

**MINUTES OF A PILOT BOARD MEETING AND REGULAR MEETING OF THE
BOARD OF NAVIGATION AND CANAL COMMISSIONERS OF THE
BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS HELD
FEBRUARY 01, 2023 AT 5:30 P.M.**

The Board of Navigation and Canal Commissioners of the Brownsville Navigation District of Cameron County, Texas, held a regular meeting on **Wednesday, February 01, 2023 at 5:30 p.m.** The following individuals were present and absent:

PRESENT: Esteban Guerra, Chairman
Ralph Cowen
Sergio Tito Lopez
John Reed
John Wood

ABSENT: None

ALSO PRESENT: Eduardo A. Campirano, Port Director and CEO
Daniel Rentfro Jr., District Counsel
William J. Irwin, Associate District Counsel

STAFF MEMBERS: Ariel Chavez
Michael Davis
Karina Franco
Chief William Dietrich
Arturo Gomez
Jose Herrera
Jaime Martinez
Jorge Montero
Margie Recio
Memo Rico
Tony Rodriguez
Melinda Rodriguez
Janie Velasquez
Zeus Yanez

OTHERS PRESENT: Rev. Andreas Lewis
Jorge de la Colina
Randy Delay
Kyle Wundt

PILOT MEETING

The Chairman called the pilot meeting to order at 5:30 p.m.

1. Consideration and Action on re-commission Captain Gene R. Tuttle.

Captain Tuttle addressed the Board and thanked the Board for the opportunity to continue his service. Commissioner Cowen moved to re-commission Captain Gene R. Tuttle, Commissioner Lopez seconded, and the motion passed unanimously.

There being no further business, the Pilot Board meeting was adjourned by unanimous consent at 5:33 p.m.

REGULAR MEETING

1. Meeting Called To Order

The Chairman called the regular meeting to order at 5:33 p.m. Reverend Lewis offered a prayer. The Chairman then led those present in the Pledge of Allegiance to the United States and Texas flags.

2. Public Audience

No person registered to address the Board.

3. Receive Director's Report

a. Receive Directors Reports

b. Receive Port Monthly Operations Summary Report

Mr. Yanez made the report to the Board. Discussion followed.

Commissioner Reed asked Mr. Martinez about his report on recent hirings. Mr. Martinez addressed the Board regarding recent hirings of crane operators.

Commissioner Reed asked Mr. Montero for a report on his recent marketing efforts. Mr. Montero addressed the Board.

CONSENT AGENDA

4. Consideration and Action on the Following Consent Agenda Items:

- a. Approval of the Minutes of the Regular Board Meeting of January 11, 2023.
- b. Approval to authorize payments over \$25,000.00:
 1. HDR Engineering Inc., the amount of \$86,503.25, for Channel Improvement project – Phase 2 Design Repackaging; and
 2. Vulcan Materials Company, the amount of \$103,761.72. for Crushed limestone for the Patio 22 expansion project.

Commissioner Reed moved to approve all consent agenda items, Commissioner Wood seconded, and the motion passed unanimously.

5. Presentation of District's Investment Report for the quarter ended December 31, 2022.

Mr. Yanez made the report to the Board. Discussion followed.

6. Consideration and Action on Assignments, Negotiations, Easements, Subleases, and Contracts in General.

Mr. Campirano and Mrs. Rodriguez addressed the Board regarding the following items:

1. 1419 Ranch, LLC (Authority to Negotiate)

1419 Ranch, LLC a current lessee has requested an amendment to their grazing lease to increase their size of leased premises. The new site is approximately 233.5 acres located on Yolanda Del Rio Road. Commissioner Lopez moved to authorize staff to negotiate a lease amendment with 1419 Ranch, LLC, Commissioner Reed seconded, and the motion passed unanimously.

2. White Tipped Dove, LLC (Authority to Negotiate)

White Tipped Dove, LLC has requested a farming lease on approximately 112 acres located south of Yolanda Del Rio Road and Highway 4. After discussion, Commissioner Lopez moved to authorize staff to negotiate a farming lease with White Tipped Dove LLC, Commissioner Cowen seconded, and the motion passed unanimously.

3. Brownsville Mooring LLC (New Lease)

Brownsville Mooring LLC has requested a new lease for a 0.5-acre tract of land located at 7950 Foust Road for a term of one year with four renewal options of one year each. The purpose of the lease would be for parking for vehicles and storage of other mooring equipment/supplies. Commissioner Lopez moved to approve the New Lease for Brownsville Mooring LLC, Commissioner Wood seconded, and the motion passed unanimously.

4. Gulf Stream Marine, Inc. (New Lease)

Gulf Stream Marine, Inc., has requested a new lease for a term of five years with one renewal option of 5 years. The site is located at 901 S. Windhaus Rd. The purpose of the lease is for storage to support stevedore and terminal handling. Commissioner Lopez moved to approve a new lease for Gulf Stream Marine, Inc., Commissioner Wood seconded, and the motion passed unanimously.

5. Ramon Mendez and Jose Luis Mendez (New Lease)

Ramon Mendez and Jose Luis Mendez have requested a new grazing lease for a 1-year term with nine renewal options of 1 year each. The site is a total of 440.47 acres located in the Espiritu Santo Grant Share 31-32 and the San Martin Grant 7: Tract A: 184 acres; Tract B: 98.47 acres; Tract C: 158 acres. Commissioner Wood moved to approve the new grazing lease to Ramon Mendez and Jose Luis Mendez, Commissioner Lopez seconded, and the motion passed unanimously.

7. Consideration and Action to extend engagement term for Audit Services for the Retirement Plan for the Employees of Brownsville Navigation District between the District and Carr, Riggs, & Ingram for one year.

Mr. Yanez addressed the Board requesting authorization to extend engagement term for Audit Services for the Retirement Plan for the Employees of Brownsville Navigation District between the District and Carr, Riggs, & Ingram for one year. The District engaged Carr, Riggs, & Ingram, LLC to conduct audit services for the Retirement Plan for the Employees of Brownsville Navigation District for the fiscal year ending December 31, 2018 through December 31, 2021. The terms of the engagement include an option to renew for additional years upon the consent of both parties. Commissioner Wood asked about the fees charged for the previous year. Commissioner Reed moved to authorize the extension of the engagement for audit services for the Retirement Plan for the Employees of Brownsville Navigation District for the Fiscal Year ending December 31, 2022, Commissioner Lopez seconded, and the motion passed unanimously.

8. Consideration and Action to authorize Port staff to advertise for bids for Sand to be used for the installation of RCP, Water Line, and Sewer Line projects.

Mr. Herrera addressed the Board requesting authorization for Port staff to advertise for bids for Sand to be used for the installation of RCP, Water Line, and Sewer Line projects. Staff is requesting permission to solicit bids for sand. This material is needed for the installation of reinforcement concrete pipes, water line projects, sewer line projects, and other development projects as they arise throughout the Port. Commissioner Reed moved to advertise for bids for sand, and to authorize opening the received bids thereof, Commissioner Cowen seconded, and the motion passed unanimously.

9. Consideration and Action to authorize Port Staff to Advertise for Bids on the Harbormaster's Office Building Generator Replacement project, and to open bids thereof.

Mr. Chavez addressed the Board requesting authorization for Port Staff to Advertise for Bids on the Harbormaster's Office Building Generator Replacement project, and to open bids thereof. BND Engineering, Maintenance and Harbormaster's Office staffs have been working with consultant Trinity MEP Engineering (Trinity) on the design of the Harbormaster's Office Building Generator Replacement project. The objective is to replace the current emergency power generator at the Harbormaster's Office Building with a new gas-powered generator that can energize the entire building. The plan is to invite bids to furnish and install all required equipment in a turn-key project. Trinity has finalized the 100% set of Plans and Specifications, and Staff is asking for authorization to Advertise for Bids. Once authorized, BND Staff will publish an Invitation to Bid in the local newspaper, upload the project's Bid Documents to the Port website, and invite known electrical contractors by email and by phone. Commissioner Cowen moved to authorize BND Staff to prepare the Invitation to Bid on the Harbormaster's Office Building Generator Replacement project, to publish it in the local newspaper as required by BND Purchasing procedures, and to open bids once they are received, Commissioner Reed seconded, and the motion passed unanimously.

10. Consideration and Action to authorize Port Staff to Advertise for Bids on Rail, Ties, and other Railroad Crossing Materials in coordination with OmniTRAX, as required for the 2023 Ostos Road Paving Rehabilitation project, and to open bids received.

Mr. Chavez addressed the Board requesting authorization for Port Staff to Advertise for Bids on Rail, Ties, and other Railroad Crossing Materials in coordination with OmniTRAX, as required for the 2023 Ostos Road Paving Rehabilitation project, and to open bids received. On December 21, 2022 BND Commissioners awarded the contract on the 2023 Ostos Road Paving Rehabilitation project. The project includes multiple railroad crossings in the scope area of Milo Road to Cargo Dock 16 Road, for which BND will furnish materials and BRG/OmniTRAX will provide labor and equipment for installation. Bids have been received on the concrete planks for the crossings and BND Commissioners are to consider awarding that purchase. BND Staff is asking for authorization to Advertise for Bids to furnish the required rails, ties and other appurtenant materials for the crossings, and to open bids on those materials once received. Upon authorization, we will publish an Invitation to Bid in the local newspaper, as well as invite known suppliers of these materials by email and/or by phone. The Bid documents will also be uploaded to the Port's website. Commissioner Reed moved to authorize BND Staff to prepare the Invitation to Bid on the Rail, Ties, and other Railroad Crossing Materials as required for the 2023 Ostos Road Paving Rehabilitation project, to publish it in the local newspaper as required by BND Purchasing procedures, and to open bids once they are received, Commissioner Cowen seconded, and the motion passed unanimously.

11. Consideration and Action on proposal from EarthCo, L.L.C. for Construction Materials Engineering Testing services for the 2023 Ostos Road Pavement Rehabilitation project.

Mr. Chavez addressed the Board requesting approval on proposal from EarthCo, L.L.C. for Construction Materials Engineering Testing services for the 2023 Ostos Road Pavement Rehabilitation project. On December 21st, 2022, BND Commissioners authorized BND Staff to issue the Notice of Award to the lowest bidder on the 2023 Ostos Road Pavement Rehabilitation project. Moreover, BND Staff solicited and received a proposal from EarthCo. L.L.C. to perform Construction Materials Engineering Testing on this project for a not-to-exceed amount of \$37,353.00. The materials testing includes compression testing of concrete cylinders to confirm compliance with required strength, and slump tests of delivered concrete to confirm water-cement ratio on concrete for driveways and railroad crossings. Testing also includes use of nuclear gauge for asphaltic pavement rolling pattern and density verification, as well as subgrade and base material densities to verify proper compaction. Commissioner Reed moved to accept the proposal from EarthCo, L.L.C. for Construction Materials Engineering Testing for an amount of \$37,353.00 which will not be exceeded without authorization by BND Commissioners, Commissioner Cowen seconded, and the motion passed unanimously.

12. Consideration and possible Action on bids received for Railroad Crossings Concrete Planks Materials as required for the 2023 Ostos Road Paving Rehabilitation project.

Mr. Chavez addressed the Board requesting approval of award on bids received for Railroad Crossings Concrete Planks Materials as required for the 2023 Ostos Road Paving Rehabilitation project. As authorized by BND Commissioners on December 21, 2022, BND Staff prepared Bid documents and published an invitation to bid on materials for Railroad Crossing Concrete Planks Materials, as required for the 2023 Ostos Road Paving Rehabilitation project, which consists of rehabilitation of R. L. Ostos Road from Mio Road to past the entrance to Cargo Dock #16,

including driveways and road/railroad crossings. The replacement of rail and planks on these crossings is scheduled to be performed by BRG/OmniTRAX, with BND furnishing the planks. BND Staff published an advertisement for bids on the concrete planks for the railroad crossings on December 27, 2022 and January 3rd, 2023. On January 23, 2023 two bids were received and opened, with Omega Industries, Inc. being the lowest bidder at \$171,218.15. Commissioner Reed moved to award the purchase of the Railroad Crossing Concrete Planks Materials for the 2023 Ostos Road Paving Rehabilitation project to the lowest responsive bidder Omega Industries, Inc., in the amount of \$171,218.15, and place the order for the materials, Commissioner Cowen seconded, and the motion passed unanimously.

13. Consideration and possible Action on bids received for the 2022 Placement Areas 5B, 7 & 8 Improvements project, as required for the Brazos Island Harbor Channel Deepening project, and to issue the Notice of Award to the successful bidder.

Mr. Chavez addressed the Board requesting approval of award on bids received for the 2022 Placement Areas 5B, 7 & 8 Improvements project, as required for the Brazos Island Harbor Channel Deepening project, and to issue the Notice of Award to the successful bidder. On September 20, 2022 BND Commissioners authorized BND staff to invite bids on the 2022 Placement Areas 5B, 7 & 8 Improvements project, as required for the Brazos Island Harbor Channel Deepening project (BIH). BND Staff published the Invitation to Bid on October 10 and October 17, 2022, and held a Mandatory Pre-Bid Meeting on October 18, 2022 with 36 people attending, including USACE, consultant HDR Engineering, Inc. (HDR) and BND representatives. On November 7, 2022 staff received and opened five (5) bids. The low bid was from A&I Custom Manufacturing, LLC (A&I), at \$7,830,500.00. The second lowest bidder was RLB Contracting, Inc. (RLB) at \$13,613,000.00. On November 18, consultant HDR and BND Staff conducted interviews with the three lowest bidders and found that all three were responsive and responsible bidders. However, on December 2, 2022 A&I stated that they wanted to withdraw their bid. A&I followed up their verbal request by letter dated December 4, 2022 stating they wanted to retract their bid due to a material mistake in the bid, and also requesting release of their Bid Bond. Commissioner Reed moved to grant the request by A&I Custom Manufacturing, LLC to retract or rescind their bid on the 2022 Placement Areas 5B, 7 & 8 Improvements project and to release the bid bond, and to award the contract to second lowest bidder RLB Contracting, Inc. in the amount of \$13,613,000.00, and authorize BND Staff to issue the Notice of Award, Commissioner Cowen seconded, and the motion passed unanimously.

14. Consideration and Action to reject bids received for the Bulk Cargo Dock Rail Improvements project, as required for the Grain & Bulk Handling Facility Development, Expansion and Upgrade project, and to authorize staff to re-advertise for bids and to open bids once received.

Mr. Chavez addressed the Board requesting authorization to reject bids received for the Bulk Cargo Dock Rail Improvements project, as required for the Grain & Bulk Handling Facility Development, Expansion and Upgrade project, and to authorize staff to re-advertise for bids and to open bids once received. On July 20, 2022 BND Commissioners authorized BND Staff to invite contractors to bid on the Grain & Bulk Handling Facility Development, Expansion and Upgrade endeavor, of which the Bulk Cargo Dock Rail Improvements project is a part. Four (4) bids were received and opened on November 8, 2022, with Pointer Smith Contracting submitting the lowest bid at \$5,019,525.90. However, due to delays in the Materials Handling and Storage Design-Bid component of the project, BND lessee West Plains requested that Rail Improvements bids not be

awarded until the Design-Build package submissions were received and evaluated. Since the Design-Build package submissions deadline was changed to February 21, 2023, it goes past the 90 days limit for bidders to hold their price. BND Staff approached Pointer Smith to extend their bid validity for 30 days, but they declined citing changes in pricing. BND Legal Counsel and Staff propose to reject the bids and re-advertise the project. If authorized, BND Staff will publish a second Invitation to Bid in the local newspaper for the rail improvements, as well as invite known contractors by email and/or by phone. The new bids will then be presented to BND Commissioners for consideration and action on or about March 15, 2023. Kyle Wundt, a representative of HDR, was present to address the Board. Legal counsel asked Mr. Wundt if West Plains had committed to paying for any cost overruns in the event the bids increased. Mr. Wundt said that it had been discussed with West Plains and they understood that the prices may increase. Commissioner Wood moved to reject the bids received on November 8, 2022 on the Bulk Cargo Dock Rail Improvements project and authorize BND Staff to publish an Invitation to Bid on the project, to publish same in the local newspaper as required by BND Purchasing procedures, and to open the new bids once received, Commissioner Cowen seconded, and the motion passed by a vote of 4-1 with Commissioner Lopez voting Nay.

15. Adjourn into Executive Session, as authorized by Subchapter D of Chapter 551 of the Government Code to discuss with attorneys pending or contemplated litigation and matters in which the duty of the attorneys under the Rules of Professional Conduct clearly conflict with Chapter 551; to conduct deliberations regarding real property (§551.072); to deliberate the deployment of security personnel or devices (§551.076); to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee (§551.074); and to conduct deliberations regarding economic development negotiations (§551.087).

The Chairman then announced that the time was 6:30 p.m., and that the Board would adjourn into executive session.

The Chairman then announced that the time was 7:45 p.m., and that the Board had reconvened in open session.

16. Possible action on matters or items discussed in Executive Session.

Commissioner Wood moved to approve the execution of the Waiver of Surface Mineral Rights presented to the District and to the Garcia family by Rio Grande LNG, LLC, as presented in executive session, Commissioner Cowen seconded, and the motion passed unanimously.

17. Adjournment.

Commissioner Lopez moved to adjourn the meeting, Commissioner Cowen seconded, and the meeting was adjourned by unanimous consent at 7:46 p.m.

ATTEST



John Wood, Secretary



Esteban Guerra
Chairman of the Board