



# Board of Supervisors Memorandum

November 18, 2014

## Background Information for Agenda Items 7 and 18

### Department of Transportation Project Experience and Certification Acceptance Compliance

#### Background

District 1 Supervisor Ally Miller's November 18, 2014 agenda item request focused on transportation capital improvement projects and use of local, state and federal funds in completing such improvements. A separate memorandum discusses Procurement Department Policies and Procedures that are requested to be addressed in the agenda item request. This memorandum addresses the Pima County Department of Transportation (PCDOT) experience with capital improvement projects (especially those using outside funding sources) and the concerns recently expressed by the Arizona Department of Transportation (ADOT) regarding a particular federally-funded project. In addition, it discusses the challenges faced by the PCDOT with lack of funding to adequately design, construct and maintain its transportation system.

PCDOT depends on the use of regionally allocated state and federal monies to supplement the Regional Transportation Authority (RTA) monies, Highway User Revenue Fund (HURF) revenue bond funds and local HURF funds to implement its capital program. This capital program is adopted annually by the Board of Supervisors, and the funding is achieved through the Pima Association of Governments (PAG) Transportation Improvement Program (TIP) process.

Attachment 1 contains a copy of the October 13, 2014 memorandum from the PCDOT Director, previously sent to the Board, discussing funding for the three northwest projects that are the topic of this current construction issue. As noted in that memorandum, Select Development was the lowest responsible bidder on three federal aid projects: La Cañada, Homer Davis and Magee. Use of federal funds bring requirements for adherence to certain rules, among them use and timely payment of Disadvantage Business Enterprise (DBE) firms. The current controversy on these jobs occurred because Select Development had not been timely in paying its subcontractors, which is an infraction and is monitored by the Federal Highway Administration (FHWA) and ADOT Business Engagement and Compliance Office (BECO).

#### Transportation Capital Improvement Project (CIP) Delivery Process

PCDOT follows Administrative Procedure 3-28, Implementation of the Project Management Manual and Exit Gate Process:

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[http://webcms.pima.gov/UserFiles/Servers/Server\\_6/File/Government/Project%20Management%20Office/Full-Manual-Update-PC-Project-Mgmt-&-Gate-Manual.pdf](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Project%20Management%20Office/Full-Manual-Update-PC-Project-Mgmt-&-Gate-Manual.pdf)

Our Project Management and Gate Process Manual (Manual) is a "living document" developed around certain principles:

- We seek to provide best-in-class capital improvement project delivery.
- Constant, constructive communication and collaboration among project stakeholders is a must for successful CIP delivery.
- Each step and tool used in our Manual must add value to CIP delivery.
- Application of lessons learned as a result of the ongoing delivery of CIPs is our source for continual streamlining and strengthening of our Manual.

The choice of the project management approach detailed in our Manual was not mandated to departments. Rather, after consideration of alternatives, it was selected by mutual agreement among representatives from all County departments responsible for CIP delivery.

The development of project plans and specifications follows the Transportation Roadway Design Manual:

[http://webcms.pima.gov/UserFiles/Servers/Server\\_6/File/Government/Transportation/Roadway%20Design/Roadway%20Design%20Manual/RDM%202014%2009%2022%202014.pdf](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Transportation/Roadway%20Design/Roadway%20Design%20Manual/RDM%202014%2009%2022%202014.pdf)

### **Transportation Construction Administration**

Construction Administration consists of reviewing the design plans, inspecting the work the contractor performs to ensure it meets the plans and specifications, measuring the quantities of work and paying for quantities of work.

PCDOT Field Engineering uses several guidelines, documents and manuals to administer construction contracts. They are as follows:

- Standard Specifications for Public Improvements City of Tucson/Pima County
- ADOT Construction Manual
- Field Engineering Contract Administration Procedures
- Standard Details
- Special Provisions

For federally funded projects, the following guidelines are also used:

- Davis Bacon Resource Book

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- Certified Payroll Workshop, 2013
- Certification Acceptance Program Procedure Manual, 1999, plus updates

The Standard Specifications for Public Improvements City of Tucson/Pima County describes the construction detail of each item of work, how the item is measured and how the item is paid. PCDOT Field Engineering constantly utilizes this book to monitor the construction projects.

If clarification is needed on the specification book, staff refers to the ADOT Construction Manual:

<http://www.azdot.gov/business/engineering-and-construction/construction/ConstructionManual/construction-manual>.

The ADOT Construction Manual is based on ADOT Standard Specifications for Road and Bridge Construction, very similar to the Standard Specifications for Public Improvements, and is organized in the same manner.

The Construction Manual is a manual of administration practices and inspection procedures. It does not replace or supersede the Standard Specifications. The Construction Manual provides an informal and more complete perspective of contract requirements than can be found in formal contract specifications.

PCDOT's Field Engineering Division established the Contract Administration Procedures to provide a guideline for PCDOT Field Engineering staff for reviewing and processing project documentation for Pima County projects. The Procedures discuss subcontracts, supplemental agreements, force accounts, monthly pay estimates, final balance, time reports, etc.

Standard Details are drawings approved for repetitive use, showing details to be used where appropriate.

Special Provisions are additions and revisions to the Standard Specifications covering conditions and requirements specific to an individual project.

In case of any discrepancy or conflict between these documents that may occur on a project, the order in which they govern is as follows:

1. Special Provisions
2. Project Plans
3. Standard Details
4. Standard Specifications

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Should PCDOT Field Engineering staff need additional clarification or direction regarding how to perform their duties, the Division Manager will then issue internal memoranda, such as the one issued on October 6, 2014 regarding quantity measurement, documentation and reporting for partial payment of material on hand (Attachment 2).

The guidelines discuss below are utilized when Pima County projects are fully or partially funded with federal funds:

- The Davis Bacon Resource Book is used to provide the framework for identifying to whom the Davis Bacon prevailing wage requirement applies and to ensure laborers are classified correctly and receive the proper fringe benefits for the classification of work performed.
- The Certified Payroll Workshop Workbook is used to ensure complete and correct Certified Payrolls are submitted as required by federal regulations. LCPTTracker, Labor Compliance Software is used to track certified payrolls.
- The Certification Acceptance Program Procedure Manual was established to serve as a basic resource and reference in carrying out the responsibilities and obligations assumed by the County under Certification Acceptance.

#### **Certification Acceptance Compliance and Contract Monitoring**

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and its 1998 reauthorization, the Transportation Efficiency Act for the 21<sup>st</sup> Century (TEA-21), allow States to administer certain qualifying projects financed with federal-aid funds. These Acts also allow states to extend the same privilege to qualifying local agencies.

The ISTE and its reauthorization, TEA-21, provide greater flexibility on behalf of state and local governments in determining transportation solutions through "Certification Acceptance" procedures by delegating greater administrative responsibility to them.

Certification Acceptance is an agreement with the FHWA that authorizes ADOT to approve the engineering details in final reports for corridor approval, design approval, plans/specifications and cost estimate approval, contract advertising and award, and construction inspections for federal-aid projects. The State in turn can delegate similar approval authority to local jurisdictions.

PCDOT entered into a Certification Acceptance Program with the ADOT in January 1995. A copy of that original agreement is Attachment 3. With this agreement, PCDOT can manage and deliver its own projects that receive federal funding, as well as expedite the

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completion of environmental compliance during project development and accelerate project schedules to the maximum extent possible. Prior to this agreement, PCDOT could obtain federal funding through the PAG TIP process; however, ADOT would approve all project development documents requiring significantly greater time and effort to complete. ADOT has eight Certification Acceptance Program Agreements with local jurisdictions around the state, and all eight are currently going through a recertification process. The revised agreement is expected to be presented to the Board of Supervisors for approval in early fall 2015.

Pima County's experience as a self-certified local government authorized by ADOT and FHWA to undertake federally funded projects is also noteworthy. Certification Acceptance neither affects nor discharges any responsibility or obligation of the FHWA or ADOT under any law other than 23 USC 117(a), which provides for the administration of federal-aid funds using **applicable** State laws, regulations, directives and standards on all federal-aid highways except the Interstate System.

Attachment 4 is a listing of all CIPs completed by PCDOT since the inception of the County's 1997 Transportation Bond Program and the 2006 RTA. This list does not include active projects under design and/or construction.

PCDOT was diligently working on the 1997 Bond projects when the RTA was approved. The RTA projects had specific time periods to implement the projects and PCDOT knew they must have the resources to meet those deadlines. PCDOT hired additional staff for Field Engineering and established consultant contracts to handle the demand for construction administration. PCDOT also began a monthly dialogue with all utility providers to ensure they were aware of the magnitude of utility relocations needed and the schedule that must be adhered to. PCDOT successfully met the RTA timelines for their project, as well as continuing with the bond projects. The project list demonstrates that since 1997, PCDOT has successfully completed 281 roadway projects totaling over \$697 million.

Of these 281 projects, 91 were federally funded transportation projects successfully undertaken by PCDOT under the Certification Acceptance program, totaling over \$67 million. All of these projects were successfully completed with no difficulties in fulfilling all responsibilities imposed by federal regulations in the management of such funding sources.

#### **Recent Construction Contract Compliance Issues on a Federally Funded Project**

PCDOT has been in continuous discussions with FHWA and ADOT regarding the subcontract issues encountered on the three projects mentioned in the second paragraph of this memorandum. Attachment 5 is a timeline that shows that discussions began in May 2014, at which time PCDOT sought the help from these agencies on dealing with

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Select Development. Attachment 6 includes copies of the several letters between Pima County and ADOT and FHWA regarding Select Development. It should be noted that Pima County has been aggressive in responding to these concerns. Recently, when the County requested an urgent meeting to address the serious allegations made against PCDOT and possible actions ADOT had mentioned, ADOT replied that due to their schedules, they could not arrange a meeting with us until December. I asked that a meeting be scheduled for the week of November 17, 2014 to address our concerns (included in Attachment 6.)

On November 3, 2014, PCDOT and Procurement sent Select Development a letter advising Select had 10 days to cure their contract infractions on the Magee: La Cañada to Oracle project (included in Attachment 6). Specifically, they must provide evidence they have paid all their subcontractors with Release of Payment Liens and proof of how they intend to complete the Magee project in the 53 remaining days of the contract while only 20 per cent of the contract work has been completed. Select Development must also provide an updated project schedule that complies with the County's standards. When we receive a response from Select Development, it will be forwarded to the Board.

#### **PSOMAS Construction Administration Services**

Information regarding the use of PSOMAS, a local consulting engineering firm, for construction management services on the La Cañada project may also be of interest (Attachment 7). As PCDOT was preparing to advertise this project for construction in late 2011, PCDOT determined it had insufficient staff to oversee the construction management activities of the project. At that time, PCDOT had an extensive workload with other RTA projects, including La Cholla: Magee to Overton and Cortaro Farms Road: Thornydale to La Cañada. PCDOT utilized PSOMAS, who was listed on the Procurement Department on-call construction surveillance list, and PSOMAS began work in spring 2012. PSOMAS was selected from the list because of its past positive performance on PCDOT construction projects. In November 2013, PCDOT began discussions with PSOMAS regarding their contract earned amount reaching the authorized contract limit. While PCDOT was satisfied that PSOMAS provided all requested services at an acceptable quality, PCDOT's Field Engineering workload had been reduced to a level that allowed for the remainder of the project to be overseen by the in-house workforce. PSOMAS' level of effort on the project was subsequently reduced so their contract amount could be spread over the remaining life of the project. PCDOT employees and other consultant staff assumed the remaining administration and inspection of the construction activities. Limited PSOMAS personnel remained on the project until their contract amount was expended. PSOMAS continues to provide quality service and will be employed in the future as long as they remain on the Qualified Consultant List and as PCDOT workload may demand.

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**Funding Issues**

This memorandum will also address funding issues and the disproportionate amount of funds we receive for HURF and vehicle license tax compared to Maricopa County. Attachment 8 shows the amount of funds Pima County receives and the amount as compared to Maricopa County. Maricopa County has only 233 more miles of roads in the incorporated area to maintain than Pima County, yet they receive nearly \$56 million more each year than Pima County. In comparing the condition of Pima County highways to Maricopa, approximately 66 percent of Pima County roadways are in failed or poor condition, whereas Maricopa County's highway system has 88 percent in good or better condition, which means our 66 percent poor or failing compares to only 12 percent of Maricopa roads being similarly classified. I have advocated several options to increase transportation funding to allow Pima County to address the condition of our roads. See Attachment 9, which summarizes road funding issues.

**Summary**

Over the last approximate 17 years, Pima County has implemented over \$697 million of roadway construction improvement projects. These projects have been completed using combinations of federal, state, regional and local funds with varying requirements to be addressed in fulfillment of funding source requirements. We have greatly benefited from our designation under the Certification Acceptance process implemented by ADOT through authorization from the FHWA. Our successful implementation of 91 projects using over \$67 million in federal funds substantiates and supports our continued designation under this program, and we fully expect that state and federal regulatory authorities will verify our actions on the Select Development contracts have complied with our oversight responsibilities.

Respectfully submitted,

  
C.H. Huckelberry  
County Administrator

CHH/mjk – November 14, 2014

Attachments 1 – 9

c: John Bernal, Deputy County Administrator for Public Works  
Priscilla Cornelio, Transportation Director  
George Widugiris, Procurement Director