



County of El Dorado

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Legislation Text

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Department of Transportation recommending that the Board authorize the Chair to execute Contract Change Order No. 58 with Nehemiah Construction, Inc. in the amount of \$4,375,281.73 to extend the eastbound limits of work on Phase 1 of the U.S. 50 HOV Lanes Phase 1 El Dorado Hills to Bass Lake Grade, Project No. 53110, and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein. Commencement of construction will be contingent upon Caltrans concurrence with Contract Change Order No. 58.

FUNDING: Prop 1B (CMIA), TIM Fees, and Casino Revenue.

| | | |
|---------------------------|-------------|-------------|
| BUDGET SUMMARY: | | |
| Total Estimated Cost | | \$6,067,000 |
| | | |
| Funding | | |
| Budgeted | \$ | |
| New Funding | \$ | |
| Savings | \$ | |
| Other | \$6,067,000 | |
| Total Funding Available | \$6,067,000 | |
| Change To Net County Cost | | \$ 0.00 |

*Funding included in FY 10/11 proposed budget.

Fiscal Impact/Change to Net County Cost:

Estimated costs for this proposed work is as follows:

Contract items: \$4,400,000

Supplemental items: \$180,000

Contingency: \$737,000

Construction management: \$500,000

Preparation of plans and specifications: \$150,000

Design support during construction: \$100,000

Total estimated cost: \$6,067,000

Funding for the proposed work is available as follows:

State Corridor Mobility Improvement Account (CMIA): \$3,516,000

Interim Highway 50 Variable TIM Fee: \$1,789,000

Casino Payments: \$762,000

Total available funding: \$6,067,000

The State CMIA funds described above were allocated to this project at the California Transportation Commissions meeting on May 20-21, 2010. The proposed work was included in the budget in the

2010 Capital Improvement Program. See Board of Supervisors item 10-0381 (also on the June 8, 2010 agenda) for funding related modifications to the cooperative agreement between Caltrans and the County of El Dorado (County).

The proposed action results in no net cost to the County's General Fund.

Background:

In November 2008, the El Dorado County Department of Transportation (Department) opened bids for the U.S. 50 HOV Lanes Phase 1 El Dorado Hills to Bass Lake Grade, Project # 53110 (Project). The construction estimate for this project was \$32.5 million, and the low bid submitted by Nehemiah Construction, Inc. (NCI) was \$26.1 million. The Board subsequently awarded the Project to NCI, and construction has been ongoing since the award. The Project is currently expected to complete in late spring of 2011.

In late 2009, the Department, the El Dorado County Transportation Commission (EDCTC) and Caltrans began discussions regarding how to best utilize the savings realized by the fact that bids came in lower than anticipated. It was decided that the most efficient use of this money would be to extend the HOV lanes to the east another mile, which would fulfill the Project's original intent of providing motorists an eastbound HOV lane from the county line up to Bass Lake Road. The current Project design would widen the median up to just west of Bass Lake Road but terminate the eastbound HOV lane between El Dorado Hills Boulevard and Silva Valley Parkway. The current Project was designed in this manner so that the new HOV lane on the left would not terminate at the same location as the termination of the truck climbing lane on the right.

The Department, Caltrans, and the EDCTC presented this proposal to a member of the California Transportation Commission (CATC) earlier this year. At its May 20, 2010 - May 21, 2010 meeting, the CATC allocated approximately \$3.5 million back to the EDCTC for use to extend the eastbound HOV lane another mile to the east.

It is the Department's opinion that the most efficient and beneficial manner in which to implement the extension of the eastbound HOV lanes is to execute a Contract Change Order (CCO) with NCI.

Reason for Recommendation:

Public Contract Code section 20137 requires that changes to a public works contract 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 bid 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.)

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

Immediate Availability of Funding

As stated above, the CATC has allocated \$3.5 million to this project for specific use as funding for a CCO to extend the HOV lane to the east. This funding is secured and ready to use. If the proposed work is implemented as a stand-alone project, the aforementioned \$3.5 million would go back to the CATC, and the County would have to compete with other agencies and projects on a statewide basis for a reallocation. Obtaining a reallocation that would fund the proposed work would be far from certain. Using this available funding is a significant benefit to the public within the jurisdiction of your Board.

Earlier Public Benefit

If the CCO is executed as proposed, it is expected that the public will gain use of the HOV lane in late 2010, though additional work will be required to fully complete the Project in Spring 2011. If the work is bid as a stand-alone project, the public would likely not gain use of the facility until 2012.

Minimization of Public Inconvenience

Motorists on U.S. 50 have dealt with construction in El Dorado Hills since early 2009. If the work is implemented via CCO as proposed, all construction between the County line and one mile east of Bass Lake Road will likely be complete by early summer of 2011. If the work is completed as a stand-alone project, the proposed work would not be completed until early summer of 2012, which equates to another year of eastbound U.S. 50 commuters dealing with construction zone delays.

Enhanced Public Safety

A single, long, continuous construction zone utilized during one year is safer than the same stretch of freeway with multiple construction zones utilized over several years. This is due to fewer lane shifts at the beginnings and ends of construction zones, fewer forced freeway merges required by reductions in numbers of lanes available to traffic, and less night work.

In addition to the above reasons that demonstrate that executing a CCO meets the public interest as described in California Civil Code, the Department has also concluded that executing a CCO will almost certainly not cost more than bidding the project stand-alone, and will quite likely save money, due to reasons as follows:

- Lower Contractor mobilization costs. Most of NCI's equipment is already on site.
- No Contractor insurance costs. NCI's insurance that was already bought for the original Project will cover the CCO work.
- No administrative cost related to project advertisement.
- No administrative cost related to project award.
- Significantly reduced costs related to creation of Project specifications (most of the specifications for the existing project are acceptable for use on the CCO work).
- Reduced County overhead costs. The construction management team already in place for the existing Project would be assigned to the CCO work. This would be significantly less expensive than assigning staff or consultants to a small, stand-alone project.
- Reduced throwaway costs at the eastbound terminus of the existing project.

It is also important to note that NCI has agreed to perform 48 of 56 (85.7%) of CCO items for which there are corresponding items in the existing project at the contract item prices in its bid for the existing Project. The existing project was publicly bid, and these existing bid prices remain both

legitimate and competitive. The Department has determined that construction prices have increased since bids were opened in November 2008, based on statewide cost data obtained from Caltrans. The Department and NCI have negotiated CCO prices for new items and lump sum items that are competitively priced with respect to construction cost averages on recent Caltrans District 3 projects.

If the proposed CCO work was publicly bid for construction in late 2010 or early 2011, it would not be possible to determine what bidding climate would be in place at that time. In addition, the State project approval process and funding uncertainties would likely push construction out even further, which would create further ambiguity with respect to construction costs.

In sum, the \$3.5 million allocated by the CATC is not immediately available for this work if the County is required to let the work by competitive bidding. Moreover, procuring the work through competitive bidding would not produce any appreciable advantage to the County or benefit to its residents. Indeed, the public would receive a significant benefit if the work is done via change order due to earlier access to the facility and enhancements to public safety. In these circumstances, competitive bidding is not required as to do so would be incongruous with its underlying purpose: obtaining the best result for the public. For these reasons, the Department recommends the Board find that an exception to the competitive bidding requirement exists here and, therefore, the work described herein may be performed through a CCO to the existing contract with NCI.

Due to file size, Attachment E is the cover sheet for the Project plans. The Department retains the entire plan set on file.

Action to be taken following Board approval:

If your Board approves this agenda item, the Department will obtain the Board Chair's signature on the CCO, obtain Caltrans concurrence with and approval of the CCO, and then direct NCI to start construction immediately. If your Board does not choose to approve this item, the Department will fold the proposed work back into Phase 2 of the U.S. 50 HOV Widening Project and continue to work to obtain funding for that project.

Contact: James W. Ware, P.E.,
Director of Transportation

Concurrences: