MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF DIRECTORS
OTAY WATER DISTRICT
September 12, 2005

1. The meeting was called to order by President Lopez at 7:03 a.m.

2. ROLL CALL

Directors Present: Bonilla, Breitfelder, Croucher, Lopez and Robak

Staff Present: General Manager Mark Watton, Asst. GM of Administration and Finance German Alvarez, Asst. GM of Engineering and Water Operations Manny Magana, General Counsel Yuri Calderon, Chief of Administration Rom Sarno, Chief of Operations Pedro Porras, Chief of Development Services Rod Posada, Sr. Civil Engineer Randy Klaahsen, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

A motion was made by Director Breitfelder, seconded by Director Croucher and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve the agenda.

5. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

<u>INFORMATION / ACTION ITEMS</u>

6. ENGINEERING AND WATER OPERATIONS

a) REJECT CONSTRUCTION BID FOR 450-1 RECYCLED WATER RESERVOIR (R2001) AND 680-1 RECYCLED WATER PUMP STATION (R2004) AND AUTHORIZE STAFF TO REBID THE PROJECT

Sr. Civil Engineer Randy Klaahsen indicated that this was a continuation of discussions at the September 7, 2005 board meeting regarding staffs'

recommendation to reject the construction bid for the 450-1 recycled water reservoir and the 680-1 recycled water pump station and authorize the rebidding of the project. He indicated that the main reason for staffs' recommendation was the lack of competition for the project. He stated that at today's meeting, he would be providing additional details with regard to staffs' recommendation.

He indicated that when the bids are open staff makes two determinations:

1. Is the contractor capable of performing the work?
2. Did the District receive a fair and reasonable price from the contractor?

He stated that TC Construction has performed satisfactorily in the past on all District jobs and is currently handling a job for the District. He indicated that staff has determined that they were capable of performing the work. However, staff felt that the District did not receive a fair and reasonable price for the project.

He stated that Spiess Construction was going to submit a bid on the job up to the last day of the bid deadline. He stated that, however, Chicago Bridge and Iron (CB&I), the steel reservoir supplier, refused to give Spiess Construction a bid and, therefore, eliminated Spiess Construction as a general contractor on this job. He indicated that Orion Construction was also trying to submit a bid up to the last day of the deadline. However, during the bid closing they had other jobs that had been bonded up to their bonding limit and they could not acquire a bond. The bonded jobs were, however, very close to being released, and thus, Orion Construction would have been able to bid the job had they been able to acquire a bond. He stated that the situation was not that they did not have bonding capacity, only that their capacity had been used up. He stated it was felt that if District staff was aware of Spiess and Orion's situation, then TC Construction was probably also aware and, thus, competition was being limited in the bidding of this project. He stated that TC Construction may have increased their profit margin a little bit because they knew that they were going to be the sole bidder on the job.

He stated that staff was also concerned that TC Construction's bid came in at exactly the middle of the engineer's estimate range. He stated that the District's consultant, Montgomery Watson Harza (MWH), estimate came in at the lower end of the range and TC Construction's bid having come in at exactly the middle of range made staff feel very uneasy.

Sr. Civil Engineer Klaahsen stated that staff also spoke with the contractors after the bid opening and found other issues with the bid. He indicated that there are three steel tank suppliers: CB&I, Pacific Tank and Superior Tank. The District had indicated a requirement in the bid specifications that respondents be QP-1 certified. He stated that CB&I has this certification, however, Pacific Tank and Superior Tank do not have the certification. He indicated that the painting sub-contractors that were QP-1 certified, were inflating their bid prices to the other two tank suppliers making them non-competitive. He stated that this was an issue with the District's specifications and staff would take this requirement out if the project were rebid. He indicated that it is anticipated that this would introduce more competition in the bid process.

Sr. Civil Engineer Klaahsen further indicated that staff has had three steel tank bid openings in the past year and two were in the process of being built. He stated that the steel cost for the 1485-2 reservoir was $.27/gallon, the 803-4 reservoir was $.30/gallon, and this project cost was $.43/gallon. He stated that staff felt that because this tank was much larger than the other two (12 MGD reservoir) that savings would be realized through an economies of scale prospective, however, the cost was actually 41% more than the steel reservoir.

Sr. Civil Engineer Klaahsen stated that the budget for this project was $15.5 million. He stated that MWH's engineer's construction cost estimate was $18.1 million. However, it included a substantial contingency. He stated that staff did not use MWH's estimate to determine the budget for this project because of the high contingency in their estimate. He stated that staff produced its own estimate and added a smaller contingency to determine the budget of $15.5 million.

He presented slides indicating where staff felt the bids would be if the project were either rebid or not rebid:

		Potential Savings if Project *was* Rebid	**Potential Savings if Project *was not* Rebid**
1.	Eliminate QP-1 Certification	$250k	$0k
2.	Bid high strength steel as the non-alternative bid item	$150k	$250k
3.	Eliminate shrouding requirement and put in a performance specification requiring that the contractor contain blasting or painting materials within the District's property	$150k	$150k
4.	Eliminate the need for an industrial hygienist	$75k	$75k
5.	Increase in all material prices by 5% due to Hurricane Katrina with the exception of materials such as generators and pumps	<$250k>	$0k
6.	Promote general contractor competition	$825k	$0k
	Net Savings:	$1200k	$475k

Sr. Civil Engineer Klaahsen indicated that staff felt that a lower bid could be acquired if the project were rebid. He stated that, however, there were risks in terms of the time perspective with regard to the agreement with the City of San Diego and there is a possibility that the bids could come in higher than the current bid received from TC Construction.

General Manager Watton indicated that the decision on this matter basically comes down to a business decision. Did the board wish to expose the District to the "market" and possible delays in the contract for a potential net cost savings of $725k? He stated that if the board decided to award the contact to TC Construction, that it would be a reasonable decision based on market conditions.

PUBLIC PARTICIPATION:
Austin Cameron, Vice President of Operations of TC Construction, indicated that the reason Spiess Construction did not receive a competitive bid from CB&I was that Spiess Construction builds their own steel tanks (this is their niche in the contracting community) and, thus, would compete with CB&I. So CB&I did not respond to their request. He indicated with reference to Orion Construction's issue with their bonding capacity during the bidding process, that that is part of the construction business. He stated that TC Construction is a large construction company, larger than Orion Construction, and he felt that his company should not be penalized because of their bonding capacity. He stated that his company had received three competitive tank bids from CB&I, Pacific Tank & Superior and they had selected the lowest responding bid from CB&I.

Mr. Cameron indicated that if the project was rebid, the District would loose two months of construction time and would be subject to material increases of 10%-15% (due to Hurricane Katrina). He noted that his firm has a guarantee of $5 million in materials for the project.

He also indicated that by delaying the project through a rebidding process, the construction start date would be delayed to sometime in the early part of 2006 (January or February) which is San Diego's rain season. He stated that there is a good possibility that there would be rain delays. Mr. Cameron also noted that potential savings on the project could be as much as $600,000 (versus $475,000 presented by District staff) if the District accepted the value engineering suggestion to open trench tunnel.

He also shared information from various vendors and publication articles that report on the increasing costs in the construction industry that included projected increases in the following:

- Steel (projected to increasing by 20% in coming months) and Concrete
- Petroleum and Petroleum based products
- Pipe (PVC) [projected to increase by 10% -- 15%
- Equipment
- Labor

Mr. Cameron indicated that his firm should not be penalized for turning in a competitive bid and that his firm wished to request that the District continue to encourage the competitive bid process by awarding the project to TC Construction.

Director Bonilla indicated that he trusted staffs' opinion, however, he felt that this situation was a little different. He indicated because of the large cost involved in the project and possible law implications, he felt that the best interest of the District should be the focus.

Director Bonilla noted the price of gasoline which has increased by 30% in the past three months which many would not have considered six months ago. He stated that increased cost affects the cost of a business. He stated that he may not exactly agree with the numbers presented, but he did believe that prices for materials would be affected based on his own business experience. He stated that he did not wish to risk this.

He asked staff if they felt that TC Construction has performed well for the District on past construction projects. Sr. Civil Engineer Klaahsen indicated that TC Construction has performed satisfactorily on every project that they have handled for the District. He stated that they are working on a District project at the moment and the District welcomes them back on every project bid process. It was further discussed that TC Construction has worked with the District on many projects since the 1980's and that they have performed very well on all projects.

Director Bonilla indicated that a company's reputation is very important and noted that the District has worked successfully with TC Construction for the past 15 years. He stated if the District rebid the project and received a lower bid, then there still was the risk that the contractor would not perform. He stated that by accepting TC Construction's bid and working with TC Construction on the various items presented for potential cost savings, the District would be doing the right thing. He stated that if the District rebid the project, there are many unknowns and he felt that there would be more liability by not accepting TC Construction's bid.

Director Croucher indicated that he concurred with Director Bonilla. He stated that he was pleased that staff had brought this item to the board's attention. He indicated that, though staff was concerned with TC Construction's bid, that they were still comfortable doing business with them. He indicated that he felt that TC Construction's knowledge of their competitors and industry was not a penalty, but a benefit to their company and speaks well for the company. He stated that TC Construction's value engineering suggestions to reduce cost was another positive aspect for their company. He stated that this is a project that the District has placed on a fast track to complete and a delay at this time was not something the board would be comfortable with. He stated that he supports awarding the contract to TC Construction. He also noted that he would like to suggest that staff explore using the network for future project bids. He stated that CWA has moved to an electronic program which is used by MWD. He would like to discuss at an Engineering and Water Operations Committee if the system would fit in the District's business processes.

Director Robak indicated that he had questions about the materials being impacted by increased costs and asked if staff had a list of projected costs for the materials for this project. Sr. Civil Engineer Klaahsen indicated that the projected cost of materials for the project was about 30% of the project cost which is approximately $5 million. He stated that there are materials that would be utilized that would not be impacted by price increases, such as, the generator, pump, etc. as the District already has an agreement for these items. He stated that, thus, there were some big line items which would not be impacted by the price increases which would need to be subtracted from the 30%. It was noted that the figure presented today ($250,000) was 5% of $5 million.

Director Robak indicated that the largest savings noted by staff was $825,000 from general contractor competition. He asked staff how many bids they felt they would be received if the project were rebid. Sr. Civil Engineer Klaahsen indicated that it is felt the following would bid:

- Orion Construction (their bonding capacity is now in order)
- Spiess Construction (have worked their issues out with CB&I and the other two tank suppliers)
- It is expected that other contractors would bid on the project who, at the time of the bid process for this project, were bidding on school, etc. projects. Thus, there was a timing issue also involved.

It was noted, however, that receiving a bid from these entities was not guaranteed. The contractors have indicated their interest, thus, staff felt that it is likely that bids would be received.

It was discussed that the $825,000 estimated savings was projected based on the engineers estimate. The District's and its consultant's estimate for the construction cost of the project was around $13 million to $13.8 million. It is felt that the bids should come in around these figures. TC Construction's bid was $14,740,000.

Director Breitfelder indicated that he felt that when there was an element of doubt, one bid was far to narrow to base a decision such as this on. He stated that the key for him was the cost per gallon for the tank. He stated that an increase of 41% was very large and he felt that staffs' original report was reason enough to support staffs' recommendation. He stated that he further supported staffs' recommendation following the additional information provided at today's meeting.

President Lopez asked the public if they wished to provide comment on anything discussed today which they wished to further clarify.

PUBLIC PARTICIPATION:
Mr. Steve Coker, Vice President of Construction with TC Construction, indicated that the tanks which Sr. Civil Engineer Klaahsen is referring to has already taken the deduction for the high strength steel, thus the price per gallon is based on the deducted rate price. The price would be reduced by $250,000 which is approximately $.02/gallon reduction or $.41/gallon.

Sr. Civil Engineer Klaahsen indicated that if the District received a $.30/gallon bid on this project. He stated that the cost of the tank would be $3.6 million and the bid from TC Construction was $5.1 million.

Mr. Coker indicated that there was more than the cost of the tank included in the $5.1 million. He stated that the $5.1 included:

- CB&I bid of $3.6 million
- Cathodic Protection
- Ring wall/foundation for the tank
- etc.

He stated that the cost would be about $.30/gallon ($3.6 million divided by $12 million). He stated that this cost was prior to the $250,000 reduction offering.

Sr. Civil Engineer Klaahsen noted that the previous bids did include the cathodic protection and ring wall within the $.30/gallon bid. TC Construction's bid of $.30/gallon does not include these items.

General Manager Watton indicated that what the District is focused on is the overall cost of the project as opposed to the pieces of the project (which can be picked apart). He stated that this item has been presented to assure that the board understood the business risks of rebidding the project. If the board wished to accept this risk, staff could rebid the project, however, they cannot guarantee that the bid would come in lower. Staff could advise of where they believe the bids will be, but cannot guarantee that this would occur.

President Lopez indicated that TC Construction has won bids in the past and is a company with a history with the District. He stated that the time element of the project is of great concern to him as delays in this project could pose a large problem to the recycled program. He stated that having the issue of Hurricane Katrina in the background and it still being hurricane season, there are unknowns of what other effects might occur. He indicated that we are discussing an approximate savings of $600,000, but it is possible that we can receive a bid with just a $100,000 savings and lose one or two months of construction time. He stated that he felt the District needed to stay on task on this project as it was critical to the recycled water system. He stated that he was not willing to put the project at risk.

A motion was made by Director Bonilla, seconded by Director Breitfelder, and passed with the following vote:

Ayes:	Directors Bonilla, Croucher and Lopez
Noes:	Directors Breitfelder and Robak
Abstain:	None
Absent:	None

to award the construction contract for the 450-1 Recycled Water Reservoir and 680-1 Recycled Water Pump Station to TC Construction and Increase the budgets for

R2001 and R2004 Capital Improvement Programs by $900,000 each for a total increase of $1,800,000.

7. ADJOURNMENT

With no further business to come before the Board, President Lopez adjourned the meeting in at 7:55 a.m.

_____
President

ATTEST:

_____
District Secretary