



County of El Dorado

330 Fair Lane, Building A
Placerville, California
530 621-5390
FAX 622-3645
www.edcgov.us/bos/

Legislation Text

File #: 12-0282, Version: 1

Chief Administrative Office recommending the following pertaining to the El Dorado Hills Branch Library Carpet Removal and Installation Project (No. 90052):

- 1) Make findings that the “continuing contract exception” to competitive bidding applies; and
- 2) Authorize the Chair to sign Agreement for Construction Services PW 11-30618 (276-C1266) with Capital Commercial Flooring, Inc. in an amount not to exceed \$149,800 to remove and install moisture barrier and new carpet at the El Dorado Hills Branch Library.

FUNDING: Settlement Agreements between County and original Contractor, and between County and Architectural oversight firm.

BUDGET SUMMARY:		
Total Estimated Cost		\$149,800
Funding		
Contractor Retention	\$140,000	
Architectural Firm	\$8,600	
County	\$1,200	El Dorado Hills Library
Other		
Total Funding Available	\$149,800	
Change To Net County Cost		\$0

Fiscal Impact/Change to Net County Cost: Funding for this Agreement is provided by retention withheld from the original contractor, payment from the original architectural firm, and funds from the El Dorado Hills Library operating budget. The original architectural firm will also cover the cost of any overruns related to the Work, not to exceed 5% of the contract not-to-exceed amount.

Background: M&H builders, Inc. constructed the El Dorado Hills Branch Library, which was substantially completed in February 2006. Upon substantial completion, the County discovered that the carpeting throughout the library failed to adhere to the concrete slab, resulting in visible seams and detached carpet edges, among other things. In order to assure repair of the defective work, the County exercised its contractual and statutory right to withhold money otherwise due the contractor. Litigation soon followed. Ultimately, the matter was settled with an agreement providing that the County will retain \$140,000 of the funds otherwise owed to M&H Builders, Inc., and previously retained in the construction escrow account. A separate settlement agreement requires the project’s architectural design firm, Anova Architects, Inc. (formerly known as Murray & Downs) to contribute \$8,600 and cover cost overruns up to 5% of the contract not-to-exceed amount, as well as to provide oversight for the subject carpet replacement project at no additional cost to the County.

The subject contract provides that Capital Commercial Flooring, Inc. (Capital) will remove and store

the library furniture as necessary to complete the carpet removal and installation. In addition to carpet removal and installation, Capital will grind the concrete slab and apply a moisture barrier as well as install rubber molding along the base of the library walls. Capital will perform the work over a two-week period, during which time the library will be closed. In advance of the work, library staff will take efforts to notify the public of the upcoming two-week library closure.

Reason for Recommendation: The primary purpose of this Project is to repair work that was never accepted by the County upon completion of construction of the Library. Though a repair project of this size would typically be let by competitive bidding, under the circumstances here, the County can invoke the “continuing contract exception” to competitive bidding and contract directly with a repair contractor. That exception applies in situations where the original contract was competitively bid, the original contractor fails to perform certain work, and the original construction contract allows the public agency to complete the work at the contractor’s expense. (Shore v. Central Contra Costa Sanitary Dist. (1962) 208 Cal.App.2d 465, 468-470.)

In consultation with County Counsel, the Chief Administrative Office has determined that each of the aforementioned factors is present here. First, the El Dorado Hills Library Project was competitively bid and awarded to M&H Builders, Inc. in 2004. Second, upon substantial completion of the project, the County notified M&H Builders, Inc. that the carpet in the library did not adhere to the surface as required by the specifications. M&H Builders, Inc., however, did not repair the carpet as requested and is now out of business. Third, multiple provisions of the original contract allow for the County to contract for repair in this manner, including Section 3.8.1 “Final Guarantee” and Section 9.2.4 “Cost of Correction,” which states, “Owner may also perform such [corrective] Work or repairs itself and charge the expense to the Contractor.” Accordingly, the Department asks your Board to find that the “continuing contract exception” to competitive bidding applies.

Finally, the Department has reviewed Capital Commercial Flooring’s quote for the work and determined that it is reasonable and the moisture barrier specified is suitable for the moisture conditions.

Action to be taken following Board approval:

1. The Clerk of the Board will obtain the Chair's signature on the two originals of Agreement for Construction Services # PW 11-30618.
2. The Clerk of the Board will forward one fully executed original to the Chief Administrative Office for further processing.

Contact: Russ Fackrell, Chief Administrative Office

Concurrences: County Counsel and Risk Management