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Title: Community Development Services, Department of Transportation, recommending the Board retroactively (to April 10, 2018) approve and authorize the Chair to execute Contract Change Order 3, adding three trees to the scope of work at a cost of \$19,196.00 on the Tree Mortality Project Phase III, Contract 2423, PW 17-30218.

FUNDING: California Disaster Assistance Act Funds (75% - State) and CAL FIRE (25% -State).

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - CCO 3 - Additional Trees, 2. Executed Contract Change Order

Date	Ver.	Action By	Action	Result
4/24/2018	1	Board of Supervisors	Approved	Pass

Community Development Services, Department of Transportation, recommending the Board retroactively (to April 10, 2018) approve and authorize the Chair to execute Contract Change Order 3, adding three trees to the scope of work at a cost of \$19,196.00 on the Tree Mortality Project Phase III, Contract 2423, PW 17-30218.

FUNDING: California Disaster Assistance Act Funds (75% - State) and CAL FIRE (25% -State).

DEPARTMENT RECOMMENDATION

Community Development Services, Department of Transportation (Transportation) recommending the Board retroactively (to April 10, 2018) approve and authorize the Chair to execute Contract Change Order (CCO) 3, adding three trees to the scope of work at a cost of \$19,196.00 on the Tree Mortality Project Phase III (Project), Contract 2423, PW 17-30218.

DISCUSSION/BACKGROUND:

On March 7, 2018 Transportation opened bids for the Project. The low bid submitted by Joe Benigno Tree Service (JBTS) was \$244,593.00. The Board awarded the Project to JBTS on March 20, 2018 (Item 22). JBTS began tree removal operations on April 9, 2018.

After the Project was awarded, Transportation was alerted of two distinct issues: (1) the limited space on Pony Express Trail would make it difficult to stack limbs and slash for chipping at a later date; and (2) Camino Union School District was not able to accommodate the planned full closures of Pony Express Trail every other Monday, starting April 9, 2018. Transportation evaluated the costs proposed by JBTS for chipping as well as the potential costs that JBTS would incur by being required to remove the full closure by 1:30 pm on Mondays. Since the combined amount of the change orders exceeded departmental authority, Transportation returned to the Board on April 10, 2018 (Item 24) for retroactive authorization of CCOs 1 and 2.

Subsequent to the April 10, 2018 Board approval of CCOs 1 and 2, Black Fox Consulting (County's consultant providing registered professional forester services) notified the County of three additional trees that should be removed; one of which is adjacent to two trees that had been identified for removal in the contract, and the other two are on the parcel immediately across Pony Express Trail. These trees died after this Project's other trees were marked for removal in late 2017, so they were not included in the bid documents. Transportation determined that it was in the County's best interest to direct JBTS to remove the trees immediately rather than delaying JBTS for two weeks to return to the Board for authorization of CCO 3. Waiting to return to the Board for authorization would have increased the cost of CCO 3 substantially, delayed completion of the Project, and required an additional full closure of Pony Express Trail. Transportation and JBTS have agreed on a cost of \$19,196.00 for CCO 3, which Transportation and Black Fox Consulting have verified as a reasonable price to fall and remove the additional trees.

Waiver of Competitive Bidding

Execution of CCO 3 will push the cumulative value of CCOs on this Project to 31.1% of the original contract amount. Public Contract Code section 20137 requires that changes to public works contract exceeding 10% of the original contract amount be let by competitive bidding. However, a well-recognized exception to that requirement applies when the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631). The courts developed this exception to assure that the competitive bidding requirement is applied reasonably with reference to the public interest and its underlying purposes, including obtaining the best economic result for the public. Where competitive proposals would not result in any advantage to the public entity or where it is practically impossible to obtain what is required, competitive bidding may be waived.

The specific circumstances concerning the subject Project supports the conclusion that competitive bidding for the work described in CCO 3 would have been undesirable and impractical and would not have resulted in the best economic result for the public for the following reasons:

1. The change order work (i.e., felling of 3 additional trees) is functionally integrated with the base project (i.e., the tree felling). JBTS and its subcontractors were already mobilized and onsite doing the base project work. Waiting until a later date to remove these trees would require an additional closure of Pony Express Trail. These factors allow the integration of the CCO work to be successful and maximize the public benefits from the project;
2. Advertising and bidding for the project changes would have resulted in delays in project completion; and
3. Competitive bidding requires award to the lowest responsible bidder. This could have resulted in multiple contractors working on the same project components (i.e., the original contractor might have been required to perform some of the tree removal work and then another contractor under a separate contract might have been required to perform the tree removal work required by CCO 3) at the same time, potentially causing conflicts and problems with performance, system functionality and warranty liabilities.

For these reasons, Transportation recommends the Board find that an exception to the competitive bidding requirement exists here and that a waiver of competitive bidding is appropriate.

While it is not completely clear that this tree removal project meets the legal definition of a public works project, Transportation decided to bring this CCO to the Board out of an abundance of caution

and as a best practice.

ALTERNATIVES

The Board could choose to not approve CCO 3. JBTS would likely file a claim for payment for the work.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel (for waiver of competitive bidding)

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

The engineer's estimate for the Project's construction cost was \$499,980. The low bid from JBTS was \$244,593. Therefore, while execution of CCOs 3 will add \$19,160.00 to the total Project cost, there is sufficient budget remaining to absorb the cost of this CCO (as well as the cost of CCOs 1 and 2).

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Chair's signature on CCO 3.
- 2) The Clerk of the Board will return a fully executed copy of CCO 3 to John Kahling at Transportation (Headington) for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

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