



Legislation Text

File #: 21-0882, **Version:** 1

Department of Transportation recommending the Board take the following actions related to the Industrial Drive/ Missouri Flat Road Temporary Signal Project, Capital Improvement Program project number 73366/36105053, Contract 4455:

- 1) Approve and authorize the Board Chair to execute Contract Change Order 3 with Tim Paxin's Pacific Excavation, Inc. in the amount of \$17,860;
- 2) Find that a waiver of competitive bidding is appropriate because competitive proposals are impractical and would not result in any advantage to the public entity, and waive the competitive bidding requirement for Contract Change Order 3; and
- 3) Add the temporary signal system to the FY 2020-21 Fixed Asset List.

FUNDING: General Fund/Discretionary - Accumulative Capital Outlay (36%), General Fund (52%) and Tribe Funds (12%). (Local Funds)

DISCUSSION / BACKGROUND

The construction contract for the Industrial Drive/ Missouri Flat Road Temporary Signal Project (Project) was awarded by the Director of Transportation to Tim Paxin's Pacific Excavation (Pacific Excavation) on February 13, 2020, as delegated by the Board on December 10, 2019, Legistar 19-1730, Item 30. The Notice to Proceed was issued for April 6, 2020. The original contract stipulated that Pacific Excavation remove the temporary signal system within 18 months of installation, as directed by the County. This was intended to coincide with construction of the permanent traffic signal and intersection improvements at the corner of Missouri Flat Road and Industrial Drive. However, due to delays in acquiring the right of way and subsequent utility relocations, removal of the temporary signal system is anticipated to exceed 18 months from installation of the temporary system. Pacific Gas & Electric, Inc. (PG&E) has informed the Department of Transportation (Transportation) that they are experiencing delays for their utility relocations which may impact the construction schedule of the permanent signalization project at Industrial Drive. The permanent signal project's construction is dependent upon PG&E's undergrounding of their utilities along Missouri Flat Road. The schedule delays are anticipated through 2023.

Through conversations with the contractor, Transportation has been made aware that Pacific Excavation is not interested in extending the contract, but is willing to sell the temporal signal system components to the County. Due to the anticipated delays, continuing to rent the components for the additional months would be more costly than purchasing them. This purchase will also allow the contractor of the future intersection improvement project to properly coordinate the removal of the temporary system with activation of the permanent system with minimal disruptions to traffic operations. The temporary signal system components will also become property of the County and may be reused for future needs.

To date, Transportation has issued two Contract Change Orders (CCOs), for a cumulative contingency amount of \$24,441.50 or 9.85% of the original contract amount. Since the Board has authorized a contingency budget of \$24,802.60 or 10% of the original contract amount, any future CCOs resulting in a cumulative contingency encumbrance over this amount would require Board

approval.

CCO 3 provides compensation in a lump sum payment to Pacific Excavation for the temporary signal system components that were furnished and installed as part of the contract work. Pacific Excavation will accept a lump sum payment in the amount of \$17,860 for the noted items of work.

Waiver of Competitive Bidding

Execution of CCO 3 will increase the cumulative value of all CCOs on this Project to 17.06% 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 Project supports the conclusion that competitive bidding for the work described in CCO 3 would have been undesirable and impractical and would not have resulted in the best economic result for the public since each of the items of CCO work is functionally integrated with the base Project and the nature of the CCO is related to the utility delay incurred by Pacific Excavation, rather than extra work that could have been subject to competitive bidding. For this reason, Transportation recommends the Board find that an exception to the competitive bidding requirement exists in this instance and that a waiver of competitive bidding is appropriate.

ALTERNATIVES

The Board could choose not to approve the change order. Pacific Excavation would likely file a claim against the County to recuperate monies expended.

PRIOR BOARD ACTION

The Board approved the Project for advertisement for bids on December 10, 2019, Legistar 19-1730, Item 30.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

At their April 20, 2018 meeting, the Board directed that the Project be funded through \$750,000 from the Public Safety Facility Budget (ACO Fund), \$1,241,000 Sheriff Contribution (General Fund), and \$159,000 in Tribe Funds, and that funding be utilized in that order (Legistar Item 18-0596). Total funding for the Project was approved by the Board on June 9, 2020, Legistar 20-0675, Item 54. The total budget for the temporary signal construction phase is \$302,000, which includes a contingency of \$24,441.50. Approval of CCO 3 results in a contingency budget exceedance in the amount of

\$17,498.90. The resulting net additional County cost will be paid for with the General Fund.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 3.
- 2) The Clerk of the Board will return a fully executed copy of CCO 3 to Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

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