



MEMORANDUM

DATE: October 13, 2014

TO: C.H. Huckelberry, County Administrator

FROM: Priscilla S. Cornelio, P.E., Director *Priscilla Cornelio*

SUBJECT: Update on Projects with Select Development, Inc.

Background

As you are aware the Transportation and Procurement departments have been experiencing various project delivery and compliance issues with Select Development, Inc. (Select), who is the prime contractor for the following roadway improvement projects:

- ✓ La Canada; River Road to Ina Road.
- ✓ Magee; La Canada to Oracle.
- ✓ Homer Davis, Bike/Ped enhancement and three lane widening.

All three projects are funded with a combination of local, regional and federal funds and the following table highlights the federal sources, amounts expended and approximate level of completion that has been achieved.

	Federal Amount Allocated	Federal Amount Requested to date	Federal Amount Received to date	Percent Complete
Homer Davis	\$1,333,271.00	1,125,459.49	\$752,122.83	99%

	Federal Amount Allocated (STP)	Federal Amount Requested to date	Federal Amount Received to date	Percent Complete
La Canada	\$17,172,000.00	\$13,649,323.30	\$13,273,188.91	90%

	Federal Amount Allocated (STP)	Federal Amount Requested to date	Federal Amount Received to date	Percent Complete
Magee	\$10,246,000.00	\$1,795,798.73	\$1,739,663.07	25%

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To date, the most serious issues that both departments have been dealing with consist of the following:

- Nonpayment of suppliers and subcontractors, which also includes Disadvantaged Business Enterprise (DBE) qualified firms. This has recently deteriorated to include loss of approved DBE contractors on Magee, which also includes failure to provide replacements in the prescribed timeframe, or suitable justification to request an exemption.
- Failure to prosecute the work. The La Canada project is approximately 3 months behind schedule with approximately 63 days in liquidated damages accrued to date. In addition, the Magee project is approximately only 25% complete, yet approximately 75% of the contract time has been expended. Also, completion of final punch list items on the Homer Davis project have been lingering since the August 6, 2014 substantial completion date.

DOT and Procurement have consistently, proactively and aggressively been raising these issues with Select, with numerous notifications and requests, both verbally and in writing (via email as well as certified mail). In addition, both departments have worked closely with Arizona Department of Transportation (ADOT) staff to keep them apprised of our efforts, and engage their assistance as needed. To date, we have met with little to no success, and in response to these repeated incidents where Select has failed to comply with contract requests and requirements, the County attorneys have notified the bonding companies for both Magee and La Canada to make them aware of the various issues being encountered. Note that the Homer Davis project has not been included in these discussion and conversations due to the fact that it is substantially complete.

Throughout this ordeal, representatives from the County Attorney's office, Procurement and Transportation have continued to meet on a regular and frequent basis to share updates, discuss progress, as well as evaluate alternative responses and determine appropriate courses of action. Taking into account the various factors involved, all parties have remained committed to the primary goal of doing everything possible to complete both projects, or at the very least, complete as much work as possible. This is based primarily on the realization that once the contract with Select are terminated, the projects could remain in a partially complete condition for up to several months while the legal issues are being resolved.

Recent Developments

This past Friday October 10, I attended the ADOT Board meeting in Wickenburg. I took this opportunity to schedule a meeting with Jennifer Toth, ADOT State Engineer, in order to update her on the various issues Pima County was continuing to encounter with Select, as well as describe the actions that Pima County has taken in response. Since the Tucson District has also been heavily involved in these efforts, I informed Rod Lane, District Engineer, of the meeting and invited him to attend.

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Following the ADOT Board meeting, the three of us prepared to meet at which time I learned that we were going to be joined by other ADOT representatives, as well as representatives from Federal Highway Administration (FHWA), including Karla Petty, Arizona Division Administrator.

Ms. Petty opened the meeting by stating that FHWA was very concerned about Select because of possible civil rights violations. Apparently, one of Select's subcontractors (who is a DBE) had contacted FHWA regarding nonpayment, as well as several other payment related issues. FHWA responded by initiating an investigation into the allegations raised by this DBE. DOT was notified of this investigation and has met with representatives conducting the investigation. As part of this investigation FHWA send a letter to Select last week requesting information. Although Pima County was not copied on this correspondence, I took this opportunity to request that a copy be emailed to us.

As we continued with the meeting, FHWA notified us that they will be taking the following actions:

1. They will be conducting an audit of Select to verify payment to the subcontractors. I explained we had also performed that investigation in which we had asked to see actual checks to show payment. FHWA said they need to see the actual cashed checks, as written checks were being considered insufficient. Select has been given the deadline of October 22nd at which time they must respond to the various inquiries by FHWA.
2. They will be performing an audit of Pima County in order to verify our oversight and management of the projects, especially as it relates to the use of pre qualifications of contractors. Pima County has no independent authority to prequalify contractors. A.R.S. Title 34 is an open competition statute that neither authorizes nor even contemplates prequalification of contractors/bidders. It was not until after September 4, 2014, when ADOT confirmed by letter that prequalification of contractors was required as a condition of the grant, that we had clear authority to do so.
3. FHWA may be reviewing our self-certification.
4. Lastly, Ms. Petty stated that effectively immediately, FHWA is considering suspending all of the federal funds on these projects. In addition, they may also require Pima County to reimburse all federal funds that were paid to Select for the period of time in which Select did not comply with the DBE requirements. The specific dollar amount will be determined in the audit they are conducting next week.
5. ADOT also took this opportunity to express their concerns with the quality of the workmanship and materials used on these projects. As a result, these elements will also be reviewed as part of the audit on Pima County.

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In summary Select's failures to meet various contractual and federal requirements may cost the Transportation department a significant amount of money, both in terms of lost funding plus reimbursement to the federal government. I did ask about the possibility of using any unspent federal funds on other eligible projects, and Ms. Petty did indicate that it would be acceptable for PCDOT to go through the PAG process and propose reallocating the remaining funds, to other federally funded projects.

Next Steps

It is unfortunate that the situation with Select has deteriorated to this point, but we are no longer left with any reasonable or prudent options. Based on this latest information, the following action items will be taken:

1. For the La Canada project, we will do everything possible to make sure that Select completes the paving operations that are currently underway. The placement of the rubberized asphalt has been completed, and the remaining intersection and cross street work is scheduled to begin immediately.
2. We will be working closely with FHWA to determine the amount of federal fund repayment that may be required, pending the FHWA audit of Select's finances.
3. We will begin to identify alternative funding sources should they be required to complete both the La Canada and Magee projects.
4. We will assist FHWA and ADOT during their review/audit of Pima County's self-certification protocol and project management and oversight, in order to verify that all requirements and procedures were followed.
5. We will meet with Procurement and the County Attorney's office to discuss termination options of both contracts with Select.

If you need any further information regarding this matter please let me know.

cc: John M. Bernal, Deputy County Administrator
Farhad Moghimi, PAG Director
Charles Wesselhoft, County Attorney
George Widugiris, Procurement Department
Ana Olivares, Deputy Director for Infrastructure
Rick Ellis, Transportation Engineering Division Manager
Thomas J. Kilargis, Field Engineering Division Manager