



## Legislation Text

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**File #:** 09-1101, **Version:** 5

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Community Development Agency, Transportation Division, recommending the Board approve and authorize the Chair to sign Contract Change Order 122 with DeSilva Gates/Viking, A Joint Venture in the amount of \$79,609.50 to resolve all claims on the U.S. 50/Missouri Flat Interchange Phase 1B project, CIP No. 71336, Purchasing Contract No. 304-C1099 and confirm that it is in the public interest to waive competitive bidding for the work described therein.

**FUNDING:** State Transportation Improvement Program/Proposition 1B Funds.

**DEPARTMENT RECOMMENDATION:**

Community Development Agency, Transportation Division, recommends the Board approve and authorize the Chair to sign Contract Change Order 122 with DeSilva Gates/Viking, A Joint Venture in the amount of \$79,609.50 to resolve all claims on the U.S. 50/Missouri Flat Interchange Phase 1B project, CIP No. 71336, Purchasing Contract No. 304-C1099, and confirm that it is in the public interest to waive competitive bidding for the work described therein.

**DISCUSSION / BACKGROUND:**

General

On October 21, 2009, the Transportation Division (Transportation) opened bids for the U.S. 50/Missouri Flat Phase 1B project (Project). The low bid submitted by DeSilva Gates - Viking, A Joint Venture (JV) was \$23,834,107. On November 9, 2009, the Board awarded construction of the Project to the JV. The Project's roadway improvements were fully opened to motorists in Fall 2012. Final work on the Project was completed in late 2013.

Contract Change Order 122

On July 29, 2014, the Board approved the Notice of Acceptance for the Project. Transportation sent the JV the Project's proposed final estimate on November 5, 2014. The JV responded to Transportation's proposed final estimate by filing claims totaling \$134,987.82 on December 9, 2014. Transportation met with the JV on March 2, 2015 and negotiated a final claims settlement of \$79,609.50, which Transportation proposes to formalize with Board approval of CCO 122.

Waiver of Competitive Bidding

The cumulative value of CCOs (including CCO 122) on this Project is 15.36% 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 open to 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 122 would have been undesirable and impractical and would not have resulted in the best economic result for the public for the following reasons:

- 1) Each of the items of change order work is functionally integrated with the base project. The JV and their subcontractors were already mobilized and onsite doing the base project construction. These factors allow this integration 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 earthwork and then another contractor under a separate contract might have been required to construct the roadway section) 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.

**ALTERNATIVES:**

If the Board chooses not to authorize CCO 122, the JV will likely initiate litigation against the County by filing for mediation/arbitration. Therefore, Transportation recommends that the Board approve CCO 122.

**OTHER DEPARTMENT / AGENCY INVOLVEMENT:**

N/A

**CAO RECOMMENDATION:**

CAO recommending Board approval of CCO 122 with JV in the amount of \$79,609.50 for work related to the U.S. 50/Missouri Flat Interchange Phase 1B project, CIP No. 71336.

**FINANCIAL IMPACT:**

As shown in Transportation's 2014 Capital Improvement Program, there is adequate funding in the project's direct construction budget to pay for CCO 122. All funding for CCO 122 will be provided by State Transportation Improvement Program/Proposition 1B funding.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

Obtain the Board Chair's signature on two (2) copies of CCO 122. Return one (1) original of CCO 122 to Transportation for further processing.

**STRATEGIC PLAN COMPONENT:**

N/A

**CONTACT**

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