



## Legislation Details (With Text)

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**Title:** Department of Transportation recommending the Board take the following actions related to the White Meadow Road and Peavine Ridge Road Storm Damage Repair Project, CIP 78711/36102025, Contract 2771:

- 1) Retroactively approve and authorize the Board chair to sign Contract Change Order 4, in the amount of \$144,525 due to an increase in the amount of import material needed at the site;
- 2) Find that an exception to the competitive bidding requirement exists for the work described in Contract Change Order 4 and that a waiver of competitive bidding is appropriate; and
- 3) Authorize an increase to the construction budget in the amount of \$75,000. (Est. 5 Min.)

**FUNDING:** Local and State discretionary funding initially (100%), with Department of Transportation staff working with the Federal Emergency Management Agency and the California Office of Emergency Services to obtain reimbursement. (Local, State, and Federal)

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. A - CCO 04, 2. Executed Change Order 2771

Date	Ver.	Action By	Action	Result
2/12/2019	1	Board of Supervisors	Approved	Pass

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### DISCUSSION / BACKGROUND

The contract for the White Meadow Road and Peavine Ridge Road Storm Damage Repair Project (Project) was approved by the Board on September 25, 2018 (Item 49) and notice to proceed was issued for November 5, 2018. On December 18, 2018 (Item 47), Department of Transportation (Transportation) staff informed the Board of the need for Contract Change Order 4 (CCO 4), and the anticipated necessary budget increase.

Shortly after the Project started, this Project's contractor, MKD Construction, Inc. (MKD) and

Transportation staff realized that the import material (e.g. soil) bid quantity was not aligned with the amount of import material that would be required at the site. Transportation staff and MKD agreed that CCO 4 would be executed to pay MKD to provide more import material. The County and MKD worked together to minimize the cost and impacts of CCO 4, taking steps like replacing import material with heavy crushed rock in the bottom of the fill and using whatever local material when it was suitable to use for the fill. Despite these and other measures, on December 10, Transportation staff determined that the estimated cost of CCO 4 would be in excess of 10% of the total cost of the original contract and would require Board approval.

#### Waiver of Competitive Bidding

Execution of CCO 4 will push the cumulative value of CCOs on this Project to 17% 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 support the conclusion that competitive bidding for the work described in CCO 4 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 Contractor its subcontractors were already mobilized and on site 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 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 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 CCO. The contractor would likely then file a claim against the County to recuperate monies expended.

#### **PRIOR BOARD ACTION**

See Discussion / Background section above.

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

N/A

## CAO RECOMMENDATION / COMMENTS

It is recommended that the Board approve this item.

## FINANCIAL IMPACT

On September 25, 2018 (Item 49) the Board approved a construction budget for the Project of \$1,091,211.25. A breakdown of the budget is as follows:

Total construction budget	\$1,091,211.25
Construction management	\$ (130,945.35)
MKD construction bid price	<u>\$ (872,969.00)</u>
Amount remaining for CCOs	\$ 87,296.90
CCOs written to date	<u>\$ (9,760.00)</u>
Balance available	\$ 77,536.90
CCO 04	<u>\$ (144,525.00)</u>
Balance Available	\$ (66,988.10)

The approval of CCO 04 will result in a budget deficit of \$66,988.10. Transportation is requesting a budget increase of \$75,000 to allow for additional contract change orders and increases to construction management costs.

This Project is eligible for 75% reimbursement by FEMA and 18.75% reimbursement by California Office of Emergency Services. The remaining 6.25% of eligible costs and 100% of costs that are not eligible will be covered by local and state discretionary funding. The current funding Obligation Letter for this project is \$319,522, but the project is deemed to be a large project. Per the FEMA Public Assistance Program and Policy Guide, the final eligible amount for large projects is the actual documented cost of the completed, eligible scope of work. Transportation will continue working with these agencies to obtain the maximum allowable reimbursement.

## CLERK OF THE BOARD FOLLOW UP ACTIONS

N/A

## STRATEGIC PLAN COMPONENT

Infrastructure

## CONTACT

Rafael Martinez, Director

Department of Transportation