

Minutes of Nevada Department of Transportation  
Board of Directors Construction Working Group Meeting  
October 8, 2012

Chairman Len Savage  
Controller Kim Wallin  
Rick Nelson  
Bill Hoffman  
John Terry  
Dennis Gallagher

Bill Wellman  
Thor Dyson  
Paul Frost  
Jeff Cobb  
Megan Sizelove

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Savage: We're going to get started. Good afternoon everybody. It's one o'clock on October 8<sup>th</sup> in our Construction Work Group meeting. And let's see. Madam Controller, myself, and Member Martin is absent and not in attendance at today's meeting. Las Vegas?

Female: Las Vegas is here. I'm the only one here so far. I don't see Tracy...

Savage: Can you hear (inaudible) Las Vegas?

Female: I can hear you.

Savage: Thank you. We can hear you as well.

Female: Okay. Frank Martin isn't here, and Tracy, I don't know where she's at yet either.

Savage: Okay. So we'll go ahead and get started with Agenda Item No. 1, Public Comment. Is there anyone here in Carson City that would like to speak at today's meeting? No one present. Anybody in Las Vegas who would like to speak?

Female: No public here.

Savage: Thank you. That being said, we'll move on to Agenda Item No. 2. Has everyone had a chance to review the reading minutes of the August 24<sup>th</sup> Construction Working Group meeting? Madam Controller?

Wallin: Yes.

Savage: And myself, yes.

Nelson: I reviewed them too.

Savage: Thank you, Mr. Nelson. There's no additions or modifications or deletions? I guess we'll have a motion.

Wallin: I'll move to (inaudible).

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Savage: I'll second. Moving on to Agenda Item No. 3, Old Business. There is no Packet No. 3 so we will hear from you, Mr. Nelson.

Nelson: Rick Nelson for the record. For old business, there's two items on here. The first has to do with e-documentation status report and just to fill you in, the RPs have been accepted in evaluating. There were interviews conducted last week where three firms came in and made presentations. The results of those interviews haven't been published yet, but I suspect that that's going to happen here in the next few days.

And I think, what that means for the Board is, that come November we probably will have a recommendation to advance to the Board with respect to an agreement to move forward with our e-documentation project.

Savage: And there were three firms that submitted?

Nelson: There were three firms, yes, and I don't know what their names were. But there were four that were submitted and three that were interviewed. For the BPs of old business, as you recall at the last -- well, not the last Transportation Board Meeting because we just had it, but there was an agreement, Agreement No. 89, that dealt with consultant for the Mesquite design-build project and there was some discussion that was generated with respect to that agreement and John Terry, the Assistant Director for Engineering, is here to sort of continue that discussion with respect to consultant support agreements.

Terry: And that question was related to, in my understanding, in fact, it was actually just an amendment to extend the time, but the question came as to why such large amendments on originally relatively smaller agreements. And so I'm kind of answering this question from two perspectives; one in my current job, as Assistant Director of Engineering, and my previous job where I was the project manager to do design-build south and we set the model for how we do these. And I guess the simple answer, we do it this way on purpose. In other words, for all of the design-build we went and looked at contracts. We usually need consultant help in order to put out the RFP documents, especially in the early ones when we didn't have good documents and we needed to prepare those documents.

And when we do the solicitation, we tell the team soliciting that you are soliciting, you are submitting for -- helping us on the RFP documents and at our option continuing to help us during construction services. The third part of that is, and that you are then, of course, precluded from being on any team that's doing the other side. So these are the people that are representing us in design-build.

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We do it this way intentionally and maybe the proper way would be to say Phase 1 and Phase 2 almost, than original agreement and amendment. We do it this way because we may not have the scope well developed. We may not know for sure that we're going to move forward with the final phase and we certainly don't know what additional help we need from the consultant at that phase, in other words, what roles NDOT people may be filling and what areas we may need them to help with.

So I guess the simple answer is -- and I have the numbers on all the design-builds and Member Martin is entirely correct. To help us in the procurement phase and (inaudible) the smaller the original agreement, and the help during the actual design and construction phase is larger, but we intentionally tell all of the consultants submitting, this is what you're submitting on. It's at our option to go to the next phase. In this case all four design-builds did move to the construction phase and all four design-builds, we did amend their contract for that phase.

Savage: And how many different consultants?

Terry: There has been so -- I didn't get all the data for the I-15 North design-build which completed a number of years ago, but the most recent, there was four design-builds; I-15 South, I-80, I-15 ITS and the interchange of Mesquite on I-15. Four different consultants assisted us in the procurement phase. All four were given an initial procurement and initial agreement, and all four did we amend those agreements and go into kind of the Phase 2 assistance. And if need be, I can give you all of the numbers on all of those agreements, but in all but one case the amended amount was more than the original amount.

Savage: And I think that's the Board's concern was that perceptions (inaudible)...

Terry: And perhaps we should say we do it when, in the agreements, instead of calling it original and amendment, call it Phase 1 services and Phase 2. That's really kind of what it is. It would be extremely difficult for us to come up with a scope for the Phase 2 services when we're doing the Phase 1, and we very much want that continuity and we told them in the RFP, when we sent it out, that you're submitting for both phases. That's really the issue.

Savage: And I can understand the theory, the continuity. I think that's very, very important to make sure -- ensure the department has the same consultant, but I think we have to be very, very careful, as we all are, using public monies in order to remain competitive, whether it's consultants or contractors. And I know it's done every day on the contractor side and I think this new board is holding

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everyone responsible and accountable to ensure the consultants with this team are strong and can justify their position and value, and value.

Terry: Another, call it constraint, is our typical contracting method on these consultant contracts. And, in fact, the case we did for all of these is what we call “cost plus fixed fee.” In other words, we pay their costs, plus their overheads, whatever, and a set amount of fixed fee. We pay the fixed fee, you know, for that first phase and then we amend it for the second phase. Sure, we could write them a really big agreement up front that we were sure would cover all the way through the second phase, but we would be establishing a fixed fee that’s not really based upon a good scope. It’s better business practice for us to have that fixed fee on a defined scope, and then as that one’s completing we define the scope on the next phase and can set it more tightly.

That’s our normal practice and it seems to be working, but it does bring this issue that typically the amendment’s bigger than the original agreement. And, you know, we have needed consultants during the construction phase -- design and construction phase of all design-builds.

Wallin: Do you think that as you go along, you know, as we do more and more of the design-build projects, that you’ll start to gradually get the expertise in house because you’ve got a lot of these agreements and all that, that we can stop...

Terry: Yeah, but I think it’s going to make the problem worse because I think we’re getting the expertise and we have example RFP documents. We’re going to need less help on the procurement phase, but we’re still going to need help on the design-build phase, especially the design phase, because it’s the design reviews and stuff that are technical. We need to review ten bridges and etcetera. So it will almost make the situation worse because I think we’re getting better at the procurement phase, need less consultant help with that, need more consultant help with the build phase.

Wallin: Well, maybe these consultants won’t be the ones in the procurement phase. You’ll have them...

Terry: If we didn’t have them at all in the procurement phase, then we are just hiring them for the design-build phase -- wouldn’t be a problem.

Wallin: Then you wouldn’t have this amendment problem.

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Savage: Okay. Thank you. Any other questions or comments from anyone in attendance? Again, I'd just like to remind everyone of the group, it's a working group with anyone's...

Wallin: It's not the Len and Kim show.

Savage: ...input at any time, any moment. We encourage...

Wallin: It's not our show.

Savage: ...comments. It's not our show. That being said, Mr. Nelson, we'll move to Agenda Item No. 4.

Nelson: Under Agenda Item No. 4, what we wanted to do was to begin to define the differences between NRS 408 and NRS 330. It seems like every legislative session the government affairs committees always end up diving into NRS 338, the delivery of public works, and 408. And it seems that at the last minute, we're always scrambling to try to figure out what proposed changes to 338 are going to have an impact with NDOT under 408 and how the two blend together and that sort of thing.

So in order to get ready for the legislative session, we asked staff to go through and take a look at really the differences between 338 and 408 and make some comparisons. And what we have is a summary, if you will, Attachment A in your packet, and Jeff Cobb from the construction division wants to make a little presentation to sort of talk about how this all happened, came to be, but I do know there's one issue that will more than likely show up at the next legislative session and that's the 338.141 which has to do with how contracted report, they're separate, so I know that one's coming up and I can only suspect that there will be others. And that's what prompted this summary, so Jeff, you want to go ahead?

Cobb: My name's Jeff Cobb. I'm with the constructability section of NDOT Construction Division. The presentation is essentially a brief narrative to help explain the development of the preliminary side-by-side comparison. The report, the side-by-side comparison was put together by myself and Shawn Howerton, Jennifer Eyerly and Roc Stacey. What we were tasked to do is to identify the differences and similarities between these two chapters. The way we went about this, we started with NRS 338, Chapter 338. You'll notice on the published report, the left column represents those statutes in 338, the right column represents 408 applicable information.

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We started essentially from the very beginning and just went statute by statute and then identified information in 408 that was relative to those statutes. What we wanted to do was, we wanted to show the exemptions, the applicability, differences and similarities in the language. The report identifies several types of differences; the monetary timeline and procedural differences.

Some of the minor differences had intentionally been left out of the side-by-side comparison just to keep it more manageable. If we were to get into all of -- every one of these we'd have ten pages in front of us at the minimum. However, all of those minor differences are captured in our backup documentation and this will be utilized as we move forward with the next step.

One of those minor differences, just to give you an example, in NRS 338.177 and in NRS 408.507, both of these statutes are regarding lease of property. 338.177 states a five-year maximum lease, 408.507 identifies the limit of the time as determined by the director. In a minute we'll talk about some of the differences in some of the terminology as well. But that type of minor difference was captured, like I said, in the backup documentation, however, not provided in the side-by-side comparison.

When we state "no applicable statute in the right-hand column," what we're identifying is that Chapter 338 exempts the Department and Chapter 408 does not contain similar language. So if we saw in some of our major difference -- in some of the areas where we see major differences, for example, retention, we are exempt from those statutes in 338, however, we did provide in the side-by-side comparison a similar language and this is just to, like I said, this is a preliminary side-by-side comparison. This is a surface look at these statutes to help us with the next step.

In regards to, one, NRS 338.139 and 338.142, if you notice the right-hand column has been left blank. Unfortunately, we had to get this published and at the time we published it, we were still looking into these two chapters. What we have identified is that 338.139, in regards to special contractors, NDOT doesn't have that language in 408. We do not contract with specialty contractors.

In regards to the 142 protest, the department follows a procedures established within internal policy, so I apologize for those two being blank. So there are consistent differences between these two chapters that are relatively obvious, 338's referencing public body, 408's referencing the department. We see statutes that may have similar intent but that terminology is different. I think this is important whenever we move into this next step because if there was an intent to

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combine, those languages would have to be addressed and terminology would have to be more consistent between the two.

Well, the team's confident that we hit the task on -- that we hit the scope on this task and we're hoping that we identified some indicators for its more specific preparation. That I believe was the overall goal for our next -- I think that with the side-by-side comparison in moving forward, that the team's going to move forward and looking into areas of improvement, where we could clean up, if you will, these two chapters. With that, that concludes the presentation. If there's any questions I will certainly attempt to answer them.

Savage: Mr. Cobb, I thank you for your presentation and your team's support as well. I feel it's a very brief but informative comparison and I think it's a good idea, again, to have substantiation in the background and possibly the pros and cons, and you've probably already played that tennis match in your own minds, and if this were to go down the road to the next legislature and the pros and cons of why 408 was initially brought into the state's statute and why 338, the basic fundamental differences of why it was initiated in the beginning, from the laymen's perspective would, I think, be very helpful as well. And you've probably already done that, but it's nice to know when you get in front of an entire legislative body to be able to say there was a reason and this is the reason. So, I thank you all.

Cobb: Thank you.

Savage: Madam Controller?

Wallin: I guess my only question here is, because you guys have very limited BDRs. I know there are a lot of things on your plate. Do you think this is something that one of the legislators might be taking up to take the charge and (inaudible)? Do you know any sense?

Nelson: Based on some preliminary discussions that I've had with some members of the assembly, I have a high degree of confidence that the 338.141 is going to come up, that they're going to close a little bit of a loophole that was left open during the last session. And so with that in mind, if there is opportunities for us to clean some things up that would make life simpler for the contractor, that would clarify some of these exemptions with NDOT, it will have some legislation that's going to be introduced and we've got an opportunity to tag on with some of that.

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- Wallin: Yeah, to kind of get some of the things where, you know, where you see that we should go ahead and get them synched up and...
- Nelson: Right. And you know what? The last construction working group meeting when we were talking about retention, you know, we are going to take this topic back to the NDOT construction industry liaison committee and so if 338.141 does pop up and there's some language that we could all agree on with respect to retention, that will give us an opportunity to sort of roll some of those things together. We don't plan on -- we've missed that window of opportunity to create our own language, but there will be opportunities I'm sure.
- Savage: I think it's a good idea that your next meeting is sooner than the liaison group.
- Nelson: It's Friday.
- Savage: Friday, good. Try to do some pondering before we get down (inaudible).
- Nelson: Yeah, it's always easier to negotiate before January than afterwards.
- Savage: Absolutely.
- Wallin: Do you think this is something that you would share with the group, to say this is what we've done and what's your feedback comments, because if they're going to look at -- if someone in the legislature is going to look at 141 I think it really opens it up for...
- Nelson: For some of these...
- Wallin: ...all of this. So it's nice to have their input on some of these other things that...
- Nelson: And getting this list into the hands of the industry I think is rather straightforward and easy to do. Bill and Bill Wellman from Las Vegas Paving are chairing that industry group this go around and so we can get it into the industry, start working on it that way as well.
- Wallin: Thank you.
- Savage: Any other questions on Agenda Item No. 4? Again, I thank you Jeff and Shawn and Jennifer. I appreciate your (inaudible). We'll be going to Agenda Item No. 5, Unbalanced Bidding and Bid Review analysis. Mr. Nelson.
- Nelson: Item No. 5 deals with unbalanced bidding and I know the construction working group on several occasions have had conversations about how we go about awarding bids, how we handle the documentation, what unbalanced bids actually



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mean through the life of the project. And so what we wanted to do was sort of cut this item into two pieces, the first dealing with the analysis that goes into awarding a contract and then the second half, which we'll cover at a later date, will deal with the actual documentation, measuring the quantities, getting those input into the system, and ultimately paying the contractor.

So this afternoon we've got Paul Frost, who's our Chief of Roadway design, who also chairs the bid review analysis team, here to make a little presentation about how we review bids and how we wrestle with unbalanced bids.

Frost: Good afternoon, Member Savage (inaudible). I am pleased to be here to talk about one of my personal favorite items, unbalanced bids, and maybe, hopefully explain some of the procedures we do to analyze our bids and through award, and then talk about some of the challenges we have as engineers and designers putting together what we think is an appropriate engineer's estimate. In the package I sent to you, hopefully, you received some backup data that describes our current bid review analysis procedures, which I'm happy to say our team this year finalized and published, so these are current procedures.

And then also an example of a bid tab summary and a (inaudible), referenced here in a few minutes. Just real quickly, our current procedure, when we develop a project, of course, we go through designer and estimate quantities and bid items and we come up with this estimate. We take our truly best attempt at determining what the real cost of that is going to be. We don't try to inflate it, we don't try to underestimate. There's been some comments in past board meetings that, maybe, we're trying to be a little conservative. I can assure you that from our group at least we are trying to pick the exact number that we think the bid proposals will come in at.

We use a nice software tool to help us do that. It's called the Oman Bid Tab software and that lets us be very specific on history of contract items, such as if it was a small quantity versus a large quantity, if it was in a different region. It lets us throw out outliers, more recent bid tabs should we just want to compare it, see if we can see a trend of prices occurring. And with all that, again, I just want to emphasize that we really do try to estimate the actual bid cost.

After we go through and advertise the project and open bids, the bid review and analysis team procedures start to kick in. Our administrative services receive and tabulate all the bid proposals and put them into two documents. One is the complete bid tab summary, and then the other is this price sensitivity report. That lets us kind of hone in on some of the items that may be an issue. We look at

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significant items over \$50,000 and then we also look at where the apparent low bidder and the second low bidder -- if the apparent low bidder's unit price is less than 75 percent of the engineer's estimate or over 150 percent of the engineer's estimate, that's kind of a flag to us that, you know, we want to make sure we double check that item, make sure there's no errors.

And as Rick mentioned, we look for mathematically and materially unbalanced items. A mathematically unbalanced item is a unit price that falls outside of that range, of the 75 to 150 percent. So we get quite a few mathematically unbalanced items. A materially unbalanced item is a mathematically unbalanced item that, let's say we were to have made an error in our quantity in our engineer's estimate, if we would have corrected that, if we correct that error, that makes No. 2 become the new apparent low bidder. That would be a materially unbalanced item. If changing that item or correcting that item could affect the outcome of the bid, is another way to say it.

So and I'll go through a quick example of one of those. If I gave you an example of a contract (inaudible), it's Contract 3505.

Savage: Is it Page 1 of 2?

Frost: Do you have the--is that the sensitivity analysis?

Wallin: This one.

Savage: Okay.

Frost: It's Attachment B.

Savage: Attachment B. Thank you.

Frost: On the third item down, Roadway Excavation, that item, the apparent low and second low bidder's unit prices are substantially different. They're double. For example, if we were to have a major error in that, transpose a number or something, and the real quantity of that was 200,000 yards instead of 273, if you correct that, granite's cost for that item would be about \$1 million and Q&D would be about \$2 million. I'm sorry, that's what it is now with the current 273,000 cubic yards.

If we were to have had an error and corrected it to 200, those numbers would be 800,000 and 1.6 million, and the difference would make -- that difference in cost would make No. 2, No. 1. Our sensitivity report would go through the -- in the

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yellow highlighted, the second column there, percent -- this is a good one to look at; percent change in quantity required to make a change. You see some -- these numbers, if they're really low, or like a 5 percent or less change in the quantity would result in No. 2 becoming No. 1.

That is definitely an item we want to make sure we have correctly. (Inaudible) go forward in addressing how it would be best for the state to proceed after that, but it's a good flag for the items that really have a potential for changing the bid order.

And our team goes through -- we have a good representation on our Bid Review Analysis Team, our BRAT team, construction, design, administrative services, sometimes legal, sometimes FHWA. And through this whole team we look at all these, we talk about the potential impacts any of the items may have and collectively we make a recommendation as to whether to award, reject, reject all bids, go to second bidder or re-advertise.

That's a nutshell of our procedure we go through. I did want to, kind of, explain some of the issues we have or some of the challenges we have. I come to the Board meetings and sometimes there's a discussion of this contractor price came in at 65 percent or 130 percent and here's some of the reasons why that occurs. I'll start with our Oman Bid software. Sometimes, if there's a limited history on an item, we have new items all the time, especially in some of the ITS fields and some of the technologies that are always developing. There might be very limited data to a specific unit that we have little or no history.

Getting into our -- back to the whole topic of unbalanced bid items, if a contractor -- there's a lot of latitude that the contractors have in the unit prices here. Again, we look at things less than 75 percent and over 150 percent of the engineer's estimate, but that certainly doesn't mean we are going to reject bids for items outside of that range. And in fact, I'd say the overwhelming high percentage of our contracts have mathematically unbalanced bids.

By having those, obviously, if you increase one item or decrease the unit cost of one item, it's likely that that cost might get spread over other items. Those feed into our Oman Bid Tabs and now our history of unit prices has kind of a continual skew to it almost where the prices may not even be getting better. They may be getting worse with our history of unit prices.

We have had a history of accepting mathematically unbalanced bids. As an agency I know -- I've just had private conversations with some contractors. I

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know we've had discussions with the AGC on at least several occasions that asking kind of a general question of, first is this, you know, is this a problem and if so what should we be looking at, some possible ways to fix it.

The general feeling is that -- I don't want to speak for all contractors, and you're a contractor, you kind of -- interested in your opinion, but most seemingly do not want to be restricted and they like to be able to have that kind of creative way of putting their bids together, protective of the pricing, maybe not wanting to clearly show competitors what they think they can build things for. I'm not sure. There's some speculation there, a lot of reasons that could be legitimate for an unbalanced bid if a contractor has a supplier, a deal with a material source close to the job. So they really -- kind of the majority of the opinions were that NDOT should not necessarily try to restrict mathematical (inaudible).

Hoffman: Chairman Savage?

Savage: (Inaudible).

Hoffman: This is Bill Hoffman, Deputy Director. We did bring up this exact point at the June 20<sup>th</sup> AGC NDOT liaison meeting and, you know, most of the large contractors statewide take part in this liaison meeting and we did bring up this unbalanced bidding and "penny a ton" type of bidding that was going on and as Paul just alluded to, we were concerned about the fairness to all contractors. We really wanted it to be fair. Some contractors bid the works right up, others use that flexibility that Paul talked about. And what they recommended is, it's not an issue that we need to jump in and try to fix right away.

There were some recommendations they made to NDOT in terms of quantities; making sure the quantities are correct, making sure we list application rates or tonnage rates for the contracts, and that would probably be the first good step in trying to promote fairness amongst the contracting community. So there was a little bit of work we needed to do and that was to make sure that the quantities were accurate as they went out with the projects and make sure that contractors had enough information to bid on the job via our pliant set.

And I should note that there is a difference between the way contractors go through and generate their estimate for the work. It is production-based cost estimating which equipment, materials and labor; what is the true cost that it'll cost that contractor to do the work. As Paul talked about, we go back and look at historical bid prices for those items, and I know that's no different than any of the other DOT's across the country, that they do that the same way. They use

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historical bid items to come up with an engineer's estimate, so just wanted to make sure that you guys were aware of the estimating differences.

Savage: So really there weren't any big, large red flags, Mr. Hoffman, from the liaison group that needed to be attended to immediately?

Hoffman: No.

Savage: There was no major concerns and I really commend Mr. Frost and your staff, Mr. Hoffman, with the written policy of this BRAT review. I mean, I had no idea it was this involved and I think it needs to be, now that it's writing, and there's checks and balances and several people and several different eyes looking at something. I think it's very beneficial to the department as well as the industry. It's consistency. That's all you're trying to bring is consistency and fairness. That's being achieved.

Frost: We've recently made efforts to also include a wider range of contracts and try to get all of our NDOT contracts through this procedure with all our district contracts, even our architecture contracts -- have a BRAT review of the landmark demolition tomorrow.

Savage: The only question I had was on Attachment A, Page 205. You have the primary BRAT members and then you have the, as needed, BRAT members. Is there something of significance that would trigger that secondary additional team that would -- who makes that call?

Frost: Yes, when the sensitivity report gets generated by (inaudible) services, they send it to the primary team members, and then if, let's say it was an ITS safety project or maybe something that the member was not listed, we would invite them if there were specialty items that they could comment on the contractors' proposals.

Savage: Okay. Thank you. Madam Controller?

Wallin: Yeah, I really appreciate all the work that went into putting this together so I kind of have a better understanding, not being a construction person, and so it's (inaudible). But I really appreciate this, and I'm glad that Bill talked about how the industry doesn't seem to think that there's an issue. They think that our process is fair and what have you. Do you find that certain areas in this state have more of the unbalanced bids, like in the rural areas. Do those have more than the suburban?

Frost: No.

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Wallin: Or is it pretty much across the board?

Frost: I've tried to see trends of type of projects for the region and it's all over the board. We have two projects that are the same work, will have the same contractors sometimes, have wildly different bid proposals. No, I don't see necessarily a trend. I mean, there are certain items that consistently, you know, depending on asphalt. We do consistently see it on a few items, but regionally I haven't seen anything.

Wallin: I was just curious. Thank you.

Savage: Thank you Madam Controller. Any other comments or concerns? Do you have anything you want to say?

Wellman: Well, I guess I can just to help. Bill Wildman, Las Vegas Paving Director. Paul's absolutely right. I mean, there's materiality and quantity issues. Quite frankly, it's never going to be a perfect world, so if NDOT's team doing quantities don't have it exactly right and if it comes to light and it can't be fixed prior to bid time, we have to take advantage of that or we're not going to be local with all due respect. Rest assured, NDOT's getting the best value. The "penny a ton" oil, for an example is, in different regions you have different quantities of oil added into the mix. Maybe 5½ percent somewhere, maybe 3½ percent someplace else, so I think reading the materials guys probably trying to fix that accordingly but it also depends on which pit it's coming from, on one side of town or the other side of town, but yet, you don't know that.

And because of that when you have that, if we have a material volume of 4 percent oil and somebody else is at 5½ percent, that's a significant amount. That's a significant amount of money. So we can't bid 5½ percent oil if we only put 4 percent into the mix, so we need to be able to take advantage of that so it does make it "apples and apples." So you got (inaudible) wet tons and at times which makes it equal, if you will, but that's, I would call, a material units balanced number.

Mathematically you'll see it quite often if you look at these same things and see mobilization, or roadway X. (Inaudible) roadway X only because it's an upfront item. It's one of the items that's done first where you get paid 25 percent once you sign the contract essentially for mobilization, so 25 percent of that money comes upfront. So keep those things in mind as well and it's kind of all business, if you will, and it's a must in trying to stay competitive in any marketplace, and it has been that way in the 32 years I've been at Las Vegas Paving. So it's not

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something new, whether it's this economy or not. It's always been that way. We're looking to get that project just as anybody else.

And you break down a lot of things. Structure excavation, installing of a pipe, and then you have granular (inaudible). All three of those components happen essentially simultaneously. So how do you budget each piece of equipment or some guy reach one of those components. You kind of really get them as one and then you've got to plug numbers into the others.

And I'll give you an example of Snider Way Bridge that bid last week. We've got the bid abstract on that because, frankly, we thought we would be competitive, not hoping to be low but hell, we weren't even competitive, and we're not even sure why. So we looked at the abstract on that and we can't tell anything from anybody's numbers for the same reasons is, we're not getting any benefit out of it either in understanding because we don't know why this person did it this way and why they did it that way, but it is what it is and maybe as they knew more about the project because they delved into it more than one of our engineers, understood that the quantities were a little different here or distributed them more accurately than we did.

There could be a variety of reasons, and as Bill says, we talked about it as an industry in our liaison committee and this hasn't seemed to be broke and clearly we've defined that NDOT is getting the best value regardless, so why get into something that's not broke.

Savage: Okay, thank you, Bill. Any other questions or comments? Move on to Agenda Item No. 6.

Nelson: So this is our regularly scheduled items to talk about, how we're doing on our construction projects. We'll take them from projects that have closed through active projects and then we'll finish off with our closed session. One of the things we wanted to do is to try to make this a little easier for staff and twice a year we bring a summary of the closed construction projects to the Transportation Board, to the full board. It'll be in December or January and then in June or so.

And so, what we put in your packet this time is that summary from January. We probably should have highlighted the projects that have closed since the last meeting and Megan can tell you which ones those are, but what our plan is, is to give you this whole snapshot every two months and then when the six month time rolls around we'll just take what we've aggregated and present to the Transportation Board and then save until the end of the year.

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To that end, in the back you'll see there's a summary page for every project that has closed out so you can see the accounting from our accounting division as to what we've spent on each of those projects. So Megan, do you want to go ahead and present the projects that have closed since the last time?

Megan: Of course. So in total I just want to say that since the August construction working group meeting, in working closely with the district (inaudible) and additional five contracts and you can see on the first sheet here that 3379, 3423, 3426, 3431, as well as 3439; those are the five contracts that have been closed out since the end of August. And again, as Rick mentioned, the next Construction Working Group will do a better job of bulleting this, so you guys can see them better.

So I will say that, that's five additional, and so since January we've closed out a total of twenty nine projects and we're seeing significant interest and progress in working with the districts, and so I'm pleased to present that as well. And moving to the closeout status log, which is the one with the pretty columns. It can be colorful (inaudible) in front of you. That will identify the remaining contracts that are still in some active phase of being closed out, organized by district first and then by contract number.

And this has been updated as of September 27<sup>th</sup>, so you'll be able to see the progress that has been made on the active projects. And there's a number of them that are close to being closed out as well, so like I said, we are making progress.

Wallin: Can I ask one question here? On this schedule here on Contract No. 3480, it's showing retention of 500,000. Is that a typo? Shouldn't it be 50, because I thought (inaudible)?

Megan: It should be 50. Absolutely. We'll make sure that gets corrected. Good eyes there.

Wallin: One of the things I would like to see on your closed out schedule, not the pretty one, first one. I would like to see -- you have the total number down at the bottom that shows the percentage over/under basically. I would like to see three numbers there; One, the percentage that we have of those under, you know, if you take all the ones that were under what that percentage is, and then all those that are over so I can kind of see how's it balancing out there.

Megan: Sure. Absolutely.



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- Wallin: Because when you combine the under with the over, then it's kind of like well, you know, we're under here but...
- Megan: Sure. It kind of compensates for it elsewhere. Okay. We'll break it out better. Absolutely.
- Wallin: But I do like, you know, I don't know about you, Member Savage, but I do like seeing -- finally making some progress (inaudible)...
- Savage: No, I agree, Madam Controller.
- Wallin: ...contracts closed out.
- Savage: Absolutely. Very informative. You can go back to the individual sheet, the individual job, and if we have any questions or anyone in the department for that matter has a question, you can go to it very quickly so I think we're...
- Wallin: It tells us what's going on.
- Savage: The comments I think, to me, I really like those little comments because it makes it a little bit clearer. I agree with Madam Controller, a lot of progress in the last year on this.
- Megan: We've seen a lot more interest, I think, from our collective -- collectively to work as a group to try and close (inaudible).
- Savage: Because I remember the number 17, in 17 months being the target and I know we can improve on that greatly in the future, and I think that's our goal. I'd like to achieve what we can (inaudible), so I thank you.
- Megan: And then, so I will say, we also wanted to provide, unfortunately, they came in a little bit late so I'm not sure if these were included in your packets, but they were the minutes from our monthly closeout meeting that we have, separated out by district. So if you have any questions on that as well. Certainly we're seeing a lot more attendance at those monthly meetings as well from the district which is very helpful to try and, again, work together as a team to close these out.
- Savage: Absolutely. Everybody's on the same page it's going to move quicker. Like I said last time, I think it's imperative the contractor and the teams realize the first day on the job is the first day of -- they can really start right then and reduce that timeline. Any other questions or comments on the Project Closeout, Agenda Item No. 6?

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Dyson: I'd just like to -- Thor Dyson, engineer from District II, want to state that we're going to have stricter attendance to these meetings. I only have a couple of REs that attended this last one on September 4, so I just want to make it clear that they will be attending future meetings.

Savage: (Inaudible) one of these guys I know. Thank you, Mr. Dyson. Anyone else in attendance have comments?

Nelson: So, if there's no comments on any of the numbers associated with the Closeouts, we can move along to the Active Contracts.

Savage: Item No. C under Agenda 6.

Nelson: So in your packet is Attachment C and that's a listing of active contracts and this is the large page that's color-coded. Just would like to point out that the red, yellow, and green is a subjective opinion, if you will, from the construction division as to whether the contract's in good shape, if we need to watch it or if there's issues that need to be addressed. And in several of these, it shows up in the red because we're either over budget or we're running behind in time. There are a few of these red contracts that do have claims or active litigation, and we can address those -- your questions with respect to those, during Item No. 7, but we are here to answer any questions that you might have about any of these contracts, if you've got a favorite one that you'd like to know what's going on with or a question about any of them. We are more than happy to answer any of those questions you might have.

Savage: I don't have any questions at this time, Mr. Nelson.

Wallin: No, me either.

Nelson: Okay. We'll continue to update these and keep you posted as to what is happening with each one of these contracts.

Savage: Thank you, Mr. Nelson. Any other comments or questions on Item No. 6 from anyone? So at this time I will take a motion for Agenda Item No. 7.

Wallin: (Inaudible) Agenda Item No. 7 (inaudible).

Savage: We'll close the session at this time to seek information from counsel regarding potential and existing litigation, so we'll go offline. Mr. Gallagher.

  
Representative