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Title: Environmental Management Department recommending the Board consider the following pertaining to the construction of the Cap System, French Drain and Landfill Gas Emission Control System Operable Unit 1 at the Meyers Landfill (Public Works Contract No. 013-PW-09/10-BOS):

- 1) Authorize the Director of said Department to sign the first amendment to Change Order 001 in the amount not to exceed \$199,246 for additional work required due to a number of issues, errors and omissions with the Final (100%) Remedial Design provided to the County by the U.S. Forest Service and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein;
- 2) Authorize the Director of said Department to execute Change Order 010 in the amount not to exceed \$59,867.08 (Sewer line backfill), Change Order 011 not to exceed \$88,826.91 (October storm repair), Change Order 012 not to exceed \$69,592.56 (French drain backfill), Change Order 013 not to exceed \$853,933.60 (Additional 2011 bid schedule charges), Change Order 014 not to exceed \$525,000 (Additional 2011 out of scope charges), and Change Order 015 not to exceed \$225,000 (Winterization Plan) for additional work required for the construction of the Cap System, French Drain and Landfill Gas Emission Control System Operable Unit 1 at the Meyers Landfill and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein; and,
- 3) Authorize the Director of said Department to execute Change Order 013 to extend Public Works Contract No. 013-PW-09/10-BOS for one (1) year, expiring on December 31, 2011.

FUNDING: The Department is exploring additional sources of revenue to help offset the increased costs.

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - CO #001 Amd #1.pdf, 2. B - CO #010.pdf, 3. C - CO #011.pdf, 4. D - CO #012.pdf, 5. E - CO #013.pdf, 6. F - CO #014.pdf, 7. G - CO #015.pdf

Date	Ver.	Action By	Action	Result
12/14/2010	1	Board of Supervisors	Approved	Pass

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(Winterization Plan) for additional work required for the construction of the Cap System, French Drain and Landfill Gas Emission Control System Operable Unit 1 at the Meyers Landfill and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein; and, 3) Authorize the Director of said Department to execute Change Order 013 to extend Public Works Contract No. 013-PW-09/10-BOS for one (1) year, expiring on December 31, 2011.

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Fiscal Impact/Change to Net County Cost: Through Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) litigation, the County has obtained a portion of funding from the County's insurance carriers, Third Party Settlements and the CalRecycle grant (Legislative File 10-0650). The Department is exploring additional sources of revenue to help offset the increased costs. If adequate funding is not secured these Change Orders may be cancelled.

Background:

The County of El Dorado is in the process of final closure construction activity of the 11 acre Meyers Landfill disposal site. The Meyers Landfill operated from approximately 1947 through 1971 under a series of Forest Service Special Use Permits that were issued to private parties and the County of El Dorado. Waste disposed at the site included municipal solid waste from residential and commercial sources from within the southern Lake Tahoe Basin area. The site stopped receiving waste in 1971 and in 1973 the County closed the landfill and covered the waste with an interim soil cap.

Since the closing of the site several site investigations have been conducted. As a result of these investigations, it was determined that in the best interest of public health and safety, the site would need to be remediated. In January of 2002, the United States Forest Service (USFS) issued a Feasibility Study and Proposed Plan for remediation of the site, which was later modified and termed the Supplemental Remedial Investigation/ Feasibility Study (RI/FS). The RI/FS calls for capping the waste mass with an impermeable multi-layer cover system, installation of a passive landfill gas venting system, relocation and consolidation of a portion of the waste mass directly above a South Tahoe Public Utility District (STPUD) sewer line, and installation of a surface water collection and retention system, also known collectively as the Remedial Action. The Remedial Action included the Meyers Landfill Final (100%) Remedial Design, prepared for the Forest Service by the Engineering/ Remediation Resources Group, Inc. (ERRG). The proposed Remedial Action to be implemented at the Meyers landfill site was finalized by the Forest Service in the Record of Decision (ROD) executed on November 15, 2007. The ROD, as further described in the Final (100%) Remedial Design, was incorporated into the Partial Consent Decree (PCD), which was issued to the County of El Dorado by the Federal Court, Eastern District of California on August 20, 2010. Since the PCD was not issued until late this summer, the Forest Service issued the County of El Dorado a Unilateral Administrative Order (UAO), which allowed the County to move forward with the closure construction of the Meyers Landfill. The UAO is similar in content to the PCD.

On November 11, 2009, the Board authorized the Environmental Management Department to release and advertise an Invitation to Bid for the Meyers Landfill closure construction based upon the Final (100%) Remedial Design provided by the U.S. Forest Service. On January 26, 2010, the Board awarded the Meyers Landfill closure construction contract to Sukut Construction (Sukut), with closure construction anticipated to begin summer of 2010.

Pursuant to the UAO and the PCD, the County was ordered to implement the Forest Service issued

Final (100%) Remedial Design. After Sukut initiated closure construction activities it was discovered that the Final (100%) Remedial Design prepared by ERRG and approved by the Forest Service, which was the basis for determining construction costs and incorporated into construction bids and contracts, was inaccurate, incomplete, and did not reflect 100% of the necessary construction activities required to complete the final closure of the Meyers Landfill. The Final (100%) Remedial Design indicated a limit of waste within an 11 acre area of the site. Sukut encountered waste in several locations extending well beyond the indicated limit in the Final (100%) Remedial Design. The Forest Service has provided direction that in some areas, this waste must be relocated, however in other areas, the cap boundary will be extended to cover the waste in place. In addition, it appears that the Final (100%) Remedial Design did not capture the total volume of existing waste that needs to be relocated. ERRG has twice revised the estimated waste volume to almost triple the original estimate. There were also several additional wells and/or piezometers discovered that were not included in the Final (100%) Remedial Design that required abandonment.

As a result of site conditions identified by Sukut that were previously unknown, ERRG provided a draft revised Final (100%) Remedial Design, which increased the total acreage included in closure construction from 11 acres to approximately 12 acres requiring an impermeable cap, and which resulted in an additional 1 to 2 acres requiring earthwork and/or waste relocation activities. There were also yet to be determined impacts on the design of the surface water collection system and other design features.

Subsequent to ERRG issuing a revised Final (100%) Remedial Design, multiple additional issues were encountered that were outside of the scope of the revised design which adversely impacted the construction schedule, increased construction costs, and resulted in the project carrying over to the 2011 construction season for completion. See attached Change Orders for specific details.

Reason for Recommendation:

On August 4, 2010, a conference call was held between the Forest Service, the County of El Dorado, and respective engineering consultants, to discuss the additional work that will be necessary as a result of the discovery of additional waste that was not included in the Final (100%) Remedial Design. It was agreed upon by all parties that as the engineer of record for the project, ERRG would revise the Final (100%) Remedial Design. ERRG's draft revised design indicates increases in site work, waste relocation and capping previously quantified in the bid schedule in the Sukut contract, as well as some necessary construction activity not previously itemized in the bid schedule.

Due to rapidly changing site conditions outside of the original scope of the project that were not accurately identified in the Final (100%) Remedial Design, such as additional potholing, clearing and grubbing, and waste relocation, the Environmental Management Department issued Field Change Order #001 in the amount of \$50,000 to Sukut on August 10, 2010, in an effort to keep the project moving forward. Field Change Order #001 was necessary to provide Sukut with authorization to conduct required closure construction activities outside the originally approved Final (100%) Remedial Design. The amount of this change order was exhausted and on August 24, 2010 the Board authorized the Director of the Environmental Management Department to amend Field Change Order #001 to Change Order #001 with a not to exceed amount of \$317,250.

Subsequent to Sukut receiving the draft revised Final (100%) Remedial Design from ERRG; additional waste was discovered that required relocation on the South end of the site; the STPUD sewer line location was not properly identified in the Final (100%) Remedial Design which resulted in

additional waste relocation on the East side of the landfill and regrading of previously completed slopes; waste extended deeper than indicated in the Final (100%) Remedial Design in the area of the STPUD sewer line increasing the total miscalculation of waste from 34,900 cubic yards in the original Final (100%) Remedial Design to over 100,000 cubic yards; the construction of an additional sedimentation basin was included in the final revised Final (100%) Remedial Design which also required the French drain be extended by approximately an additional 150 feet; and the depth of clay in the French drain alignment was significantly deeper than indicated in the final revised Final (100%) Remedial Design resulting in the additional removal of over 30,000 cubic yards of soil in order to construct the drain, then return of this material to meet new grade requirements. The cumulative effect of aforementioned issues, errors and omissions with the original Final (100%) Remedial Design not only resulted in very significant increases to the cost of the project, but also resulted in a significant increase in the project duration. As a result, the Meyers Landfill Remedial Action will take two (2) seasons and will be completed during the 2011 construction season.

Public Contract code section 20137 requires that changes to public works contracts exceeding ten percent 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 bids would thus be undesirable, impractical, or impossible. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 635-636.) 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 eliminating favoritism and corruption, preventing waste, and obtaining the best economic result for the public. (Id. at p. 636) Accordingly, where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable. (Ibid.)

It is the opinion of the Department and County Counsel that execution of the proposed change order meets the public's best interest standard as described above for the following reasons:

Partial Consent Decree

The remedial work at the Meyers landfill site is being performed under a Partial Consent Decree (PCD) issued by the Federal Government requiring the County to perform the work necessary to remediate the site. The failure to comply with the requirements of the PCD can result in the issuance of stipulated penalties of up to one thousand two hundred fifty dollars (\$1,250) per day per violation (paragraphs 79 and 80 of the PCD). The time necessary to competitively bid the additional work will delay the completion of the remediation project and could subject the County to significant additional penalties under the PCD, including a one time stipulated penalty of four-hundred thousand dollars (\$400,000) for a Work Takeover (paragraph 81 of the PCD), and the right of the Forest Service to receive the benefit of the County's performance guarantee up to the estimated cost to complete the project (paragraph 47 of the PCD).

Earlier Public Benefit

As described above, the conditions at the Meyers landfill site have been determined by the Forest Service to constitute a threat to the public health and safety. The remediation of the contamination of the groundwater has been described as of the utmost importance especially in an environmentally sensitive area such as South Lake Tahoe. The delay occasioned by having to competitively bid the

additional work would allow the current conditions at the site to remain unchanged for an additional construction season. Given the short construction season in the Tahoe area, if the matter were competitively bid, the completion of the final cap would not occur until the 2012 construction season, likely increasing the costs of the project even further.

In addition to the above reasons that demonstrate that executing the proposed change order meets the public interest as described by the California Civil Code, the Department has also concluded that executing the proposed change order will likely result in a cost savings to the public because:

No potential increase to previously established bid schedule costs.

No additional Contractor insurance costs.

No administrative costs related to project advertisement.

No administrative costs related to the project award.

As described above, the issuance of the proposed change order best serves the public interest from a public health and safety standpoint. Furthermore, procuring the work through competitive bidding would not produce any appreciable advantage to the County or its residents.

Action to be taken following Board approval:

The Director of Environmental Management Department will execute the first amendment to Change Order #001 in the amount not to exceed \$199,246, Change Order #010 not to exceed \$59,867.08, Change Order #011 not to exceed \$88,826.91, Change Order #012 not to exceed \$69,592.56, Change Order #013 not to exceed \$853,933.60, Change Order #014 not to exceed \$525,000, and Change Order #015 not to exceed \$225,000.

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