



## Legislation Text

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**File #:** 21-0919, **Version:** 1

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Department of Transportation recommending the Board:

- 1) Approve and authorize the Chair to execute Contract Change Order 10 with Hanford Applied Restoration and Conservation in the amount of \$74,820.32 on the US 50 / Missouri Flat Road Interchange Improvements Phase 1C - Riparian Restoration Project, CIP 36104014;
- 2) Modify allocations made at the time of contract award for supplemental and contingency items; and
- 3) Find that an exception to the competitive bidding requirement of Public Contract Code section 20137 exists here and that a waiver of competitive bidding is appropriate.

**FUNDING:** Master Circulation & Funding Plan Financing. (Local)

### **DISCUSSION / BACKGROUND**

The contract for the US 50 / Missouri Flat Road Interchange Improvements Phase 1C - Riparian Restoration Project (Project) was awarded to Hanford Applied Restoration and Conservation (Contractor) on August 02, 2016 (Legistar 16-0455, Item 19).

Construction projects in the Department of Transportation's (Transportation) Capital Improvement Program generally include a 10% contingency budget for items of construction work that are unanticipated. This Project's contingency budget is \$67,989.18 and Transportation's departmental Contract Change Order (CCO) authority for this Project is \$46,494.59. The Project also has a budget of \$109,757 for supplemental change orders for items including flagging, dust control, storm water, and water use charges.

The environmental documents for the Missouri Flat Road Interchange Project require the County to mitigate the removal of trees and various plants within the limits of the interchange work, including within the riparian zone of Weber Creek. In 2016, the County put forth a landscape mitigation project detailing the requirements established in the environmental documents for the interchange. The landscape mitigation project required planting in the riparian area of Weber Creek in an effort to restore the area to pre-interchange construction conditions. The contract includes a detailed restoration plan for the riparian area. Planting in the riparian area occurred in late 2017 in accordance with the requirements of the contract.

In August 2018, the County noticed that only two of the seventeen planting species met the performance standards for Year 1 plant establishment as defined in the contract documents. This appeared to be due, in part, to the high creek flows following storms in early 2018. The County, Contractor, and Contractor's environmental consultant discussed various options including re-planting of the same size species required by the contract, planting larger size of the same species required by the contract, and planting upland from the riparian zone. The County submitted the Year 1 Monitoring Report to the California Department of Fish and Wildlife (CDFW) and requested guidance on how best to move forward as it did not appear the minimum mitigation measures could be achieved with the planting prescribed by the contract. A response was not received from CDFW until after the Year 3 Monitoring Report was submitted. By this time, none of the original planting had

survived. However, some native plants, such as blackberry bushes, had propagated and stabilized a portion of the riparian area. The County, Contractor, and the Contractor’s environmental consultant met virtually with CDFW three times over the course of two months in early 2021. CDFW agreed to modify the success criteria established in the contract providing the County re-planted as described in the attached change order and extended the plant establishment period to December 31, 2023. The original plant establishment period would have ended in December 2022. The County finds this to be a reasonable compromise in order to meet the mitigation requirements required. CCO 10 proposed with this Board action provides payment to the Contractor for the additional weeding, planting, and irrigation needed.

The total estimated cost of CCO 10 is \$74,820.32. With previously approved contingency change orders of \$18,244.74, the total for contingency change orders will exceed the amount approved by the Board by \$25,075.88. The amount allocated for supplemental change orders has not been utilized and Transportation is requesting that Board modify the allocation it made at the time of award as follows:

	<u>Original Allocation</u>	<u>Proposed Allocation</u>
Contingency CCOs	\$67,989.18	\$93,065.06
Supplemental CCOs	\$109,757.00	\$84,681.12

Waiver of Competitive Bidding

Execution of CCO 10 will push the cumulative value of CCOs on this Project to 13.7% 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 10 would be undesirable and impractical and would not result 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 Contractor is already mobilized and onsite doing the base project work. 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 result in delays in project completion; and
3. Competitive bidding requires award to the lowest responsible bidder. This could result in multiple contractors working on the same project components 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**

The Board could choose to not approve this change order. Transportation would not be able to fulfill the mitigation requirements.

### **PRIOR BOARD ACTION**

See Discussion/Background section above.

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

### **FINANCIAL IMPACT**

There is sufficient funding for the proposed contract change order in the Project's construction phase budget that was originally approved by the Board. No additional funding is being requested.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 10.
- 2) The Clerk of the Board will return a fully executed copy of CCO 10 to John Kahling at Transportation (Headington) for further processing.

### **STRATEGIC PLAN COMPONENT**

Infrastructure

### **CONTACT**

Rafael Martinez, Director  
Department of Transportation