

MISSISSIPPI PORT AUTHORITY
BOARD OF COMMISSIONERS
SPECIAL MEETING

September 29, 2014

Minutes of the Mississippi State Port Authority Board of Commissioners Special Meeting, Monday, September 29, 2014, 2510 14th Street, Suite 1450, Gulfport, Mississippi, at which the following Commissioners and staff were present:

Commissioners:

John K. Rester, President
Jack Norris, Vice-President
E.J. Roberts, Secretary
Robert J. Knesal, Treasurer
James C. Simpson, Jr., Commissioner

Staff:

Jonathan Daniels, Executive Director & C.E.O.
Matthew Wypyski, Chief Operating Officer
John Webb, Director of Engineering
Joe Conn, Director of Restoration
Carlos Bell, Director of Community Relations/Marketing
Mel Arsenault, Director of Compliance
Mary Bourdin, Director of Finance
Kim Purchner, Executive Asst./HRO
Kim Aguilard, Marketing Specialist

Ben Stone, Balch & Bingham

Others:

James Necaize, Necaize Brothers Construction
D. Palmer, Hanmore Brothers
David Machado, Machado/Patano
Robert Gregory, Design Precast & Pipe, Inc.
Landry Fore, Design Precast & Pipe
Randall Love, T.L. Wallace
Mark Schloegel, Stewart Sneed Hewes

Commissioner Rester noted the presence of a quorum and called the special meeting to order at approximately 4:00 p.m.

Commissioner Knesal moved to close the meeting to determine the need for Executive Session. Commissioner Norris seconded and the motion was unanimously approved.

Commissioner Roberts moved to enter into Executive Session to discuss a Legal Matter (lease/contract negotiations). Commissioner Simpson seconded and the motion was unanimously approved.

(THE BOARD OF COMMISSIONERS ENTERED INTO EXECUTIVE SESSION AT APPROXIMATELY 4:05 P.M.)

Commissioner Rester stated that no action took place in Executive Session.

Commissioner Knesal moved to add two items to the agenda; 1) Island View's request for ad valorem exemption and 2) award of Project #302. Commissioner Roberts seconded and the motion was unanimously approved.

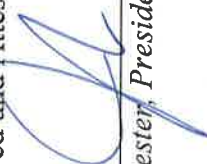
Commissioner Norris moved to approve request of Island View Resort & Casino for a partial ad valorem tax exemption for the calendar year 2015, excluding school taxes. Commissioner Knesal seconded and the motion was unanimously approved.

Commissioners Norris and Knesal recused themselves and left the meeting.

Commissioner Roberts moved to approve Resolution No. 14-02 (attached), having been read in its entirety by Commissioner Rester. Resolution No. 14-02 awards the West Pier Construction Phase 1, Project No. 302 to Necaize Brothers Construction Company, Inc. Necaize Brothers Construction Company, Inc. was the lowest and best, responsive and responsible bidder at \$63,332,220.44. Commissioner Simpson seconded and the motion was unanimously approved.

The meeting adjourned at approximately 4:40 p.m.

Approved and Attested



John Rester, President



E.J. Roberts, Secretary

RESOLUTION NO. 14-02

The Board of Commissioners of the Mississippi State Port Authority at Gulfport (the "Port Authority") took up for consideration the matter of awarding the contract for the West Pier Construction Phase 1, Project No. 302. Thereupon, Commissioner Roberts offered and moved the adoption of the following resolution:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT APPROVING THE AWARD OF THE WEST PIER CONSTRUCTION PHASE 1, PROJECT NO. 302 TO NECAISE BROTHERS CONSTRUCTION COMPANY, INC.

WHEREAS, on or about July 28, 2014, the Port Authority issued an Advertisement for Bids for the West Pier Construction Phase 1, Project No. 302 (the "Project"), which, among other things, stated: (i) that the Project was covered by the requirements of Section 3 of the Housing and Urban Development Act of 1968 and (ii) the Award of Contract criteria for the Project would be expressed in the Instruction to Bidders;

WHEREAS, the Instructions to Bidders required that, among other things, each bidder of the Project was to provide the Port Authority with Section 3 documents as described in the section of the Instructions to Bidders titled "Award of Contract." A copy of the Instruction to Bidders, as amended by Addendum No. 1, is attached as Exhibit "A" and fully incorporated herein;

WHEREAS, the Award of Contract section of the Instructions to Bidders stated that, among other things, any responsive, responsible bidder that qualifies as a Section 3 Business Concern would be entitled to a preference of 1.5 percent of the low bid for purposes of evaluating and determining the lowest and best bidder;

WHEREAS, the Award of Contract section of the Instruction to Bidders, as amended by Addendum No. 1, provided that all bidders were required to demonstrate commitment to the achievement of the PGRP Section 3 Goals in one of two ways: (1) Certifying as a Section 3 Business Concern; or (2) providing a Section 3 Plan detailing how the bidder will meet the Section 3 subcontracting goal of providing subcontracting opportunities to Section 3 Business Concerns in an amount not less than 10% of the total contract amount. The Instruction to Bidders, as amended, further provided that a bidder's subcontracting plan should: (i) include the necessary number of Section 3 business subcontractors to meet or exceed the goal for this contract; and (ii) clearly state the total dollar value that will be self-performed and the total dollar value which will be subcontracted to Section 3 Business Concerns, providing for each listed Section 3 Business Concern a fully completed Section 3 Business Certification form, the amount to be performed/subcontracted, the scope of the work and the anticipated timeframe for performance of the work;

WHEREAS, the Award of Contract section of the Instruction to Bidders, as amended, further provided that any bid submitted without satisfying one of the two Section 3 requirements above would be deemed "**non-responsive and rejected**";

WHEREAS, the Award of Contract section of the Instructions to Bidders further stated that any bidder found to have submitted a Section 3 Plan that does not meet the minimum thresholds or provide a workable implementation plan for meeting the Section 3 goals will be found to be non-responsible for this Project;

WHEREAS, the Award of Contract section of the Instructions to Bidders further stated that the Project would be awarded to the lowest responsive, responsible bidder, subject to the preference for a Section 3 Business Concern of 1.5 percent of the low bid amount for the purpose of determining the lowest and best, responsive and responsible bid as provided in the Appendix to 24 C.F.R. Part 135;

WHEREAS, on or about August 13, 2014, the Port Authority held a pre-bid public meeting to discuss the Project and the requirements for submission of bids, which included the Section 3 requirements and the preference given for Section 3 Business Concern Certification;

WHEREAS, in attendance at that pre-bid public meeting were representatives of the following prospective bidders: Necaize Brothers Construction Company, Inc. (“Necaize”); W.C. Fore Trucking, Inc. (“Fore”); Hemphill Construction Company, Inc. (“Hemphill”); Southern Industrial Contractors, LLC (“Southern”); and Huey Stockstill, Inc. (“Stockstill”);

WHEREAS, on September 18, 2014 at 10:00 a.m., the Port Authority opened the sealed bids submitted by the following bidders, and the total bid amount submitted by each respective bidder was as follows:

Bidder Name	Total Bid Amount
Fore	\$62,935,274.54
Necaize	\$63,332,220.44
Hemphill	\$68,728,914.15
Stockstill	\$73,652,176.00
Southern	\$77,622,234.96

WHEREAS, in accordance with the requirements of the Instructions to Bidders, Necaize submitted a bid which evidenced its certification as a Section 3 Business Concern;

WHEREAS, no other bidder submitted (i) a bid which evidenced its certification as a Section 3 Business Concern or (ii) a Section 3 Plan detailing how the bidder would meet the Section 3 subcontracting goal of the Project as required in the Instructions to Bidders, as amended;

WHEREAS, the Port Authority finds that, based upon Necaise's compliance with the requirements of the Instructions to Bidders, as amended, all bidders had a fair and reasonable opportunity to respond;

WHEREAS, in accordance with the requirements of the Award of Contract section of the Instructions to Bidders, the Port Authority determined that the following bidders were non-responsive and non-responsible because they each failed to provide documentation showing how they would meet the Section 3 requirements for the Project: Fore, Hemphill, Southern and Stockstill. The respective letters delivered to Fore, Hemphill, Southern and Stockstill outlining the Port Authority's findings of non-responsiveness and non-responsibility are attached as composite Exhibit "B" and are fully incorporated herein;

WHEREAS, more specifically, the Section 3 Business Concern Certification provided by Fore with its bid has the box for "No" checked in response to the question: "Does your firm represent and certify that it is a Section 3 business concern?". Fore submitted an additional document entitled Section 3 Project Plan that has the box for "No" checked in response to the question: "Are you a Certified Section 3 Business Concern?". Further, the Section 3 Project Plan form provided by Fore does not provide a workable implementation plan, or any details thereof, for accomplishing the Section 3 subcontracting goals (at least 10% of the total contract amount) as specified and required in the Invitation for Bids, as amended. In fact, the Section 3 Project Plan provided by Fore with its original bid provides the following responses:

Contract Amount Expected to Subcontract to Sec 3 Businesses:	\$	N/A
Percent of Total Dollar Amount Available to Subcontract Expected to Subcontract to Sec 3 Businesses	\$	N/A

The Section 3 Business Concern certification and Section 3 Project Plan provided by Fore with its original bid are attached as Exhibit "C" and are fully incorporated herein;

WHEREAS, Necaise was the only bidder to submit a responsive, responsible bid;

WHEREAS, even if the bid provided by Fore had been responsive and responsible by providing an adequate Section 3 Plan detailing how it would meet the Section 3 subcontracting goal in accordance with the requirements of the Instructions to Bidders, which it did not, the 1.5 percent preference applied to Necaise as a Section 3 Business Concern pursuant to the Instruction to Bidders and 24 CFR Part 135 would require a finding that Necaise was the lowest and best, responsive and responsible bidder;

WHEREAS, the 1.5 percent preference for a Section 3 Business Concern is calculated as follows pursuant to the 24 C.F.R. Part 135, Appendix, Section III(2)(i): "An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid - (A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and (B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows: . . .When the lowest responsive bid is: . . .\$7 million or more - 1 1/2 % of the lowest responsive bid, with no dollar amount.";

WHEREAS, Necaise provided the lowest responsive, responsible bid. However, hypothetically, even if Fore's bid had been responsive and responsible by providing an adequate Section 3 Plan detailing how it would meet the Section 3 subcontracting goal, which it did not, Necaise would still be found to be the lowest and best, responsive and responsible bidder after applying the Section 3 Business Concern preference as follows:

(A) Necaise's bid satisfies 24 C.F.R. Part 135, Appendix, Section III(2)(i)(A) because the Port Authority did not establish a maximum total contract price for this Project; and

(B) Necaise's bid is not more than \$944,029.11 (\$62,935,274.54 x 1.5%) higher than Fore's bid (difference between Necaise's bid (\$63,332,220.44) and Fore's bid (\$62,935,274.54) is \$396,945.90);

WHEREAS, on September 22, 2014, Fore requested that it be allowed to amend its original bid provided on the Project. More specifically, Fore stated that it made a clerical mistake by expressing in its original bid that it was not a certified Section 3 Business Concern, and Fore requested that it be allowed to substitute its bid with amended forms (Form D-1 and D-6) indicating that Fore is a Section 3 Business Concern for this Project;

WHEREAS, the Port Authority hereby finds that allowing any non-responsive, non-responsible bidder to supplement its bid with additional materials to substantiate its certification as a Section 3 Business Concern would affect the competitiveness of the bidding process for the Project because such certification impacts economic provisions of the bid by implicating the 1.5 percent preference applied to Section 3 Business Concerns, which is currently unavailable to those non-responsive, non-responsible bidders who failed initially to provide evidence of certification as a Section 3 Business Concern in accordance with the provisions of the Instructions to Bidders;

WHEREAS, in accordance with the plain language contained in the requirements of the Instruction to Bidders for the Project, the Port Authority hereby finds that allowing any non-responsive, non-responsible bidder to supplement its bid with additional materials to substantiate its certification as a Section 3 Business Concern may cause or contribute to one or more of the following: (i) violation of a mandatory statutory or regulatory provision; (ii) destruction of the competitive character of the bid; (iii) impact the amount of a bid upon implication of the 1.5 percent preference to the total bid amount; and/or (iv) give one bidder an advantage or benefit over another;

WHEREAS, it is not clear or evident to the Port Authority that Fore made a clerical mistake in its original bid when it expressed that it was not certifying as a Section 3 Business Concern for this particular Project;

WHEREAS, even assuming for the sake of argument that the amendments to the Section 3 documentation proposed by Fore were permissible, Fore neglected to submit a complete Bid Form (page 5 of the Bid Form is missing) with its bid, and such Bid Form was required by the plain language of the Instructions to Bidders. As a result, the Port Authority finds that Fore's bid is non-responsive on this basis;

WHEREAS, based on the foregoing, the Port Authority hereby finds that it cannot waive Fore's failure in its original bid to comply with the Instruction to Bidders for the Project as it pertains to that bidder's requirement to provide certification as a Section 3 Business Concern or to provide a Section 3 Plan detailing how it would satisfy the Section 3 subcontracting goals of the Project. As a result, the Port Authority denies Fore's request to amend its bid on the Project; and

WHEREAS, the Port Authority now desires to authorize and approve the award of the contract for the West Pier Construction Phase 1, Project No. 302 to Necaise Brothers Construction Company, Inc. as the lowest and best, responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT, AS FOLLOWS:

In accordance with the findings of the Board of Commissioners as set forth in the Recitals above and Mississippi law, the Port Authority hereby authorizes and approves the awarding of the contract for the West Pier Construction Phase 1, Project No. 302 to Necaise Brothers Construction Company, Inc. because it is the lowest and best, responsive and responsible bidder.

Commissioner Simpson seconded the motion to adopt the foregoing Resolution, and the vote thereupon was as follows:

	<u>Voted:</u>
Commissioner Knesal:	<u>Recused</u>
Commissioner Norris:	<u>Recused</u>
Commissioner Rester:	<u>Affirmative</u>
Commissioner Roberts:	<u>Affirmative</u>
Commissioner Simpson:	<u>Affirmative</u>

The motion having received the foregoing vote of the Board of Commissioners, the President declared the motion carried and the Resolution adopted, on this the 29th day of September, 2014.

This Resolution, along with any exhibits thereto, shall be incorporated into and considered as part of the minutes for the Board of Commissioners' meeting in which it is adopted.


JOHN RESTER, PRESIDENT