

Minutes of Nevada Department of Transportation  
Board of Directors Construction Working Group Meeting  
December 10, 2012

Chairman Len Savage  
Controller Kim Wallin  
Member Frank Martin  
Rudy Malfabon  
Rick Nelson  
Scott Sisco

John Terry  
Kevin Lee  
Jeff Shapiro  
Megan Sizelove  
Jenny Eyerly  
Lucy Koury

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Savage: Good afternoon. Let's go ahead and get started. We're waiting for counsel to show up, but we'll go ahead and begin the December 10 Construction Working Group meeting. Can you hear us in Las Vegas?

Martin: Sure can, thanks.

Savage: Elko?

Lee: Yes, I can hear you. Thanks.

Savage: Thank you. So at this time, we'll call the meeting to order and the second Agenda item is any public comment here in Carson City. Las Vegas, do you have any public comment?

Martin: None here, sir.

Savage: Thank you. Agenda Item No. 3, any comments from the Working Group here in Carson City at this stage on the Agenda?

Wallin: No.

Savage: Any comments from the Working Group in Las Vegas?

Martin: None from me.

Savage: Thank you. Moving on to Agenda Item No. 4, if everyone has had a chance to review the meeting minutes from October 8, if there's any questions or comments regarding the meeting minutes.

Koury: Dennis will be in in just a moment.

Savage: Okay.

Wallin: Okay. No additions. I move to approve.

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Savage: We have a motion to approve the meeting minutes of October 8. Do we have a second?

Martin: Second.

Savage: Thank you. All in favor, say aye.

Group: Aye.

Savage: Moving on to Agenda Item No. 5, the consultant selection process discussion. Mr. Nelson will lead that discussion.

Nelson: For the Construction Division, Megan Sizelove handles almost all of the administrative elements associated with the construction program, so we'll turn it over to her. Also, we have Jenny Eyerly here from Administrative Services and she handles all of the -- all of the consultant agreements for the whole department. So between the two of them, they ought to be able to give us a good rundown of the process and be able to answer any questions that you might have.

Savage: Go ahead, Megan, take the floor. Thank you.

Sizelove: Again, Megan Sizelove. I'm the Consultant Program Manager for Construction Division. I just will be summarizing or reviewing Item No. 5, Attachment A from the packet.

Savage: Okay.

Sizelove: For the Construction Division, we hire service providers for a variety of disciplines, which include construction full administration, construction augmentation, scheduling support, claim support and constructability evaluations. I would say the majority of the procurement that we do go after are for the full administration (inaudible) and we do that by working with our -- the districts to establish what their needs are and identify that and then move forward with any kind of procurements that we need for those needs. As was mentioned, they're managed through the Construction Division, but administered through the Agreement Services Division within the department. All of our processes conform to the requirements of the federal requirements 23 CFR 172, NRS 333 as well as TP1-2-3.

So once we identify the need for consultants, we move forward in the process, which includes identifying the budget, going after approval, which is reviewed by the Financial Management Division, and then ultimately approved by the Director. They identify disadvantaged business enterprise goal, which is through contract compliance as well as the federal highways. Determine a review

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committee, which generally consists of three to four members, and that's approved by the Assistant Director, Rick, or anybody he delegates. And at that time, we have them -- we ask them to sign a confidentiality form.

The evaluation criteria is -- generally includes five categories of project approach, project team, past performance, availability capacity as well as proximity of project team. And the criteria within those -- the definitions within those criteria are generally project specific and determined by the Program Manager. And just I want to make sure that it's clear that that cost is not an evaluation factor and that's prohibited in procurement of the engineering services per the NRS 625.530 and the Brooks Act. While still there, that's not in consideration. And then the Program Manager prepares a draft RFP and the draft agreement with the associated attachments, and we work with Agreement Services to administer the solicitation. That's kind of the beginning of the process...

Savage: Mm-hmm.

Sizelove: ...to get it out on the street. We then distribute it to all the prequalified firms as well as advertise it in the newspaper and post it on the NDOT website for a minimum of two weeks. Once we receive them back in-house, we continue to work with Agreement Services and they distribute it to the previously approved review committee, who individually review the proposals and score them independently and assign a score, if you will, to those proposals. We work with Agreement Services. They tabulate the scores. And based on an ordinal arrangement, we go ahead and tally the scores and the Chief Construction Engineer, Jeff Shapiro, will make the final recommendation on the top-ranked firm.

At that time, we'll either enter into negotiations if it's a clear outlined firm, or if we have a tie, if you will, or if a lot of the firms are closely ranked, then we'll go ahead and move on to interviews. And at that time, we'll ask the review committee to continue to participate in the selection process and they will conduct the interviews, working with Agreement Services, and then will, again, independently score those interviews. And based on the scores, Jeff Shapiro will make the recommendation to go to the front office with the top-ranked firm.

The Director will approve the notice of intent to award and then will hold a debrief for all of the firms that participated in the proposals. At that time, we provide them the evaluation scores and we give them any comments, and we provide that to them verbally. And then the Program Manager will enter into negotiations with the top-ranked firm and work with them in the -- internally as well with the different divisions here to establish the agreement relating to the

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identified scope and budget. We establish an overhead rate with -- we work with Internal Audit to establish that overhead rate.

And if negotiations are unsuccessful, then we move on to the second-ranked firm. And I can say from my experience in the last three years, we've never not been able to successfully reach an agreement on negotiations, so I haven't had that experience yet.

And then any agreements that are over 300,000 are presented to the Transportation Board, which again I don't think I've ever had an agreement under 300,000, so that's generally just part of our normal procedure. And then we also just recently are required to post the project awards. The Nevada Board of Engineers and Land Surveyors post it to their website and it has to be up there for three days before we can (inaudible) the contract, and that's per the NRS 331.1425.

So once we've met all those requirements, then we can go ahead and execute the agreement. Then we manage the agreement by -- well, once the agreement is executed, it's managed through -- we have various checkpoints. One of the things I wanted to mention is that we -- the agreement is established as a not to exceed contract, and so they are paid by their services and not in lump sums or deliverables, but by their services that they provide. And the costs include the direct salary as well as their over direct -- or the other direct costs, the indirect costs and the fixed fee, and that's established by the 48 CFR, Chapter 1, Part 31. So, again, there's all kinds of guidelines that we can follow, requirements.

Based on the discipline that dictates who is their Project Manager, if it's a full administration contract, then the Assistant District Engineer will be the Project Manager of the agreement. If it's a crew augmentation, then they will -- the crew, or, excuse me, the consultant will directly report to the Resident Engineer as a Project Manager. And then if it's any of the other disciplines that I mentioned, whether it be claim support, constructability, evaluation or scheduling, then they will directly report to the Chief Construction Engineer.

And so as the Project Manager, I work closely with them to -- I just ask of their assistants to help review the invoices to ensure that the hours on the -- what's being billed per the invoice actually reflects the hours that they worked out in the field, because they're the eyes and ears for us out in the field. And then once we get their approval, then we bring the invoices in-house back to myself and I'll review them to make sure that they comply and that they're consistent with the agreements that we established.

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We check for all the backup documentation that's required, and, again we -- the invoices are submitted monthly and they also have (inaudible) summary of work that describes the hours, and that work is completed that month. And then ACEC along with NDOT is working to define and work on enforcing a consultant performance evaluation system and so (inaudible) in the future will be trying to determine a better way to enforce the performance (inaudible).

Savage: And who is ACEC?

Sizelove: ACEC is -- I don't...

Shapiro: American Consulting Engineers Council, I think. Jeff Shapiro, Construction Division. It's a group of -- it's kind of like the AGC for contractors, only it's a group of -- it's an association for consulting engineers, basically.

Savage: And is there a local chapter?

Shapiro: There is. I believe they're located in Las Vegas (inaudible).

Sizelove: There are two branches, the northern and southern Nevada.

Shapiro: Oh, there is a northern Nevada one?

Savage: Okay.

Sizelove: And so we meet quarterly as -- the big liaison group meets quarterly. We have the meetings here with ACEC, NDOT members, and then there's also a variety of subcommittee members as well, or subcommittees that are broken out (inaudible), which is a combination of NDOT as well as ACEC members.

Savage: Okay.

Sizelove: So that in a nutshell are procedures. I'd be happy to answer any questions.

Martin: Len, I've got a couple of questions.

Savage: Okay, Member Martin. Thank you, Megan.

Martin: Going back to the -- you said it goes to the committee for evaluation and then it may or may not go to the interview process, right?

Sizelove: Correct.

Martin: Okay. What is the differential that triggers going to the interview process? Is it one point, two points, twenty-five points or how does that work?

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- Shapiro: Member Martin, this is Jeff Shapiro. I'd like to answer that one. To be quite frank, that's kind of subjective. If it's too close to call, we will go to interviews. If it's clear -- if there's clearly a difference between the number one firm and numbers two and three, we'll just proceed with the, you know, the recommendation based on the panel. But we don't have a hard number that we're using right now, but we do interview a lot just because it seems like the scores are pretty close.
- Savage: So, Member Martin, I have a question along those same lines, Mr. Shapiro. Is there an evaluation form, a standard form that the department has?
- Sizelove: Yes. When we're putting together the packet, if you will, before we...
- Martin: Mm-hmm.
- Sizelove: ...submit for the proposal with Agreement Services, one of the forms is an evaluation criteria form and that's the -- the categories that I identified are the past performance, the project approach, the team, et cetera. Those are five of the categories that the review committee members use to evaluate the proposals. And there's various points associated with each of those categories totaling 100. And, again, the definitions within those categories are defined on project (inaudible) project specific, but we always follow those same five criteria.
- Savage: And that criteria, that evaluation form, is that reviewed by management on an annual basis to see whether or not it needs to be modified or...
- Sizelove: Well, each time we submit each proposal that we put out, it's I would say again project specific. And so at that time, before it can be -- it has to have the blessing of the front office before we can include it within the proposal.
- Savage: Okay.
- Sizelove: So each project, it's project specific.
- Shapiro: Jeff Shapiro again. We try to make them as objective as possible. We have our grading criteria for high and low scoring...
- Savage: Mm-hmm.
- Shapiro: ...depending on what category you're in. You know, zero to five is a low and we try to define what that is so the evaluators have an idea of how to score when they go in. But other than that, it's all independent.
- Savage: Consistent.

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Shapiro: And those documents are approved by the Director's office as part of the process (inaudible). And it is -- Megan's correct, it is project specific. Sometimes they might look similar, but we do review them for every...

Savage: Good.

Shapiro: ... project to try to tailor the requirements for that project's needs.

Savage: Okay.

Wallin: Do you...

Savage: Madam Controller?

Wallin: Do you change the...

Martin: Okay. The follow...

Savage: Madam Controller had a question.

Martin: Okay. Thank you.

Wallin: Do you change the review teams or are they pretty much the same people all the time or -- and then who -- I guess, what offices do they come from?

Shapiro: Okay. Actually, that was -- Megan did a great job, Jeff Shapiro again, but I wanted to add some things to what she said. We do try to get interested stakeholders as part of the selection panel process, so it really depends on where the project is. If we have one in District 2, Reno, we try to get people from Reno, the district staff involved, Las Vegas, the people from Las Vegas involved, the District Engineer or the Assistant District Engineer. If it's a federal aid job, we will invite FHWA to participate as a selection panel member. Local public agencies, if there's heavy involvement there, we will ask them to be part of the process, you know, Tahoe folks or Washoe County RTC or Clark County RTC. We do like to have people from outside the department as part of the selection, and that are involved in the project as part of the selection process.

And I also wanted to point out that we worked with FHWA to develop these rules and these procedures so we can use them on federal aid projects, so they are basically approved by FHWA when we go into a federal aid project. One other thing that does come up, though, when you're talking selection panels is some folks in NDOT have family members that work for these consulting firms. And I'm one of them, to be quite frank, and so I'm constantly recuesing myself as part of the selection process. And I know Megan said that I approve these contractor,

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or these -- before they go to the front office for final approval, but really what I'm doing is I'm reviewing the panel selection and their recommendation, and just to make sure everything meets with our procedures, and then I will sign off on it before I give it to Mr. Nelson. So that's basically how the process works.

Savage: Unless you're conflicted out.

Shapiro: Unless I'm conflicted out. If a particular firm will -- is a proposal, then I will try not to touch that document.

Wallin: Okay. And in that case, then it just goes straight to...

Shapiro: Goes straight to Rick, yeah.

Martin: I have a couple of follow-up questions, sir.

Savage: Please continue, Member Martin.

Martin: One of them is evaluation criteria says past performance. Is there a procedure given to the panel members on how to grade that, or is it just the panel members' feeling for past performance? In other words, if a particular firm is proposing on a project in Las Vegas and they did a really poor job on a project in Reno, how is the panel that's seated in Las Vegas informed about that poor performance?

Shapiro: Member Martin, I can answer that. That's all on that scoring sheet that we provide the guidance to the panel members on what's good, bad and exceptional, or however we rank it. It's actually kind of a high, medium, low ranking. And we do try to address, you know, if you had so many projects and were behind schedule, it's a low, if you had no projects that were, you know, they all met the schedule and budget requirements, then it's a high. But, you know, typically my experience in reviewing these past performance, the submittals, all the projects that are in the proposals are always good projects. They're never bad ones, so -- but there are criteria to grade that stuff.

Nelson: But I think the point is we've got some statewide representation on the panels as well.

Shapiro: Correct, correct, correct. Yeah.

Martin: Okay. Yeah, every firm is going to present only their good projects.

Shapiro: Right.

Martin: But you and I both know that every firm has got the bad guy hiding in the woodwork someplace that's cost the State of Nevada a ton of money. And does



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the panel ever become aware of that through official channels or only -- or they've got to go out and fish it out themselves?

Shapiro: Member Martin, Jeff Shapiro again. We do -- you know, because I work with these firms, too, so I have those kinds of experiences as well, but we do try to focus, and I hate to throw this on Legal Division here, but we try to focus on what the proposal asked for and how they responded to the proposal to try to keep it on a level playing field and try to address it in that regard. But sometimes, yes, there are those issues that come up.

Martin: Okay. Next question is on the overhead rate, I'm assuming that's paid on the direct salary or is it -- is the direct cost as was defined before including the burden on the salary and then you pay the overhead cost over and above that?

Shapiro: I don't know if I can answer that.

Sizelove: Could you repeat the question, please?

Martin: Okay. You have a salary. I collect \$100,000 a year in a salary. That's my direct -- that's my actual salary that I receive as the employee of the design firm. There is a burden that goes on that usually in the neighborhood of 25 to 35 percent, depending on the Workman's Compensation classification, a few other issues. And so then really if it's a 32 percent burden, then really my cost to the firm is \$132,000 a year. Is the overhead rate applied to the 132,000 or is it applied to the 100,000?

Shapiro: Member Martin, Jeff Shapiro again. It's my understanding that, at least the spreadsheets the Construction Division uses, it uses their base rate, so say if I'm \$100 an hour -- well, I'm not. I'm \$30 an hour (inaudible). No, but I was trying to keep the math simple. If I'm \$30 an hour, then whatever the audited overhead rate would be multiplied to that. They don't multiply it twice, but sometimes that stuff changes. But that's my understanding of how it works.

Martin: Yeah, because each engineering firm has a billing rate for various classifications of engineers. That's why I was asking if you paid the overhead on the billing rate or do you pay the overhead on the direct cost.

Shapiro: It's supposed to be on the direct cost.

Sizelove: Correct.

Martin: And the final question is, is -- no, that was my last one because you already answered the evaluation, the overhead and what triggers the interview, so thank you very much.

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- Savage: Thank you, Member Martin. Madam Controller?
- Wallin: No.
- Savage: I have a couple questions, Megan and Jeff. Regarding the NRS statute 625.530 stating that costs cannot be an evaluating factor, is that true throughout the nation and the rest of the country industry-wide?
- Sizelove: It's my understanding that any time we have federal...
- Shapiro: Yes.
- Sizelove: ...funds involved, it's a quality based selection and not a cost based.
- Savage: Okay. I wanted to confirm that. Thank you.
- Shapiro: Member Savage, that doesn't mean we don't negotiate that, but that comes after the selection process.
- Savage: Right. And then regarding the not to exceed amount for the services, we talked about that, Member Martin spoke about that, does NDOT have the right to audit that particular company within the agreement if indeed they wanted to? It's quite common with construction contracts that the owner has the right to audit a service agreement in order for substantiation and documentation if it's questioned. And I didn't know of the department had that option within their agreement with that particular consultant.
- Sizelove: I know the internal audit performs pre-selection audits or audits to determine the overhead rate. They'll audit the firm as a whole, but I'm not sure (inaudible).
- Shapiro: We also have a close-out audit. This is Jeff Shapiro again. But it is my understanding we can audit at any time, yeah.
- Sizelove: We do do a (inaudible), exactly.
- Terry: I can answer. John Terry, Assistant Director for Engineering. There's a couple terms when you come to auditing of consulting firms. The up front audit that establishes their overhead rate is usually based upon their overhead rate in previous years. We have the right to go audit these, but frankly not really the capability to audit a national engineering firm for that rate, so we usually use their accepted rate for other government agencies for that. In most cases, that is a provisional rate within their contract. Their actual overhead for the -- because it's usually the year before.
- Savage: Mm-hmm.

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- Terry: Their actual overhead rate, when they've actually performed the work, is audited at the end of the job for each year if it's a multi-year contract. And those adjustments are then made at the end of the job. So, yes, we audit them initially or at least accept the audit from another government agency. Then we audit them for their overhead rate after the job is done and make adjustments accordingly. We also then audit the project, but typically I don't know of us auditing projects in the middle of the project. Typically, once the project is completed, we then audit those jobs and quite often, in fact, most of the time, they owe us a little bit back or we owe them a little bit back. So there are really a couple different phases of audits, but, yes, we are allowed to and, yes, we do audit consulting firms on our contracts.
- Savage: But you're actually auditing their internal books, or are you just auditing the fact that you're trying to match the dailies or the job tickets with what's been billed?
- Terry: Again, the difficult part is auditing the overriding overhead of these engineering firms that may have offices in, you know, all 50 states or even international. We have the right to do that, but I don't know as we really have the capability that we normally accept their formal audited overhead rate that was either done by a government agency or done by a national accounting firm and submitted to the federal government for that. Does that make sense?
- Savage: Well...
- Terry: We could do it, but we don't.
- Savage: Okay.
- Terry: We accept their audited overhead rate based upon a government audit of their rates. Now, do we have the right to? Yes, but I don't know of a national engineering firm that we ever have done that. I mean...
- Savage: Okay.
- Terry: ...it would be a lot of work.
- Savage: It would be substantial, yes. I understand that. Thank you for your candidness. One of my questions would pertain to if this particular engineer at this engineering company is charging his or her time to NDOT, and also possibly charging time and being paid from another entity, how do you reconcile the fact that that particular engineer was only working for NDOT?
- Terry: Okay. Again, we require them to submit timesheets with their invoices. In other words, we track their timesheets that we spent. Like she said, we then ask our

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people did these people work those number of hours. Now, we have the right, and I've known of other government agencies doing this, I mean, we have the right, we could walk into their office and interview that particular engineer...

Savage: Mm-hmm.

Terry: ...and say, you know, according to these invoices, you got paid for 40 hours work in this week. Did you really work on our job?

Savage: Mm-hmm.

Terry: We have the right to do that. I don't know if we do those types of employment interviews, but we do the best we can to verify that a job charge made to our contract is a legitimate charge to our contract, and there's various ways we can do that.

Savage: Okay. That's good that you have that option. Thank you, Mr. Terry.

Sizelove: We do require, if I could...

Savage: Yes, ma'am.

Sizelove: ...time that -- we require their timesheets to be signed by the Project Manager who's representing the firm, ensuring that the timesheets are accurate. And it's not uncommon to see a particular engineer or somebody within the company showing a total of 40 hours worked, but 20 of those hours are only going towards the NDOT project, but they'll list the other projects as well. And so it doesn't -- the timesheets don't just reflect the NDOT hours worked. It's whatever -- it's a complete (inaudible).

Savage: Okay. Because, you know, it's getting more and more advanced regarding the actual payroll for that particular company to tie in and give you an audited statement of that particular employee's pay for that period, and it's becoming very advanced, which could be better substantiation for the department, is all we're stating. So it sounds like everyone's on the right track. Thank you. Okay. I think that's all I have at this stage. Any other questions or comments from the department? Staff?

Wallin: You know, I was just thinking, and you guys probably don't have an answer for this because it's kind of out there. Do you ever go -- you talk about, you decide to use a consultant based on people's needs. Do you ever -- you know, they come and they say, hey, we need somebody to help out on this project. Do you ever sit back and say, all right, well what if we -- what's the cost benefit of waiting and doing it in-house versus having a consultant, you know, because sometimes it's --

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we're all short-handed, so it's easy to say, yeah, we need a consultant to help us do all this stuff. And I sometimes wonder if, you know, maybe we could save some money and do it in-house, because we end up with consultants managing consultants managing consultants, and I have issues with that.

Nelson: For the record, this is Rick Nelson. On the construction side, we try not to do that. As Megan mentioned earlier, at the beginning of the season we'll go through and we'll look at the workload in each district and evaluate existing staff that they have and what their needs are going to be for consultant augmentations, either a full augmentation or just if we need a few people. And we do do that. In fact, this last summer we had a project that was out in the central part of Nevada that -- it just didn't pencil out to put a full consultant crew out there. And what we did was we actually pulled a crew together from some people that were in headquarters construction and a few others and we sent them out there per diem to manage that job. It sort of blew Jeff's travel budget, but...

Shapiro: And overtime.

Nelson: And overtime, but it was a lot less expensive than putting a full consultant crew out there. Originally, there were going to be several projects bundled together, but because of the schedule, some of those projects fell off, so we did take a look at that and cobbled a crew together to send out there, so...

Wallin: Because I was thinking, you know, maybe if you keep having to hire a consultant to do a certain thing all the time, then maybe we should say let's put in and ask for staff to go and do that instead of paying the higher rates and stuff. Just kind of do an analysis of how many consultants are we hiring, what are they constantly doing, does it make sense for us to hire people and do it in-house, instead of just saying we don't have the resources, let's hire it out.

Savage: I agree with Madam Controller, and that brings up two more questions that I have.

Wallin: Sorry.

Savage: (Inaudible) spinning my wheels here. The first question is that these service agreements are not to exceed agreements?

Terry: Correct.

Savage: Are there many consultants that come back with a cost savings and not spending the total amount?

Terry: John Terry again. Yes, that definitely happens. I mean, mostly because as the job evolves we may just have them not do some task. I mean, it isn't so much that

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they're that much under budget, but as the project evolves, we may say we don't need that. And understand at least -- construction's a little bit different, but our design contracts, they are cost plus a fixed fee with an amount not to exceed. So if we don't do everything or a contract doesn't require as many plan chiefs as we'd assumed or some other thing happened, sure, they could finish well under. And that's one of the main reasons we use that type of contracting mechanism. So, yeah, you're right. Most of the time, you set it up for a million dollars and miraculously it finishes right about there. But there are quite a number of times where they finish significantly under.

Savage: And that would be, you know, something to benefit the department big picture wise because during the Board approvals that we see, 99 percent of the time it comes out to the total amount agreed upon, has been my experience within the last couple years, and maybe that's different with some of the smaller contracts.

Terry: I believe you're not seeing the final results of a lot of these. No, in fact, it would be very rare they'd be right at the number because, again, you want to leave a little bit under the final number because we're going to do this audit at the end and there might be some give and take based on overhead rates and they can't go over that amount to exceed -- not to exceed even with that audit -- if it's because of overhead. So usually they finish under. I'm not sure if we ever bring it to the Board when a contract finishes or what the final amount spent was, but we could report that to you on a group of contracts. But they don't all go right up to the limit.

Savage: Well, that's good to hear. That's good to hear.

Shapiro: Well, I'd like to echo John's comments. Jeff Shapiro again. Basically, they paid for what they do, so if a job finishes early...

Savage: Right.

Shapiro: ...or we reduce the scope, they only get paid for what they did, so it's not uncommon to come under. We are reporting construction engineering costs as part of our close-out performance...

Savage: Mm-hmm.

Shapiro: ...on our projects. The only thing is some of those construction engineering costs include department reviews and whatnot. They might not necessarily -- especially on a consultant job, if they're helping out reviewing false work submittals and those type of items, so they might not -- it might not be an accurate representation of that consultant cost for that particular project because there's NDOT people

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mixed in there. And that's one of those things we're trying to, you know, make that process a little bit more user friendly to figure out where our costs are going.

Savage: Good. Good. Sounds like everybody's on the right track. So the last question I have may be a legal question. Most recently there was a project RFP sent out for the Lander County Courthouse. It's not a State of Nevada project. It was a county project. And within the description, it said one of the requirements was the prime architectural firm must have a staffed office within the State of Nevada and be owned by a Nevada resident. And I don't know if that's legal or not. Something you might look into, Dennis, if you have a moment regarding if that's in Section 408 of our -- and I know with federal funds that's not allowed, but if it's a state project, I'd be interested to know if that would be an opportunity. Because this is the first time I've seen it.

Wallin: That's (inaudible).

Martin: Chairman Savage?

Savage: Yes.

Martin: I have seen that on other county and city projects when it comes to contracting firms as well. Must be owned by a Nevada resident and have an office within sometimes as narrowed down as the county.

Savage: So I think that's something that legal can look into and see if it's for consultants. I know it's on the construction side sometimes, but something just to look into. If there's any other comments or questions from anyone with the department? Okay. Thank you, Megan. Thank you, Jeff. We'll move on to Agenda Item No. 6.

Nelson: Yeah, this is Rick Nelson. One of the things we want to do is to try to inform the Construction Working Group of this construction process. And I believe the group asked for some discussion and some presentation regarding contract documentation. At the last meeting Paul Frost was here and he talked about a bid analysis review team and the process that takes place between when we open bids and when we award them. And the BRAT team gets together and does an evaluation of each project before that recommendation to award is made. What we'd like to do now is take you from that point in time, after the award is made, and what the documentation process looks like through the life of the project. Jeff is here to make that presentation from the beginning where we establish a budget for the job and all the way through to the end. So there's quite a bit of material

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here, so I would encourage you to stop him whenever you have a question so it doesn't get lost.

Savage: That would be a good way to approach it, I think, if someone does have a question, so -- at the time.

Shapiro: Thank you, Rick. And members of the Working Group, Jeff Shapiro again, yeah, please feel free to ask me questions at any time. I'd prefer that dialogue instead of the formal presentation anyways. First off, what we wanted to do was we wanted to talk to you about our agreement estimate process or estimating process. I commonly call the agreement estimate our budget, but basically throughout the project development process, whether it's planning, design or construction, we are constantly developing estimates to help with our budgeting processing, with our planning purposes and programming and whatnot. And a lot of this effort in the early phases of a project are done by the design folks. It doesn't really get to the Construction Division until we actually have a contractor's bid. But we are, you know, whether it's preliminary design or intermediate design or whatever, we are -- we're varying estimates and it's all based on the project estimation cost manual that NDOT has, and this is actually on-line at our website. If you're interested, you can go read it.

But for example, during preliminary design, it's standard procedure for NDOT to include 15 percent contingencies on our construction cost estimates, and that's just basically because of the unknowns. We're trying to address the unknowns because we don't know everything there is to know about the project at that point. And as we narrow the design down, we have a, you know, much better idea of what we need to do, the level of work we need to do, so we drop that contingency level from 15 percent of preliminary to 10 percent at the intermediate until we have a final design where we use the factors that I show in the letter and the Board packet, 3 to 7 percent, depending on the size of the project. And these are basically -- these contingencies are to address auxiliary costs or incidental costs, unknowns that we might encounter out there. We also do things -- and this is very common in DOT type projects, federal aid type projects. Our contracts have clauses for asphalt escalation to address fluctuations in market prices for asphalt prices, fuel escalation. We've got some line items in there for contingencies, incidental construction. And what we are trying to is, like I said, use these contingencies to develop a project budget so once -- so we've got all the unknowns, as best we can anyway, addressed so when we're out in the field, we've got some budget items to address this.



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What I did in the Board packet, I included a copy of a bid tab for contract 3505. Now, the only reason -- the real reason -- well, there's two reasons. The real reason why this bid tab is in the Board pack is because the Construction Working Group saw this bid two -- our last meeting and -- when Mr. Frost gave his presentation on the BRAT process. Well, what we will do is this has all the bidders on the project, but we will take the low bidder, which in this case was Granite Construction, and we will take those numbers and dump them into our system, for lack of a better phrase, to develop what's called the agreement estimate.

And then it ends up becoming -- looking like this document, which is also in the Construction Working Group's packet. And what you probably noticed, or at least what I wrote in the cover memo, is although the bid was 21.2 million from Granite, basically through contingencies and incidental construction and whatnot, we basically came up with a budget that's \$22.2 million for this particular project. That's the agreement estimate. This is actually a federal requirement, too, as part of our agreement with FHWA, but that's the agreement estimate for this project.

A couple other things about it, this project only has three breakouts in it which is really -- it's a relatively simple project. Other projects that have bridges and different utility companies or different utility work may have more breakouts than that. But what this project -- how it's organized -- and the breakouts are just used to identify the, you know, type of worker or funding source or whatever. But how this project is organized, the bulk of the work is in breakout one, which is the roadway, and that's about 22 million. And we also have a breakout two for some utility adjustments. There must be some valve covers out there for the stagecoach general improvement district.

The roadway, breakout number one, the roadway part, has 95 percent federal, FHWA, participation, but breakout number two, the valve covers, is paid 100 percent by the utility company. We'll do the work and then we bill them is basically what we do. And then the third breakout is a training breakout, which the FHWA participates in apprenticeship programs and whatnot and that's, of course, 95 percent participation as well. Very common with federal aid projects.

And then, finally, I just wanted to point out that this document also estimates five percent for construction engineering and that's basically the budget for the NDOT -- this is an NDOT-administered contract, so that \$1.1 million in this document for construction engineering is our budget for administering the construction contract. And other than that, please ask questions, if you have any.

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Savage: Jeff, I have one question, or a couple questions to start out. That 1.1 million for engineering, does that include outside consultant, or is that just in-house?

Shapiro: In this particular case, it's only in-house.

Savage: In house. Is the agreement estimate also done by outside consultants when they're onboard along with an in-house estimate?

Shapiro: The agreement estimate process is done regardless of the funding source, so whether it's a state funded project or federal aid project, you will see a document that looks like this.

Savage: Mm-hmm.

Shapiro: They would -- if we have construction engineering that's consultant only, it would still look like construction engineering in this one. However, we would have other programming documents that are run through financial -- and that's basically what this is, a programming document too. We would have other programming documents that would identify whether that's state forces doing the work or consultants doing the work. And I don't believe we make that distinction in this document. I could be wrong, though. It just says construction engineering. That's a different set of forms, and I did not bring those forms with me, but we can certainly provide them.

Savage: But on a project that is designed by an outside consultant, part of that agreement they have is a cost estimate; is that correct?

Shapiro: Correct. Mm-hmm.

Savage: So at that time you would take your cost estimate versus their cost estimate and have a dialogue?

Shapiro: Oh, (inaudible). No, I misunderstood the question, Chairman Savage.

Terry: I can answer that. Okay. If we have an estimate done by an outside consultant, we would give them -- we give them a dump of all of our data, which is the same data our engineers estimate (inaudible) and require them to come up with a construction cost estimate that fills out all of the forms. The only actual point that the consultants don't do is actually pushing the button to actually generate that estimate. That's got to be done by somebody at NDOT in our house, but basically they give us a spreadsheet with every number exactly like that and we would then push the button. Now, we do have internal processes where we have what we call check all the bid prices. We would still have somebody else at NDOT, a higher up person, go through and review all the bid prices. But essentially, yes, when a

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consultant does a design for us, we give them all of our past bid information and we require them to come up with an engineer's estimate just like we would do it.

What Jeff's talking about here, though, is the agreement estimate. Once the successful low bid contractor comes in, his bid price numbers replace our engineering estimate numbers so that now we're tracking based on what he bid the job. So that step takes place internally at NDOT. The consultant has no role in that, but it's really dumping the numbers at this point.

Savage: Okay. So I always thought there was a check and balance that, okay, whoever stripped the job or who did the actual digitized takeoff, okay, quantity takeoffs...

Terry: Oh, they...

Savage: ...of that project (inaudible).

Terry: Oh, yeah, the quantities are what the consultant gave us. Yes, the quantities, the unit prices, we put in the actual contractor's bid unit prices. The quantity takeoffs, when we have a consultant do a design, are completely done by them.

Savage: Yes, so there is no data given to them as far as quantities?

Terry: No, no. I meant...

Savage: You have your data...

Terry: ...I meant unit prices.

Savage: You meant unit...

Terry: I meant unit prices.

Savage: You meant unit prices.

Terry: I'm sorry, I misspoke.

Savage: Okay. I was talking about quantity.

Terry: Right. If we have a consultant do the design for us, absolutely quantities are a large part of what we require them to give us, and they would fill out all of that. That's correct.

Savage: That makes me feel a lot better.

Terry: Yes.

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Shapiro: But these actual unit prices are the contractor's unit prices at this stage in the game.

Savage: Perfect. Perfect. Let's see. Are you going to discuss the second section of this...

Shapiro: Yes, sir, when we get to the documentation...

Savage: When we get to the...

Shapiro: ...(inaudible), yes, sir.

Savage: ...documentation. Okay. That's all the questions I have at this point. Madam Controller?

Wallin: I don't have any.

Savage: Member Martin?

Martin: I have none, sir.

Savage: Any other questions here in Carson City at this stage? Continue on then, Mr. Shapiro.

Shapiro: Okay. Jeff Shapiro again. I'll move on to documentation and biweekly payments, which I know the Construction Working Group has asked -- we've talked about it over several meetings. Now, basically, I've included some information in the packet, but basically, you know, the question is why do we do biweekly payments, and one of the reasons is the NRS 408 says we will pay at the end of the -- or the Director will pay at the end of the month or as the work progresses. Now, this is one of the differences between NRS 408 and NRS 338, the public works law. Where 338 says the contractors invoice the owner and the owner basically pays on the invoice, 408 doesn't do that. We prepare the pay estimates ourselves. But I will say, that's very common in DOT type -- state DOT type contract administrations. And actually, my first job was with Caltrans in the early '80s and that's exactly what they did is -- I was preparing the quantity estimates for payments. And so it's very common and still is, is my understanding with the Department of Transportation.

So going back, why do we have biweekly pay estimates? Well, it's always been like that since I've been with NDOT and I started in 1999, so I had to ask a few folks that have since retired that started long before I did, and the people I talked do, it was always like that when they were here, too. And this goes back at least as far as 1979, paying on a biweekly basis. And basically, the reason why we do it is because the contract -- you know, in the '70s the contractors requested that

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we look into that and we said, sure, we'll pay it biweekly. So that's why we do it, because we've always been doing it.

Savage: Not a good answer.

Shapiro: But anyways, I did want to talk to you about our documentation process because it is somewhat labor intensive. We do everything. When it comes to contract administration, we do everything. I've got some visual aids with me. I've got the construction manual down there and the documentation manual down there. Those are the manuals that tell us how to administer our contracts. When it comes to documenting construction contracts, of course, the doc manual is what governs. And these documents are approved, were sent to Federal Highway Administration and they are approved for use on federal aid projects, but we use one -- the same basic system regardless of the funding source to administer our contracts, which are those two books there.

The main source of our documentation is this document right here. This is a field book that we use and we're still using today. This is an actual book where the inspectors will write down quantities and then -- and this is how they document it. And this is also not that uncommon with DOTs, although many DOTs are moving away from this to more electronic-type format and that's something that NDOT's trying to do as well.

But how the process works when it comes to documentation, these are my visual aids from when I was requesting permission to embark on the electronic documentation process. And these are the copies of them that I actually used two years ago when I gave presentations. And I just use it to just kind of show people what the folks out in the field actually go through when it comes to documenting. This represents one pay estimate, one biweekly pay estimate, this amount of paper. And of course if you have 30 -- now, granted, this is a fairly large job, but if you have 30 contracts that you're paying on every two weeks, this is the -- you've got 30 piles of these that people are working on, on these type of documents.

So once -- and this particular contract is the east-west -- actually, it was one of the ones that John Terry was the manager on, the east-west widening of U.S. 95, a \$94 million project. It had 127 books and 287 bid items. Quite a bit of documentation there. But what the inspectors will do, like I said, they'll document in these books here, and then every two weeks the office person will summarize that particular -- the payments in this book and summarize them on a sheet that looks something like this. This is for pay estimate 41, July of 2007. They'll transfer the data in here into this and create summaries to start getting

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total quantities of items of work. And then, eventually, once that process is done, the office engineer will take this document right here and transfer all these numbers. This is an actual copy of the same pay estimates and the numbers in red are the pay quantities that we're going to pay for that, but I need those back, Madam Controller. Please feel free to -- I definitely need that book back or I'll be in deep doo-doo with (inaudible). I need the orange book or I'll never get this job closed out, yes.

And so then the office manager will write the -- transfer those numbers into this document here, which is called our turnaround document. And then this will be routed for approval when checks and the Resident Engineer signs off on it. And then once it's all said and done, the Office Engineer will input those quantities into the system, into our contractor pay system, and then it's processed through Construction Division and it generates a pay estimate that looks something like this. This is the exact -- this is the final balance report for that particular pay estimate. In this particular case, they paid \$2.4 million on 62 different line items.

So that's how that particular project works. And, like I said, they do this for every project that we have right now, and that's something we're trying to, with electronic documentation, make that a little bit more efficient, a little bit more user friendly.

Now, when it comes to closeouts, the pile of documents that are next to Todd's water bottle there is what the closeout reports look like. I guess we can pass them around, but, you know, I guess the point here with these visual aids is just to show everybody how paper intensive this thing is and how labor intensive it is. But this isn't actually that project, this is the Reno Spaghetti Bowl project, which was a \$60.4 million job, but that's what the closeout documents look like.

Going back to the packet, just to kind of run over the attachments. Of course, I did give you a copy of the index for the construction manual. The construction manual is available on-line, so if you need something to do, you can download it and read it, I guess. One of the attachments was the contractor payment summary for November. This was when we were preparing the materials for this particular meeting, you know, and then this document just basically shows there were 74 open contracts with a value of about 1.4 billion. Thirty-three of those projects are what I would call, what Construction Division would call active. Yeah, we only made payments on 24 of those of the 33 that were active and we paid about \$12.6 million. That's what this document shows. So in that two-week period, 24 contracts were, you know, they were generating that paperwork to run a pay estimate.

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Savage: Jeff, I have a question on...

Shapiro: Yes.

Savage: Thank you for that report and I can see, oh, it gets to be challenging sometimes, but on the left-hand column, you have the base bid amount plus the change orders and then you have the paid to date.

Shapiro: Okay.

Savage: And sometimes the paid to date exceeds the adjusted contract amount.

Shapiro: Mm-hmm.

Savage: Is that standard practice?

Shapiro: Chairman Savage, our contracts are based on the work that they do. Well, it's not standard practice. Some of this data in here, I don't want to say it's a little bit misleading, but this system was developed in 1999 and it may have certain uses for certain folks, whether they're accounting or Project Managers. I'm not sure of some of the stuff. It's a little bit misleading if you don't know what you're looking at, but -- or if you're not familiar with it, I'm sorry, but our contracts are not lump sum not to exceed contracts. New price contracts get paid for what you do. And part of the reason -- and this is also very common in Department of Transportation type work, transportation type contracts is the reason why we have so many line items in our unit price contracts is they're trying -- we're trying to spread the risk out, basically. So, you know, if the plans estimate 1,000 cubic yards of some sort of material and they only need 900, they only get paid 900. But yet if they need -- if the plans say we're estimating 1,000 cubic yards and they need 1,200, they get paid for the work that they do. That's very common with the DOT type projects.

Savage: I...

Shapiro: So that's how the numbers can exceed.

Savage: I understand that. From the accounting side of things, though, they can only pay what's been funded to that particular project.

Shapiro: Correct, correct.

Savage: For an adjusted contract amount.

Shapiro: Mm-hmm.

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- Savage: And the adjusted contract amount has to reconcile, including change orders...
- Shapiro: Mm-hmm.
- Savage: ...to the amount that is to be paid.
- Shapiro: Mm-hmm.
- Savage: And I didn't know when those two (inaudible).
- Shapiro: And then we go back to the agreement estimate, because this is all tied together. This is basically the original programmed amount. This is when we had the bid.
- Savage: Mm-hmm.
- Shapiro: We haven't even started construction yet, but this is what we're estimating it to be, or this is our budget. If they exceed the number in here, we literally have to go back to FHWA -- well, there's supposed to be communication back from the field that we're going over and that we need to -- and everybody needs to explain why they're going over. You know, sometimes material is heavier than what we estimate...
- Savage: Mm-hmm.
- Shapiro: ...and whatever. And then if we're going over from a dollar value, then we have to basically reprogram it with FHWA to get -- or the financial management folks to get permission to spend the money.
- Wallin: Do you ever, you know, because I saw two, Chairman Savage, the overages on here, I mean, like 122 percent or something like that. Do you ever go and say, all right, this one's way over and look at what the original bids were to see if somebody may have bid higher and they had their quantities or they were right? Because I'm concerned is that we might be picking low bidders who then constantly go over...
- Shapiro: Mm-hmm.
- Wallin: ...but we might have some bidders out there that are telling you the truth of what it's going to be and they're not getting picked...
- Shapiro: Well...
- Wallin: ...you know...



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Shapiro: I'm sorry, Madam Controller. Well, that's one of the thing the BRAT's trying to do when we review this stuff is we're trying to find those type of items on there and we check the quantities, you know. The traditional unbalanced bidding is if you think it's going to overrun, bid it high, if you think it's going to under-run, bid it low. But if you bid it high and it does overrun because there's a mistake, then you could go from a mathematically unbalanced bid to a materially unbalanced bid, which would mean number -- the apparent low may not be the apparent low anymore. It might be number two. We do try to take that into account, but these all reflect -- and try to, you know, stop it before it happens, basically. But these all reflect contract -- awarding contracts where we have somebody onboard and now we're just trying to complete the project at this point, so...

Savage: A question on the progress payments. Are there conditional and unconditional releases by the suppliers and the subcontractors of the general contractors prior to release of payment?

Shapiro: Chairman Savage, that's one of the things we're trying to get more sophisticated on. I mean, our contracts are with the prime, so that's our primary contract. And we pay on quantities, not necessarily dollars, so, you know, if a bridge requires a million pounds of reinforcing steel, we pay them for the pounds they put into place. Sometimes, we don't always know. You know, they gave us a bid, but sometimes we may not always know what that bid -- who's getting what as part of that bid price. If it's a dollar a pound, we don't know what's going to the supplier, what's going to the fabricator, what's going to the installer. We might not always know that. They are supposed to, you know, get permission to subcontract and we're supposed to approve that, but sometimes it's pretty gray out there. But we just focus on -- the terms of our contract are quantities, basically, at their unit prices.

Savage: And I think that's a point well made because there's always room for improvement, but during these challenging times, the last thing we need is a prime to get paid and not pay suppliers or subcontractors and be off. And I know everyone has the same concerns, so we're all aware of that and I think that's good.

Shapiro: We're trying -- I would call our system a little bit more passive.

Savage: Yes.

Shapiro: And we need to become more active, and that's something we're working with FHWA on, too, because they're concerned about prompt payment as well.

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Savage: Mm-hmm.

Martin: I think, though, the objective of the release is, isn't prompt payment. The objective of the release is do they get paid. In other words, I was just chatting with Mary here. You've got a vendor out there that supplies the Rebar. That vendor, who actually supplies the Rebar, is three times removed from the prime.

Shapiro: Mm-hmm.

Martin: What does the state do to assure that that vendor, who's three times removed from the prime, actually gets paid?

Shapiro: Well, Member Martin, Jeff Shapiro again. I do know some states, I believe Utah is one of them, they're more sophisticated in this regard and they literally -- Caltrans does too, I believe. They literally publish what was paid on the website and then have to ask suppliers and subcontractors to verify that they've been paid, too. That's something -- and this is just Jeff Shapiro talking, that's something that I'd like to take a look at, but as of today, NDOT doesn't do that.

Savage: A point well made, Member Martin, something the department can look into.

Shapiro: But suppliers are -- as of last week even, the asphalt suppliers were basically asking that same question, the asphalt suppliers.

Savage: And since we met last I believe there was an industry liaison meeting. And I don't know if we have any meeting minutes available or possibly can we get those meeting minutes within our next CWG packet to when those are held and what feedback we might have from the private side, I think would be helpful. That's all I have at this time.

Martin: I have one other question. You have in your contingency provisions for fuel and asphalt escalation. What about or what do you do, if anything, about de-escalation? In other words, price of oil goes down \$30 a barrel, asphalt, the price of the components of asphalt goes down 15 percent, do you establish a baseline for the fuel and for the asphalt at bid time?

Shapiro: Good question, Member Martin. Jeff Shapiro again. Yes, when we advertise a project, we establish base factors. And then as the factor -- you know, there's a certain zone in there where there is nothing, no adjustment if it's within ten percent. I don't remember the exact numbers, but whether it -- if the numbers go up, there's an escalation, if the numbers go down, there's a de-escalation. So the process does take care of that.

Martin: So if I hear you correctly, it works both ways?

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- Shapiro: Yes, sir. Yes, sir, it does.
- Martin: Okay. Thank you.
- Savage: Thank you, Member Martin. Madam Controller, any other...
- Wallin: No.
- Savage: Anybody from the staff or within the department? Any comments?  
Thank you, Jeff. So that'll close Agenda Item No. 6. We'll move on to Agenda Item No. 7, new business for an update on electronic bidding.
- Nelson: Yeah, we've asked Jenny Eyerly to attend to give us an update on what happening with e-bidding.
- Eyerly: I'm Jenny Eyerly with NDOT Administrative Services. And as you will probably recall from the last time we met, the issue...
- Nelson: You might want to come a little closer so you can get to the mic.
- Eyerly: All right. Can you hear me now? So the last time we met we talked about the electronic bidding issue that we had with Contract 3516 and Q & D having difficulty submitting their bid. And that issue was related to the order of supplemental notice processing. So we received a software fix from our vendor. The timing of implementing that fix is somewhat tricky because the software is housed individually on contractors' desktops out in their office, so the update is -- it's just a process for them to go through. So we try to time those carefully and in combination with other fixes as relevant.  
At this stage, some time in January we plan on implementing the DBE, Disadvantaged Business Enterprise, report enhancement that is also a software update, and they kind of go hand in hand. So what we're doing is we're testing in-house the software fix for the supplemental order processing and the DBE report enhancement and planning to implement those at the same time in January. We don't have any electronic bids opening until late January, early February.
- Savage: Thank you, Jenny. Are you getting good support from your consultant?
- Sisco: We're watching that carefully (inaudible).
- Savage: Thank you, Mr. Sisco. Because I know it's important that, you know, we have a very solid policy in place during bid day. It's about contractors living and dying each day by the bid and it's vitally important that internally the staff has the proper and diligent policy, I believe, in order to eliminate the unknowns. Because

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there's always going to be the unknowns. So as long as we have a strict policy that gives the contractors confidence about the trust of NDOT, we'll be in a good place. And I think everybody realizes that and understands that, and I thank you for your listening and understanding of that, but it's vitally important because contractors do live and die by (inaudible).

Eyerly: Absolutely. And if I can just speak to that just briefly. I think in Admin Services we're acutely aware of the importance of bids to contractors and also the integrity of the bidding process. So we're always mindful of that come bid opening day. In an ideal world, we would eliminate these kinds of things. Unfortunately, when you're dealing with software, sometimes you just never know. I mean, we've been dealing with this -- we've been using this system since January and came across this issue in November. It was just a magic combination of events that led up to this issue. So in the software world, bug-free is something that you just don't get promised. The best that we can do in-house is to understand the importance and then as each situation arises analyze it based on the framework of the rules and regulations that we have in place, the chain of command, the processes that we go through and, of course, keeping in mind the importance to the contractor. So there isn't really one perfect cookie cutter solution that we can apply, but we definitely look at that whole picture.

Savage: And I think we'll see how the e-bidding goes because we can always go back to the paper. The paper was a black and white deal, no excuses. And I think we have to achieve the same thing with the e-bidding, ultimately, to be beneficial. So I'm glad to hear...

Eyerly: We've had some people begging us not to go back to paper, so there is...

Savage: I'm sure.

Eyerly: ...you know, there is definitely...

Savage: I'm sure.

Eyerly: ...I think a movement as far as from people that we hear that they like it. Even in the process that we had to go through, even ending up in a court setting, there was still support for this, so, yeah, we're definitely hopeful that it can provide the same level of secure bidding to all contractors fairly that the paper process did.

Savage: Thank you, Jenny. I'm glad to hear it's a top priority, trust and confidence, because it's vitally important. Madam Controller?

Wallin: No.

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Savage: Member Martin, any comments or questions?

Martin: No, but I liked your comment about the paper. That's always the back up as far as I'm concerned.

Savage: Absolutely.

Unidentified: Yeah, we've got lots of backup.

Savage: Okay. Thank you, Jenny.

Eyerly: You're welcome.

Malfabon: Is the Board aware of the outcome from the case of the readvertisement, how it ended up?

Savage: No, that has not been discussed, Mr. Director.

Malfabon: For the record, Director Rudy Malfabon. In the court hearing, the judge and the parties involved agreed to do a very quick trial on the merits of the case. After hearing the testimony from both sides, he found in the state's favor, so it was up to Granite to determine whether they wanted to appeal that in the state supreme court. I had a discussion with Rod Cooper from Granite. He brought some of those issues about how we handled this particular case.

I think that there are some things that we would do differently in the future, but in the summary, though, we would have ended up in court either way. And the outcome of the readvertisement -- well, getting back to Granite, they determined that we're a very good partner working with the construction industry and the bank on contracts, so they determined not to appeal it. They did prevail on the low bid on the readvertisement. They actually beat Q&D by a little bit, so they ended up getting the contract, but obviously lowered the bid to beat Q&D on the readvertise project.

But as far as what we would do differently, it would probably be more on Q&D to take the department to court rather than accepting their bid. Because I think the issue was the timing. I think that I would have had the same conclusion, that the software glitch prevented Q&D from submitting, but it would have been incumbent on them instead of listing theirs as a received bid in time like we did, we would have said it was incomplete, so it's not really responsive, but because of the glitch -- but for the glitch, they would have (inaudible) it would have ended up still in court, but different players in that trial and the same conclusion, I believe, would have occurred and would have been supported in readvertising the contract instead of awarding the first advertisement.

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Savage: Thank you, Mr. Director. Let's move on to Agenda Item No. 8, briefing on the status of construction projects, beginning with the summary of projects closed.

Nelson: Yeah, this is Rick Nelson for the record. We'll take the briefing of the status of construction projects in three parts. The first will be the summary of projects closed, and that's Item 8, Attachment A. This spreadsheet shows 34 projects that have been closed out this year. There's five projects that have been closed out since the last reporting period, or the last two months. Now, this report, as you recall, is sort of what generated the -- created the Construction Working Group. It was a year ago January when we made our first report on projects that were closed out.

So what you see here is a running list of projects that have been closed out since the beginning of the year. We'd be happy to answer any questions that you might have about any of these specifically. At the January Transportation Board Meeting we will add the projects that have been closed out between the date of this report towards the end of November and the end of the calendar year to report to the full Transportation Board.

Behind this spreadsheet are the five individual sheets that cover each of the yellow projects on the first page. It gives a detailed accounting of the funds and time associated with each of these projects. Now, one thing you'll notice as you get a couple back, for example, Contract 3462 is one of them, you'll see in this report that for preliminary engineering and right away we list that the costs were not captured, and the same for the project behind it. These were state stimulus projects that were pushed out this last year. And since we published this report for this particular meeting, John Terry, the Assistant Director for Engineering, has been able to go in and actually peel off some of these costs that -- we will be able to report what the engineering -- preliminary engineering costs were for those projects.

So with that, if you have any questions about any of these projects that have been closed out. In summary for the year we've had 12 projects finish over the amount, the agreement estimate amount. We've had 22 projects fall below that amount, so I think, in general, the trend is trending the right way, that we're finishing under budget. Anything you'd like to...

Shapiro: No, I...

Nelson: Comments you'd like to add about that?

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- Shapiro: No, I would agree with that. Jeff Shapiro again. The total percentage at the right-hand -- lower right-hand corner indicates 99 percent which, as a whole, all the projects have come in -- the program has come in under budget.
- Savage: Mm-hmm.
- Shapiro: But we did have some individual projects that went over.
- Savage: I have one question, Mr. Nelson. On Item No. 8, Attachment A, first page, Contract 3427. This is an example. I'm just -- I notice on bid price you have 640,000 and percentage of change order 0, change order 0, but you have the final contract amount of 765,983.
- Shapiro: Rick, I can explain.
- Savage: Okay, go ahead.
- Shapiro: Jeff Shapiro again. Basically, there were no change orders on that project, but we did have some quantity overruns, for lack of a better phrase, and that's what made the difference up.
- Savage: So the quantity overruns are never -- they must -- do they ever -- what am I trying to say here? Do the quantity overruns become a change order to the contract, eventually?
- Shapiro: Chairman Savage, no, they do not. We used to do what was called balancing change orders, but we don't do that anymore. We basically adjust the quantities.
- Nelson: This is Rick Nelson. One of the things in our standard specifications allows for the renegotiation of unit prices. So if a particular quantity overruns by 120 percent or underruns...
- Shapiro: By 75 percent.
- Nelson: ...by 75 percent, then there's an opportunity to renegotiate that unit price. In other words, if it overruns, we think there may be opportunities for us to get a better price for quantity. If it underruns, the contractors feel the same in that they weren't able to achieve as much quantity as they thought they were going to. So there are instances where quantity overruns or underruns would end up generating a change order and then that would go into that adjusted payment. But if the quantities fall between that zone of 75 percent or 125 percent of quantity...
- Savage: No change order needed.
- Savage: Just -- okay. Thank you. Madam Controller, any questions?

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Wallin: No.

Savage: Member Martin, any questions in Vegas? Member Martin, any questions or comments from Vegas?

Martin: None from me, sir, thank you.

Savage: Any other comments or questions from staff? Next item, Mr. Nelson.

Nelson: Item No. B is the project closeout status. The next several sheets that are listed in the packet represent those projects that are in the range requiring contract close-outs and we're tracking 62 projects. Now, not all of these projects are actually actively being closed out. When a contract gets towards the end of its cycle, then we'll put it on this list and start tracking it to make sure that we're getting the requisite material certifications and those kinds of things. So we'll begin the close-out project before the project is over.

We continue to have monthly meetings with the districts to go over each of these projects. Megan conducts those meetings. And I think they've been very beneficial towards moving these project close-outs along. We've attached the minutes of those meetings here so you can get a feel for the kind of discussion that takes place along with those.

We do have a couple of projects that are lingering the close-out process, but I think by and large we've made very good progress at chipping away at the backlog of projects to be closed out.

Savage: If I recall, the magic number is 17 months.

Nelson: That was the average.

Shapiro: That was the average.

Savage: That was the average.

Shapiro: Mm-hmm.

Nelson: When we come before the Transportation Board next month, we'll have a new average time and...

Savage: Good.

Nelson: ...I'm hopeful it will be better than 17.

Shapiro: Me too.



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Savage: Me too.

Wallin: I hope so, too.

Savage: Thank you, Mr. Nelson. Any questions from any members?

Nelson: So the last part is the active projects, projects that we have on our active roster. We're tracking 76 projects as active with a total contract value of \$1.5 billion. You can see that this is an evolving document. It's been actually a very good tool for us to look at in-house. We're not listing green projects anymore. If there's no color, there's no problem. Again, the ones that are identified as red have some problem associated with them. It could be schedule or it could be budget. It could be a potential change order or litigation. The yellow projects are those that we've got some concerns over and we're monitoring them more closely. This meeting we have added the agreement estimate, that budget column, so we get a comparison of what we've programmed for the project as the budget. And we'd be happy to answer any questions that you might have about any one of these projects with respect to schedule or outcome.

Savage: I have one -- Member Martin, go ahead.

Martin: Yes, on this particular sheet you don't list the contractor. I see the Project Manager, NDOT consultant. The one I'm looking at, I can't tell you for sure which page it is. It's Page 93. It's got all the red and yellow markings on it.

Nelson: Member Martin, we can add the contractor to this list. One of the things we're trying to be mindful of is not to put so much information on here that we can't actually read it.

Martin: That's for sure.

Nelson: But we'll play around with that and see if somehow we can't get the contractor listed on here.

Martin: Okay.

Wallin: Because I think before we had it. I remember seeing the contractor...

Savage: Mm-hmm, one time.

Wallin: Yeah, one time we had the contractors.

Martin: Yes, we did.

Wallin: Yeah.

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- Shapiro: Madam Controller, it might be the closed out spreadsheet that does have it.
- Wallin: No, we had it...
- Shapiro: Was it on this one too?
- Wallin: We had it on this because I remember the red because, like, Peak Construction, they were popping up under Kingsbury.
- Shapiro: Yeah, we can add (inaudible).
- Savage: This is a great form. This is a great summary. Any further questions, Member Martin?
- Martin: No, sir. It is -- and I agree, Chairman Savage. It is a great tool because there is huge numbers of contracts and it's nice to see them all on just a couple of pages and get a basic picture.
- Savage: Thank you, Member Martin. One question that I have is, and maybe it's just a calculation error, but let's take a couple contracts, 3290 and 3361. The amount shown on the paid to date exceed the agreement estimate, but do not indicate over budget.
- Shapiro: Chairman Savage, I can answer that. There was a -- on 3290 -- this is Jeff Shapiro again. 3290 there is a significant overpayment due to a mathematical error on NDOT's part, to be quite frank. That's to the tune of \$600,000. Once we get that money back -- get those quantities back, excuse me, then it will bring that in under budget. So that's why we're not showing it as over budget at this time. Now, 3361 is a little -- that's actually a -- I don't want to say clerical error. That not being colored is actually an error on our part. It should have been red.
- Nelson: See, these color codes are done by staff. There's not a computer code that does that for us, so they have to review these documents.
- Savage: Because I noted actually 11 -- I noted 11 jobs on this page that were actually -- where the total pay was over the agreement estimate...
- Shapiro: Right, right.
- Savage: ...which it would indicate a red flag.
- Shapiro: And some of those are the ones, sir, that I've highlighted in pink because they should have been red.
- Savage: Yeah.

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Shapiro: But some of this is we're combining automated information with manual manipulation and it's a work in progress. We missed those.

Wallin: So one's 153 percent over?

Savage: Mm-hmm.

Shapiro: Yeah. Well, except for 3290. We just need to get those quantities back (inaudible).

Savage: Sounds good. That's all I have. Madam Controller?

Wallin: No, that's good.

Savage: Anybody from staff or within the department with any comments or questions? Okay. That'll move us on to Agenda Item No. 9. At this time, entertain a motion to close the meeting.

Wallin: I make a motion to close the meeting.

Martin: Second.

Savage: Thank you. All in favor?

Group: Aye.

Savage: Motion passes. Meeting closed.

  
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Representative