP contract that's for example a million dollars, and the contractor has a reimbursable list with a fixed fee to bill against on a monthly basis. Sometimes they won't reach that amount, and are those dollars returned through a change order to the department?

Terry: If I could, John Terry for the record. Now, I think you had two parts to that question. The designer, say that's part of a construction contract that went CMAR.

Savage: Mm-hmm.

Terry: We would pay the designer actual hours worked, actual costs. Then at the very end, we would pay him his entire fixed fee. If he does not spend all of his money, and his hours worked, we just never pay him that, and we close out the agreement that way. There's no payback. I'm not a hundred percent sure, maybe somebody else knows, a contractor is hired on a similar basis. In other words they're a cost plus fixed fee in the GMP -- in the design portion when we hire them. So it would be the same way. They get a cost plus a fixed fee. If they finish their work for under that cost, we just don't pay them for the rest of it, and it's audited and closed out, but we would pay all of the fixed fee. So say it's a million dollar contract, and he has -- yeah. A hundred thousand dollar contract with a contractor to review our work and progress through that, and he only spends 80 thousand of it, and 10,000 is fixed fee. We would only pay him the 80 plus the 10 fixed fee. The other ten would just never be billed to us, and it would be audited and closed

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out. Most of our contracts are cost plus fixed fee with an amount not to exceed. They can't go over the amount, but if they don't get to the amount, we just don't pay them.

Malfabon: This is Director Malfabon. I guess -- I think Len's question is if -- are you paying on a CMA project by bid item that you're tracking...

Terry: That's the design phase. Now, if we get into the construction phase, now they're just paid on quantities like any other construction contract. The only way we wouldn't pay them the full amount is if the quantities come in under what the estimated quantities are. Turn that over to Jeff or somebody, but they could to over too. That's not a not-too-exceed amount. That's a...

Shapiro: But basically these contracts, my understanding, the way they're set up, and the project management division is involved with this as well, but they're basically -- I don't -- plan quantity is not the proper term, but it's very similar to that. They do -- we still monitor quantities, but there should be no fluctuation in the quantities when it's all said and done, because they work that stuff out in the -- during the design process. Now if they hit something and there's a huge underrun, I know they would make that adjustment, and there's also a risk reserve if there's something that they hit that's unforeseen. But it's very similar -- to my understanding, it's very similar to a lump sum type contract.

Terry: But you're paid as you proceed.

Shapiro: But you're paid as you proceed, correct. Right.

Savage: But the guaranteed maximum price, the GMP price on the CMAR projects, cannot be exceeded because the risk is on the contractor, and...

Terry: Well formal written approval (inaudible).

Shapiro: Right. Correct. Correct.

Savage: Exactly. Exactly. That's my question for clarification. And there are no shared savings clauses for something that a portion of dollars that are saved could be split.

Shapiro: Not my understanding, no.

Savage: (Inaudible). Okay.

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Shapiro: So, for example, if they don't use the risk reserve per se, it just comes back to us. Never paid, yeah. It's never paid.

Savage: It'd be nice to hear those good things is what I'm trying to say sometimes. When you hear some of these contractors doing these CMAR projects, it's always, hey, they just said \$250,000 to the department.

Terry: And maybe moving forward as we start closing out some of these CMARS, maybe this group, and maybe later even the Transportation Board would like to hear a summary, you know, of where we ended up on some of the CMAR contracts.

Savage: Exactly. I think that would be very informative. Thank you, Mr. Terry.

Martin: I have one other comment on that matter. On the Carlin Tunnel Project, we awarded today the CMAR at 28,834,000 or something along those lines, and 2.8 million last -- in the last session. I was just going back to my previous board meeting. When did we originally award the CMAR to Q&D; do you recall, Rick?

Nelson: I don't -- I do not recall.

Terry: This is John Terry. I'd guess six to eight months ago.

Martin: Okay. And how did that -- how did the two -- the \$28 million number that we awarded today match up with their projected number last (inaudible) award?

Terry: This is John Terry. I can partially answer that question. NDOT set up a budget originally. When we hire the contractor in the design phase, the only real costs that are in that phase are some of their overhead costs and their preliminary costs. So say they had a budget of say, \$30 million that they submitted to us when they originally were on the project, wouldn't be accurate, because we don't really ask for that when they're assisting in the design phase. This project did go a little bit over -- a significant amount over NDOT's original programming amount for the job, but that was similar to what we would do with any design project as it evolved, and in this case, the original assumption was that the bridge decks would only be treated -- kind of overlaid with a polymer type overlay for protection, and as we got further into the design, two of the bridges, the decks were determined to be a such a condition that we added in a total replacement of the deck. That's a similar thing that we would have done in a regular design job. They submitted to the front office and said we want to change the scope, here's why, here's why it's going to cost much money, and we addressed it. Other than that, the scope in the

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budget for the project was established by us not by them. So to say they went over their original one wouldn't be fair. We as a group went over our original budget for a legitimate reason, but other than that, once they assign the GMP, then they're held to that one, and I don't know if I answered his question.

Martin: Yes, you did. Thank you.

Savage: Madam Controller, do you have any questions or comments? Madam Controller?

Wallin: Sorry. I was muted and somebody was trying to call me, and I was trying to not get them and unmute. So I don't have any comments. I was listening to you and Frank. You guys are asking the questions that I had.

Savage: Okay. Thank you, Madam Controller. And just one other question on the ICE. Is the department satisfied with the ICE work to date on the Carlin Tunnel Project? I know in reading some of the documents they had -- I believe they were -- it was around a \$250,000 contract that they had had to perform independent estimates for the Carlin Tunnel project, and I just didn't know if there was any feedback from department staff as to how they had been performing.

Terry: John Terry again. I can say that we like the ICE process. In fact, we would like some of their assistance to help us do more bottom up type estimates than the type of estimates we have done in the past. But I will have to get back to you on the performance of the ICE in terms of their budget, and what we originally budgeted and how they're doing on that. I'd have to get back to you. But we do like the ICE process, and we like having comparable contractor type estimates.

Malfabon: This is Director Malfabon. One thing that I've asked John Terry to look at is the amount of the fixed fee on the ICE contract. I didn't feel that they were as much at risk. Like remember at a previous Transportation Board meeting, the question came up, do they have to build it if they, you know, if they're the low bidder. No, they don't. It's just a good check based on using the same method of labor, equipment, and materials, the same way a contractor has to bid it based on productivity. The ICE does it the same way. So it's a good check on the contractor's guaranteed maximum price, but I didn't feel that there was much at risk, similar to a designer. A designer is at risk because they have their errors and omissions insurance that we can call on if they mess up the design and it costs us during construction. But the ICE doesn't have that same amount of risk, so I asked John to look into that and determine what's appropriate level of fixed fee on

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these, and most likely we're going to lower that percentage compared to previous contracts for the ICE contractor.

Shapiro: Chairman Savage, Jeff Shapiro, construction division. Our staff, the constructability section is very involved in that process because we're basically taking it over from the consultant that was doing it before. And I'll double check with them, but as far as I know, everybody's been pretty happy with what we've seen so far, and the meetings that I've been involved where we're talking production-based estimating which is what they're -- how they're doing it versus we're historical quantity based. So it's a little -- it's kind of apples and oranges. But from what I've seen in the meetings I've been involved with, it seems to be a pretty good process. But I'll double check with our staff and report that.

Savage: Okay. Very good. Thank you, Mr. Shapiro. Thank you, Mr. Malfabon. Okay. If there's no more discussion with the old business, Agenda Item 6, we'll move onto Agenda Item No. 7, briefing on the status of construction projects.

Nelson: So in your packet, we have the standard reports that we usually provide with respective closeout of projects and status of projects. The first attachment here is the list of projects that we've closed out since the last CWG meeting, and that totals nine. Nine contracts have been closed out, and I believe Megan sent out the summary sheets for each one of the projects. I'm hoping that you have those. We'd be happy to answer any questions that you might have with respect to any of those projects that have closed out. I do know when I was meeting with Mr. Martin, he asked a question about overpayments, and the question was well, how would we know if there ever was one. And when we were meeting, I'm afraid I didn't have a very satisfactory answer for him, but when I got back I saw the summary sheets, and there's in fact a little asterisk marked there, and that's how we put you on notice that there has been an overpayment. So we'd be happy to take any questions that you might have on these nine projects that have been closed out since the last CWG meeting.

If there aren't any, the second attachment shows the status of contract closeouts. That's dated April 24. Now, this list is a little misleading because as a project gets closer to completion, we add it to this list to begin tracking. Right now there's 48 projects that are listed on Attachment B, but of those 24 -- or of those 48, only 24 have been accepted and are really ready to be closed out. The rest are in various states of completedness. Just so we get them on our list and we start having those monthly meetings with the resident engineers to get them scheduled. As a little

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historical statistic, in 2011, we closed out 27 contracts. In 2012 we closed out 37, and so far in 2013 we've closed out 17, which averages about a contract a month or so, a little better than a contract a month. So we're on track to close out more projects than we had in the last year. So I think as a trend, we're seeing the pace pick up on contract closeouts.

Savage: Absolutely. Because if I remember right, annually it was around 16 or 17. (All speaking at once). So the progress has been substantial.

Sizelove: And right now, looking at the information, we're at about 11. It's taking us on average about 11 months to close a contract based on what we've done this year so far.

Savage: Good. Thank you. Thank you, Mr. Nelson. Mr. Nelson, I had a couple questions on the contracts -- on three contracts, and this is on the ones that have been closed out. 3467 and summary. It looks like there was approximately 50 percent contract value -- almost 60 percent, 59 percent contract value in changes, and I'm looking at this sheet here that was received by email actually. This one here. That was on the (inaudible) Lake Tahoe Bike Traffic Safety. The final contract amount was 709, bid price was 446.

[All speaking at once]

Foerschler: Good afternoon. This is Sharon Foerschler for the record, Chairman.

Savage: Good afternoon, Sharon.

Foerschler: This was a project that we went on with a design plan to retrofit the drop inlets along Highway 50 and 28 to pull them out of the travel lane for the bicyclists. Unfortunately, the plans that went out, we couldn't build them per plan, so there was a bunch of field adjustments that had to be made. It's a fairly low cost contract when it went out, but all these little changes, and it was all along 28 and 50 coming down around the lake. So that added to the increase in cost.

Savage: So who was the engineer of record on that?

Foerschler: That was...

Shapiro: I believe that was us, wasn't it?

Foerschler: ...in-house, I believe.

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- Shapiro: Yeah. That's an in-house.
- Foerschler: Yeah. It was an NDOT design.
- Savage: Okay. And the next question I have is contract 3473. Again it's a substantial amount, almost 70 percent of additional dollars paid over and above the original bid price, up to 341,000.
- Nelson: You said 3473, Chairman?
- Savage: 3473.
- Shapiro: I don't know the specifics. Chairman Savage, this is Jeff Shapiro. I could get back to you on that, but this is a retrofit type project. No. That's District 3, right. I know, I'm not wearing my glasses either.
- Kevin: This is Kevin in Elko, and it appears that 3473 is very close to budget. So I'm just not sure in the information's adding up.
- Foerschler: We're only 3,000...
- Shapiro: Yeah. I'm not seeing the 70 -- you said 70 percent?
- Martin: Well, I think I'm looking at exactly what Len was looking at. You got a bid price of 341,000. You guys are using apples and oranges in the way the contractors do accounting. You're saying your final contract value is \$580,000 versus an engineer's estimates of 443, but yet according to this you had a bid price of 341. So you ended up paying 240 grand more than the bid price. And I think what Len is wanting to know is why you did that.
- Shapiro: There's a mathematical error on this sheet I think. Well, we're going to need to look at the detail sheet, because I believe there's a mathematical error on this particular sheet.
- Kevin: Yeah. This is Kevin in District 3 in Elko, and I show a final contract of \$344,123.
- Shapiro: That's what I'm seeing. Yeah. That's what I'm seeing too on the spreadsheet, Kevin. So that might not match up with the project detail, and I apologize for that. We can fix -- we'll look into that.
- Savage: That's good news though.

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- Shapiro: Because the sheet -- Attachment A is showing that it came in at 86 percent of budget.
- Savage: I hope the next one is good news as well. I believe it is, but I just want to check. Item 3478 -- or contract 3478. It looked like there was a cost savings of around \$700,000.
- Shapiro: Correct.
- Savage: That's good news confirmed. That's all I have. Any other questions from Board members? Madam Controller or Member Martin?
- Wallin: I don't have any.
- Martin: I don't know what the appropriate time to bring up the overpayments, but in looking at the overpayments, there was a paid consultant called CM Work, who is a subcontractor to CEA, that overpaid on two separate jobs. I guess my question would be do we still use CM Works?
- Nelson: Do we have active contracts with them?
- Shapiro: Well, yeah. Member Martin, this is Jeff Shapiro, construction division. We don't have any new contracts to give any consultants. You know, we definitely need to talk to that consultant, and it's not, you know, it's just like our guys making that mistake. That's not acceptable, but I don't know if in their defense if I should say that. That was their first project with us, and some of these projects we went to some new firms to give them some experience per se, and it just, you know, it is what it is. What happened was they actually overpaid on one and underpaid on another. They had two contracts that were adjacent to each other, and they got confused as to what contract was what for a certain point in time. But still, it's not acceptable. We need to talk to them about it.
- Savage: I have a question on the overpayment too on a legal question. Is there a trigger of sort that can be noticed to the contractor that's been overpaid that we can have the monies returned?
- Gezelin: Well, this is Pierre (inaudible). Yeah. A letter should go out to the contractor identifying the overpayment and the reasons that we know about for the overpayment demand reimbursement, and follow up if there is no reimbursement with attempted collection of that amount. But there should be -- there should be a notice given to them in writing as to, you know, make a demand on them, a

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demand letter, demanding return of the money, and then attempt to collect if there is no response, or try to negotiate something.

Savage: And I hope it doesn't get to that level.

Nelson: Could I clarify...

Gezelin: Exactly. We don't want to get -- you don't want to get to my desk.

Nelson: Now, in this case, we had a consultant resident engineer that was making payments on behalf of NDOT, and so they -- that firm, CM Works, they never realized any overpayment, but they made an overpayment to a separate contractor on NDOT's behalf. So is that -- so -- so could we go back to the -- it's like an errors and omissions on a design type of contract where...

Gezelin: Well, I think you make the demand on the consultant, and tell them that, you know, they have made a mistake. Because under the contract they're obligated -- I mean, under the consultant contract to make proper payments, and to represent NDOT on their behalf, and so, you know, any overpayment that they make, they're going to be responsible for.

Nelson: I guess, Chairman Savage, what I'd like to do in this one, is spend some time with the Attorney General's office and develop a plan, if you will, a strategy for dealing with this particular case as opposed to putting them on the spot to make a decision with about five seconds worth of discussion. Does that sound fair?

Savage: Very good.

Shapiro: But I would -- Chairman Savage, I would like to point out that in this particular situation, the net was not an overpayment overall between the two contracts. It was just a misallocation. I mean, it's still unacceptable. It was just a misallocation of funds from one to the other basically. So -- and actually it was the same contractor. You had adjacent projects, same contractor. They -- just for whatever reason they got confused. Still, we need to talk to them about it. But we didn't -- we did not overpay the contractor per say. We just paid them on the wrong job a little bit. No. We ended up writing four grand more. So we still need to have accurate accounting measures when we pay. Period.

Savage: Agreed. So I think that's all we have on Agenda Item No. 7. We'll move to agenda Item No. 8. Is there's any further public comment, either here in Carson City, Las Vegas, or Elko.

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Martin: None here, sir.

Savage: Elko?

Kevin: No, thanks.

Savage: Nobody up there, Kevin. Thank you. Okay.

Wellman: You know, maybe we should make that one of our agenda items at our next board meeting (inaudible). I'll speak loud.

Savage: Please speak up. Can you identify yourself?

Wellman: Bill Wellman, Las Vegas Paving. I think we just need to make that as an Agenda Item at our next working group meeting if you will, or (inaudible) meeting, and let's talk about that. Because we just got hit with one too, and by the time I found -- this is a project that's eight months ago is the last we did any work on it, and I find out about it. And now I found out how it happened, and there's really nobody to blame, it just -- it's just the process, if you will, when it goes too far, but maybe we need to find a better way to do that. So I'm sure this wasn't our first one.

Shapiro: No, it wasn't. And actually, it was a Las Vegas Paving job. Jeff Shapiro for the record.

Wellman: Oh, it was.

Shapiro: Yeah. Yes, it was. That's the one we were just talking about, yes.

Wellman: When you said back to back, there's not very many contractors that get back to back jobs, but...

Shapiro: But for what it's worth, the construction division supports going to some sort of pay application process. I think that would help if the contractors were basically invoicing us like they do under NRS 338. That's not the way we currently do it, and if the working group would like us to look into that, we would support that, because I think that would help.

Savage: I've always assumed that they invoiced you, so that's how much I know.

Shapiro: What we do is pretty common to other DOTs I've worked for. The DOT employees, good, bad, or otherwise, prepare the pay estimates and submit them. I mean, a good project manager will be talking to his contractor to make sure that, you know, we're covering the cash flow issues and all that kind of stuff, and

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they're getting paid for the work they actually did, but it's pretty common, at least in my experience with DOTs, that the DOT employees prepared and processed the pay estimates without an invoice from the contractor.

Dyson: Thor Dyson, district engineer. On our jobs in district two, the REs, the inspectors, they will sit down at pay estimate a lot of times and they will review what they're prepared for the contractor to take a look at, and say, you know, does this make sense what you've done the last two weeks, because this is the invoice we're going to -- the pay estimate we're going to submit to construction division for payment to the contractor. And that's the correct partnering thing to do since that's the process we have to live by right now.

Savage: But is that industry standard throughout the nation, or, I mean, with RTC, with other CalTrans, ADOT?

Shapiro: With Departments of Transportation as far as I know, Chairman Savage. Not with the RTC. They're NRS 338, and the law specifically says, you know, the contractor will invoice and the owner has, what, 30 days to pay on that invoice -- to review it and pay it. So that's the difference between 408 versus 338.

Schneider: This Paul Schneider, Federal Highway Administration for the record. That's common throughout the United States. That is the practice that's done everywhere, all states.

Savage: Thank you, Paul. So back to Mr. Wellman.

Wellman: Again, Bill Wellman for the record. Paul is that -- do they do it on two-week intervals? Is that pretty common through DOTs?

Schneider: Very common.

Wellman: Okay. Because in our industry with the locals if you will, Clark County generates a pay estimate and then sends it to us. So we have the same issues at times, and it can go both ways. Sometimes we don't get paid what we should get paid, it just, you know, where some of the problems I see, and I certainly don't want to rant on this by any means. We've talked about this before. When you're talking every two weeks, you know, you're looking at -- by the time you're getting to the doing the numbers, it's a week later, and now you're looking at what did you produce, and when was the cutoff date, you know. It's the pluses and minuses. It's never going to be that perfect world if you will. On a 30-day cycle you take some of that out of it, if you will. Now, I'll give you an example of one that I -- and I don't

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know which one you were talking about. I don't remember the job numbers, but it was a Lake Mead out in Henderson. It was \$145,000, and it just came back as a negative to us because we paid it -- paid it back, but how I -- the result of that was, was they decided to add some additional box culvert in a drainage issue that happened to be the same size as some other that was a pay item, and they used the pay items themselves to pay for it through the process because the change order doesn't get completed, it rolls back into, you know, the chicken or the egg type thing. Do you do a change order before you do the work, but you can't stop the job to do those particular things. So they rolled that and they paid these particular items, and some were towards the end of the project. They processed a change order for those quantities and it just got paid again as a change order. And then through an audit apparently, that's where it got found out, you know. And keep in mind that it's field staff that's doing these pay estimates, which is fine. They can do them while they're there, but once they move off the job and the job's completed and the change order is processed, you know, it may get lost without being in an audit. So there may need to be -- there's got to be a better way to look at it, I guess, and see. And that's why I'm suggesting (inaudible) get a few other contractors involved.

Schneider: No, I agree.

Savage: So the next liaison meeting is in June, I believe, the 20th of June. So your proposal, Bill, is to take it to that level first (inaudible) CWG after that.

Wellman: It's my suggestion, just -- and let the contractors and NDOT try to air it out a little bit. This is not one that we've talked about.

Dyson: Thor Dyson, district engineer. Jeff, is electronic documentation moving...

Shapiro: We are still moving forward with that, yes.

Dyson: So is electronic documentation going to be successful in assisting in some of these issues with payment of quantities and pay estimates?

Shapiro: Jeff Shapiro. Well, some of this is going to be my opinion. I know it's going to help out with the close out process, because the computer is going to do all the mathematical work. In theory it should reduce some of the human error elements because humans are really only touching it once. But as Member Martin pointed out several months -- or several meetings ago when we were talking about this, the information -- the process is only good as the information that people input

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into the system. So whether it's a paper-based system or a computer system, garbage in is still garbage out. So that's something, you know, you need to...

Dyson: But the mere fact of handling once as opposed to multiple times will certainly reduce those kind of issues.

Shapiro: The good thing about the system that we were implementing right now is it has a - it won't allow to pay past plan quantity without some sort of override system. Our current system isn't quite that restrictive.

Sizelove: Sophisticated.

Shapiro: No. I don't want to use the word sophisticated. Our current system will pay whatever you put into it pretty much. This new system won't let you pay over plan quantity without an override.

Dyson: And how old is our current system?

Shapiro: 1999-ish. I was told it started -- that's when I started -- yeah. It's pretty old. So, I mean, parts of it will still exist, but -- well, the paper-based system is much older than that. But anyways, you know, so I think it's going to get better, but we still got to make sure we stress upon everybody accuracy is key, and if you, you know, you got to put in those quantities accurately.

Savage: Okay. Is there any other public comment here in Carson City? Okay. Then we'll take a motion to move to a closed session. Do we have a motion?

Martin: So moved, Chairman.

Wallin: Make a motion to moved to closed session.

Savage: We have a second, Madam Controller. All in favor, say aye.

Group: Aye.

Gallagher: Mr. Chairman, while you're still on the record, just for the public to note that the closed session is solely for the purpose of the committee (inaudible) from counsel regarding threatened on actual litigation, that there will be no decisions made during the closed session. It is for receipt of information only, and that after the end of the closed session, the committee will come back into public session for the sole purpose of adjourning.

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Savage: Thank you, Mr. Gallagher. And I will take a motion to adjourn the CWG meeting for May 13, 2013.

Martin: So moved, Chairman.

Savage: Do we have a second?

Wallin: Second.

Savage: All in favor?

Group: Aye.

Savage: Meeting adjourned. Thank you.


Representative Assistant Director, Operations