



MEMORANDUM

Date: November 20, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Select Development Status Report on Department of Transportation (DOT) Projects**

Attached is a November 17, 2014 status report from DOT pertaining to the three highway construction projects under contract with Select Development. With respect to the Magee Road project, I am providing the following additional information:

- On November 18, 2014, Select Development responded to our November 3, 2014 Ten Day Cure Notice. This information is being reviewed by the Procurement Department and DOT to assess whether the deficiencies with respect to the contract schedule and subcontractor and supplier payments have been adequately addressed.
- On November 19, 2014, a telephone conference was conducted with the Arizona Department of Transportation (ADOT) to review our recent correspondence with respect to compliance with all applicable federal fund provisions on the Magee Road project. ADOT assured us they are satisfied with Pima County's actions to provide oversight of contractor activities on the federally funded projects, and they committed to work with us in resolving the issues pertaining to these projects.

I will provide additional information relative to actions to be taken with respect to the Select Development contracts as it becomes available.

CHH/mjk

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Priscilla Cornelio, Director, Department of Transportation
Ana Olivares, Deputy Director, Department of Transportation
George Widugiris, Director, Procurement
Terri Spencer, Division Manager, Procurement



MEMORANDUM

DATE: November 17, 2014
TO: C.H. Huckelberry, County Administrator
FROM: Priscilla S. Cornelio, P.E., Transportation Director 
SUBJECT: Update Regarding La Cañada Drive, River Road to Ina Road

Per your memorandum dated May 19, 2014 attached is the biweekly update report regarding La Cañada Drive: River Road to Ina Road. We have also included the status of two other projects, Magee: La Cañada to Oracle and Homer Davis School which are being constructed by Select Development.

Please let me know if you have any questions.

PSC:dg

Attachment

- c: John M. Bernal, Deputy County Administrator for Public Works
- George Widugiris, Director, Procurement
- Ana Olivares, Deputy Director
- Rick Ellis, Division Manager
- Thomas Kilargis, Division Manager

Select Development Project Progress Updates

November 17, 2014

4LCRRI La Cañada, Ina to River

NTP: May 7, 2012

Contract Time: 529 Working Days (1)

Days Remaining: -85 - (-85 days of LDs) Working Days (as of week ending November 14, 2014)

Note 1: Original Time was 480 Working Days. Approved time extensions have added 49 days.

Progress:

Select continues working on curb and medians throughout project. Mainline paving and temporary striping is complete. Several driveways need to be completed. Major work not completed is minor structure work, drainage excavation, including slope paving and riprap, landscaping, permanent striping, signing, and cleanup work.

PCDOT Actions:

Contract time expired on Tuesday, July 1, 2014 and liquidated damages continue to accrue. PCDOT staff continues to meet regularly with Select to discuss schedule and overall progress, as well as highlight key areas of emphasis such as completion of driveways and other time critical activities.

PCDOT reviewed Selects' schedule submitted September 11, 2014. After reviewing the schedule, PCDOT has determined the schedule does not comply with the contract and requires corrections and resubmittal. Select has not submitted the revised schedule. PCDOT staff has at minimum, weekly meetings with Select to discuss schedule and progress.

Sub-Contractor Payments:

PCDOT continues to work through subcontractor/supplier payment issues. The FHWA Office of Civil Rights continues the investigation into the allegations of nonpayment or late payments to DBE subcontractors. As part of the investigation, FHWA had requested documentation from Select. Select requested a 60-day time extension to gather the information. FHWA agreed to a 30-day time extension with the condition that Select authorize FHWA personnel to help find the relevant information in the company's files. Select had until October 29, 2014 to respond to FHWA if this condition was amendable to them. To date we continue to receive no further information from FHWA regarding this investigation.

As mentioned in previous reports FHWA is very concerned regarding Select and the allegations of civil rights violations on all three projects. FHWA will continue their investigation of Select and they will perform an audit of PCDOT to verify how projects are managed, especially the use of pre-qualification of contractors and investigate PCDOT's self-certification. FHWA is seriously considering suspension of reimbursement of federal funds, from the date of civil rights infraction, forward.

The landscape subcontractor, Diggum Excavating, is owed approximately \$125,000 for August and September. PCDOT sent a letter to Select on Friday, October 17, 2014 requesting an explanation for the untimely payment and the date of when they expect to make payment. October 20, 2014 Select sent a letter stating that at this time the landscape subcontractor has not provided the required documentation. PCDOT responded in an e-mail to Select and asked for specifics on the required documentation and what date Select informed Diggum that the documentation was required in order to receive payment. On Friday, October 31, 2014 Procurement sent Select a letter requesting a status update on Diggum documentation and reminding Select that Diggum is their DBE subcontractor to meet the DBE goals on this project. DBE utilization is not credited towards the goal until the DBE firm is paid for the work

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performed. Select was given three business days to respond to the request. Select paid Diggum's outstanding balance through September 25, 2014 on November 3, 2014 and with that payment have met the DBE goals for this project.

PCDOT sent a letter to Select on October 16, 2014 stating Select must provide Pima County signed Unconditional Waiver and Release on progress payments through the end of September 2014 for all subcontractors and suppliers prior to receiving the October Estimate payment. Select submitted the October invoice; however, it has not been released. PCDOT is waiting to receive release waivers from all subcontractors and suppliers. County Attorney is working with Selects' surety company and exploring the option to pay the surety company direct and have them pay Select and their subcontractors and suppliers.

PCDOT Actions:

PCDOT will continue working with Select and their subcontractors, as well as ADOT and FHWA. PCDOT has provided and will continue to provide information requested by FHWA for their investigation.

SWPPP:

PCDOT Erosion Control Coordinator and Contractor counterpart continue to conduct regular inspections, document the inspections and correct any deficiencies that need correction.

PCDOT Actions:

PCDOT will continue monitoring SWPPP.

Claim:

Select submitted a Request for Information (RFI) Response Time Delay Claim seeking compensation of \$2,434,909.90. PCDOT denied this claim due to not giving proper notification as outlined in Section 105 of the Standard Specifications. Select does not accept denial and sent a letter on June 17, 2014 stating the claim amount has risen to \$3,208,005.14. The claim was denied at the Director's level.

PCDOT Actions:

PCDOT latest response was sent on September 5, 2014 again stating their claim was denied because it lacks justification and fails to demonstrate which tasks, if delayed, delayed the project as a whole.

In anticipation of legal action by Select, County Attorneys' office has retained specialized legal services to assist PCDOT. PCDOT continues to confer with County Attorney's office prior to sending any correspondence to Select.

As of today, no further information has been received on this matter.

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4MRLCO Magee III, La Cañada to Oracle

NTP: October 28, 2013

Contract Time: 306 Working Days (2)

Days Remaining: 50 Working Days (as of week ending November 14, 2014)

Note 2: Contract time includes the approved 6-day time extension.

Select has requested a 35-day time extension for a Tucson Water issue and the request remains unresolved as PCDOT waits for additional information from Select.

Response: PCDOT reviewed the request and sent a letter denying the request on November 12, 2014. The request was denied for because the section of waterline under re-design was not on the schedule critical path, other similar work was available and could have been worked on as re-design was completed. PCDOT had offered to participate in a remobilization out of the work area to move ahead to next waterline location and then remobilization back to redesign area; however, Select did not accept offer.

On October 14, 2014 Select sent a letter requesting an additional 70 days of contract time for DBE replacement. Select states using an approved DBE was a requirement of the Contract Documents and Blue Diamond was an approved DBE at the time the Subcontract Agreement was signed and it is at no fault of Select Development that the project was delayed by Blue Diamond Contracting L.L.C. The Magee project has had substantial delays caused by Blue Diamond's inability to perform the work and Select having to procure an alternative DBE to meet the requirements. The scope of work that was being performed by Blue Diamond prior to their abandonment was in the critical path of the project and hindered the ability of Select Development to stay on schedule and within the DBE requirements.

Response: County Procurement responded to the DBE letter on October 21, 2014 stating Section 10.01 of the DBE Provisions of the contract, "The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason." As such, it is Select's responsibility to immediately resolve any DBE issues and mitigate any impact to the project schedule. In addition, Select failed to properly request a time extension within three working days after learning of the event. The request for time extension was denied.

On October 14, 2014 Select sent a letter requesting an additional 83 days (and counting) of contract time for delays associated with Box Culvert 3. Select states the delay has been due to flooding of the site. They also state the work was hindered by TEP having to relocate and a Tucson Water tie-in.

Response: PCDOT has reviewed the Box 3 delay time request and sent a letter denying the request on November 5, 2014. The storm damage to the excavation for Box Culvert 3 is Select's responsibility. Section 107-19 Contractor's Responsibility for Work states; "Until final written acceptance of the project by the Engineer, the contractor shall have the charge and care thereof, and shall take every precaution against injury or damage to any part thereof by the action of the elements from any other cause, whether arising from the execution or from the nonexecution of the work".

Progress:

Select has shifted traffic along Magee to the south side of the roadway for the segment of pavement that has been installed between La Cañada and La Oeste. They are also working on Tucson Water dip sections and tie-ins on the south side of Magee and other grading work on the north half of the project where the traffic switch occurred. Select continues to comment that they will be installing pre-cast box

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installation along Magee in the near future. Pre-cast box number 3 on the north side of Magee next to Northern Ave continues to be delayed.

Select sent a Notice of Possible Delay e-mail on November 11, 2014. The e-mail states the following: This email shall constitute proper Notification per contract Documents. Select is currently working on completing subgrade areas on the Magee III project. It has been directed by PCDOT that landscape sleeves must be installed prior to ABC placement. The landscape sleeves are currently in Diggum Landscaping scope. Diggum is the replacement DBE for this project. Per prior instructions Select cannot complete DBE scope. This work will be delaying the project schedule and Select's ability to perform by November 12, 2014. Please advise as to how Select should proceed.

PCDOT Actions:

Estimated completion date per Select's schedule is now June 2015. Select submitted this schedule on September 16, 2014. After reviewing the schedule, PCDOT has determined the schedule does not comply with the contract and requires corrections and resubmittal. An explanation of why substantial completion is well beyond the remaining contract time is also needed. Select failed to respond.

On Monday, November 3, 2014 Select was hand delivered (and e-mailed) a Notice to Cure letter. Select has not submitted an updated schedule as requested and to date they have completed 19.4% of the work and utilized 79.1% of the time. In addition, subcontractors and suppliers are not being paid timely. With this letter, Select is placed on formal notice that it is in default of its Contract with Pima County according to Article XV (B) – Termination of Contract for Default, which states: The occurrence of any of the following shall constitute an event of default:

1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
5. Failure to make prompt payment to subcontractors or suppliers for material or labor.

Select has 10 business days from receipt of this notice to cure all defaults. Should Select fail to cure, Pima County will take all necessary actions to protect its position including, but not limited to, termination of the Contract. A response from Select has not been received.

PCDOT responded to Notice of Delay for landscape sleeves on November 13, 2014. PCDOT responded they will not entertain any request for additional time or money due to this because it is Select's responsibility to arrange for the placement of landscape sleeves prior to AB placement with their own or subcontracted forces. Select has an approved landscape subcontractor, Foothills Grounds, who could have performed the work on a timely basis had Select not made the decision to shift that work to Diggum.

PCDOT issued a partial stop work order to Select on Friday, November 13, 2014. Select wanted to start the demolition work on Magee south of Oracle; however, with no schedule of when the new work would be completed and therefore, no knowledge of how long businesses would be inconvenienced, Field Engineering did not allow the demolition work to start. In addition, Select currently has other areas of curb and drainage excavations not completed.

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Sub-Contractor Payments:

PCDOT continues to work through subcontractor/supplier payment issues. The FHWA Office of Civil Rights continues the investigation into the allegations of nonpayment or late payments to DBE subcontractors. As part of the investigation, FHWA had requested documentation from Select. Select requested a 60-day time extension to gather the information. FHWA agreed to a 30-day time extension with the condition that Select authorize FHWA personnel to help find the relevant information in the company's files. Select had until October 29, 2014 to respond to FHWA if this condition was amendable to them. We have received no further information from FHWA regarding this investigation.

As mentioned in previous reports FHWA is very concerned regarding Select and the allegations of civil rights violations on all three projects. FHWA will continue their investigation of Select and they will perform an audit of PCDOT to verify how projects are managed, especially the use of pre-qualification of contractors and investigate PCDOT's self-certification. FHWA is seriously considering suspension of reimbursement of federal funds, from the date of civil rights infraction, forward.

PCDOT sent a letter to Select on October 16, 2014 stating Select must provide Pima County signed Unconditional Waiver and Release on progress payments through the end of September 2014 for all subcontractors and suppliers prior to receiving the October Estimate payment. Select has submitted the October Pay Request; however, not all the lien releases have been submitted and the Notice to Cure letter also stated that no payments would be made to Select until the Notice to Cure had been lifted.

PCDOT Actions:

PCDOT will continue working with Select and their subcontractors, as well as ADOT and FHWA. PCDOT has provided and will continue to provide information requested by FHWA for their investigation.

The County has requested a meeting with ADOT BECO office to discuss the allegations of civil rights violations and PCDOT's performance. A letter was sent to them requesting a meeting the week of November 17, 2014. County Administrator sent a copy of this letter to the ADOT Director. A date for the meeting has not been set.

SWPPP:

PCDOT Erosion Control Coordinator and Contractor counterpart continue to conduct regular inspections, document the inspections and correct any deficiencies that need correction.

Actions:

PCDOT will continue monitoring SWPPP.

Sub-Contractor Approvals:

When Select was awarded the contract by the BOS, the Board stipulated that all sub-contractors not shown in the initial sub-contractor list submitted at bid time, be brought to the BOS for approval before starting work. Select is following through with this, though it has been challenging for Select to obtain sub-contractors.

On Friday, October 10, 2014 Select submitted to County Procurement a DBE substitution request, along with a copy of a signed subcontract agreement with Diggum, for landscape items. Select is requesting approval for Diggum to fulfill the project DBE requirements. County Procurement promptly sent this request to ADOT BECO for their review and approval. Late Friday, October 10, 2014 ADOT BECO

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requested additional information regarding the contracted structure work Blue Diamond had completed and if anyone else had completed some of their work. County Procurement responded with the requested information on Tuesday, October 14, 2014 along with a copy of a letter sent to Select from PCDOT requesting they cease all work on any items that had been subcontracted to Blue Diamond. On October 24, 2014 BECO office approved the Diggum substitution in order that the DBE commitment amount can be met on the contract; however, they stated this approval does not minimize or negate Select's noncompliance with DBE regulations and Pima County's failure to properly provide oversight.

PCDOT Actions:

PCDOT staff placed the approval of Diggum as a subcontractor on the November 18, 2014 BOS agenda.

Claim:

No claims have been submitted on this project, though the time extension requests could potentially become requests for extended overhead compensation.

In anticipation of legal action by Select, County Attorneys' office has retained specialized legal services to assist PCDOT. PCDOT continues to confer with County Attorney's office prior to sending any correspondence to Select.

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4HDBPE Homer Davis School TE

NTP: June 20, 2013

Contract Time: 125 Working Days (3)

Days Remaining: 1 Working Days (as of week ending November 14, 2014)

Substantial Completion: August 6, 2014

Note 3: Throughout the construction duration, several utility conflicts arose which required a number of new design and re-design efforts. Contract time (working days) was not charged for utility impacts and design changes.

Progress:

Project items of work are substantially complete. Select slowly working on punchlist items prior to Final Acceptance. Select stated they would be on site to correct asphalt deficiencies as soon as they have completed paving on the La Cañada project. Final project documentation, such as material certification, and proof of final payment to subcontractors and suppliers needs to be submitted to PCDOT.

PCDOT Actions:

PCDOT continues to work with Select to close out the project as quickly as possible. PCDOT has requested a schedule of when items will be completed. PCDOT will continue to hold retention until punchlist items are complete. PCDOT is considering sending Select a letter giving them 60 days to finish punchlist items or we will have to use the retention funds to hire someone else to finish the job.

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PCDOT Actions:

PCDOT will continue monitoring SWPPP.

Claim:

Select has requested compensation for additional home office and loss of profit based on extended contract time and increase in project scope.

PCDOT Actions:

PCDOT latest response was sent on August 27, 2014 stating additional compensation was not warranted and their request was denied.

In anticipation of legal action by Select, County Attorneys' office has retained specialized legal services to assist PCDOT. PCDOT continues to confer with County Attorney's office prior to sending any correspondence to Select.

To date no further correspondence from Select has been received on this issue.