



## Legislation Details (With Text)

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<b>File created:</b>	2/20/2022	<b>In control:</b>	Board of Supervisors
<b>On agenda:</b>	5/17/2022	<b>Final action:</b>	5/17/2022
<b>Title:</b>	<p>Department of Transportation recommending the Board take the following actions pertaining to the Mosquito Road Bridge at South Fork American River - Bridge Replacement Project, Capital Improvement Program project number 77126/36105028, Contract 5084, with an estimated total construction phase cost of \$93,001,334:</p> <ol style="list-style-type: none"><li>1) Award the Construction Contract to Shimmick Construction Company, Inc., who was the lowest responsive, responsible bidder who has agreed to extend the bid award time period;</li><li>2) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management;</li><li>3) Authorize the Director of Transportation to sign an Escrow Agreement, if requested by the Contractor and in accordance with Public Contract Code Section 22300, for the purpose of holding Contract retention funds; and</li><li>4) Authorize the Director of Transportation to sign the Dispute Resolution Board Agreement with the Contractor, the County, and the Dispute Resolution Board Members for the purpose of assisting in the resolution of disputes and/or potential claims upon final Board award approval.</li></ol> <p>FUNDING: Highway Bridge Program Funds (99.9%) and Sacramento Municipal Utility District Funds (0.1%). (Federal and Local Funds)</p>		

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. A - Addendum No. 1, 2. B - Addendum No. 2, 3. C - Bid Summary, 4. D - Shimmick Bid Extension Letter, 5. E - Cash Flow Analysis, 6. Executed Contract No. 5048/CIP No. 36105028 (77126)

Date	Ver.	Action By	Action	Result
5/17/2022	1	Board of Supervisors	Approved	Pass

Department of Transportation recommending the Board take the following actions pertaining to the Mosquito Road Bridge at South Fork American River - Bridge Replacement Project, Capital Improvement Program project number 77126/36105028, Contract 5084, with an estimated total construction phase cost of \$93,001,334:

- 1) Award the Construction Contract to Shimmick Construction Company, Inc., who was the lowest responsive, responsible bidder who has agreed to extend the bid award time period;
- 2) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management;
- 3) Authorize the Director of Transportation to sign an Escrow Agreement, if requested by the Contractor and in accordance with Public Contract Code Section 22300, for the purpose of holding Contract retention funds; and
- 4) Authorize the Director of Transportation to sign the Dispute Resolution Board Agreement with the Contractor, the County, and the Dispute Resolution Board Members for the purpose of assisting in the resolution of disputes and/or potential claims upon final Board award approval.

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## **DISCUSSION/BACKGROUND**

The Mosquito Road Bridge at South Fork American River Project (Project) will replace the existing Mosquito Road Bridge with a segmental cast in place box girder bridge over South Fork American River on Mosquito Road. The Project includes the construction of temporary access; the foundation construction of cast-in-drilled-hole (CIDH) concrete piles, optional micropiles, sub-structure, and super-structure bridge work; the construction of tie back, soil nail, soldier pile, and reinforced concrete retaining walls; and grading, paving, and drainage system improvements for the re-aligned approach roadway. The Project duration is 700 working days and is anticipated to be complete by spring 2025. The Project will install bollards at the entrances to the existing bridge to restrict future vehicle usage after the new bridge is open to traffic. The existing bridge will be removed from the Department of Transportation's (Transportation) inventory list and then converted to a bicycle and pedestrian bridge under a separate construction contract with County funding.

The Project was approved for advertisement by the Board on December 14, 2021, Item 24, Legistar 21-1790. Approval of Legistar 21-1790 also included Board approval of Resolution 182-2021, which authorizes the Director of Transportation to approve a full closure of Mosquito Road for up to 70 calendar days per construction season.

Due to federal funding, both California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) compliance are required. On August 8, 2017, Item 27, Legistar 17-0725, the Board certified the Final Environmental Impact Report (FEIR), adopted the Mitigation Monitoring and Reporting Plan, adopted the Findings of Fact, approved the Project as described in the FEIR, and authorized Transportation to proceed with filing the CEQA Notice of Determination. A CEQA Notice of Determination for the FEIR was filed on August 9, 2017. A Caltrans NEPA Categorical Exemption/Categorical Exclusion Determination was issued on September 5, 2017 for the Project.

On April 21, 2022, Transportation submitted The Arborist Report and Oak Resources Management Plan (ORMP) Mitigation Permit Application to the Planning Department for the removal of heritage oaks and oak tree canopy within the permanent improvements right of way for the Project. The journal entry for the mitigation fee is in process. Tree removal will be one of the first items of work on the Project. Per the Contract, and subject to review and approval of an access plan submittal, the Contractor will be responsible for the arborist report and mitigation fee for temporary access areas within the temporary construction easements.

The Contract Documents include all required federal provisions and incorporate the current Caltrans Disadvantaged Business Enterprise (DBE) requirements.

Issuance of all environmental permits for this Project is complete.

Procurement of all required right of way for the Project is complete.

## **DEPARTMENT RECOMMENDATION**

Award and Sign Construction Contract with Lowest Responsive, Responsible Bidder Who Agreed to Extend the Bid Award Time Period:

On Friday, February 25, 2022 at 2:00 p.m., Transportation opened electronic bids for the Project and read them during a public Zoom meeting. Five (5) bids were received ranging from \$66,237,895 to

\$114,380,376.

Flatiron West, Inc. (Flatiron) submitted the lowest bid at \$66,237,895. However, the contract documents required the bidder to make adequate good faith efforts to meet the Disadvantaged Business Enterprise (DBE) goal of 14%. Transportation performed a Good Faith Effort (GFE) evaluation of Flatiron's bid, and initially found that Flatiron did not make an adequate good faith effort. Flatiron requested Transportation reconsider that decision in accordance with federal law. Transportation convened a reconsideration panel and held a meeting with Flatiron. Based upon additional information provided by Flatiron, Transportation reversed the initial determination and found that Flatiron did in fact make an adequate good faith effort to meet the DBE goal. On April 6, 2022, Transportation notified all bidders of the reconsideration of Flatiron's GFE and of Transportation's intent to recommend that the Board award the Project to Flatiron. The second lowest responsive and responsible bidder, Shimmick Construction Co. (Shimmick), protested this recommendation and was scheduled to state their protest for the Board to review and make a final determination for the protest and award of contract.

The Bid Documents require the County to award the project within sixty (60) days of bid opening, which was April 26, 2022. Due to various circumstances, including the reconsideration of Flatiron's good faith effort and Shimmick's aforementioned bid protest, Transportation was not able to bring the award of this bid to the Board within that time period. Transportation sent a letter to Flatiron on April 25, 2022, requesting that the bid award period be extended. Flatiron notified Transportation on May 3, 2022, that they would not sign the letter to extend the bid award period, which precluded Transportation from recommending the Board award the Project to Flatiron. Transportation then sent a letter to Shimmick requesting that the bid award period be extended. Shimmick agreed to sign the bid award extension. Accordingly, Shimmick withdrew their bid protest on May ~~xx~~10, 2022. Transportation recommends the Board award the Project to Shimmick, as Shimmick is the lowest responsive, responsible bidder who agreed to extend the bid award period. Shimmick's total bid for the Project is \$74,401,068.

#### Authorize the Director of Transportation (Director) to Sign Escrow Agreement:

Pursuant to Special Provisions Section 9-1.16F, "Retentions", Transportation will retain five percent (5%) of the value of work done from each Contractor payment (excluding mobilization payments) as security for the fulfillment of the Contract. Alternatively, Public Contract Code (PCC) Section 22300 provides that the Contractor may request that payment of retentions held be made directly to an Escrow Agent. The Contractor will receive the interest earned on the investment.

In accordance with these provisions, the Contractor may request in writing that the County make payment of retention funds directly into an escrow account, which would necessitate an Escrow Agreement. To help expedite this process, if requested by the Contractor, Transportation requests that the Board authorize the Director to execute the Escrow Agreement. Upon satisfactory completion of portions of the Contract and upon written notification from the Director, the Contractor will receive incremental releases from the Escrow Agent paid into the account and any interest earned thereon. A portion of the retention and interest will be retained in the escrow account until thirty-five (35) days after the recordation of the Notice of Acceptance of the Contract at which time, upon written notification, these funds will be released to the Contractor.

#### Contract Change Orders (CCOs):

In any contract, there is a need to be able to make changes and the CCO process facilitates the

ability to make necessary changes when needed within a contract.

### **Contingency CCOs**

With construction contracts, there is an expectation that unanticipated changes will be encountered once construction begins. To prepare for this, a 10% contingency budget is set aside. The budget for contingencies on this contract is \$7,440,106. PCC Section 20142 and Resolution 102-2012 authorize the Director to execute individual CCOs, the maximum value of which is based on the original contract amount with a not-to-exceed limit of \$210,000 for this Project. This authority is also for a cumulative total of contingency CCOs not to exceed 10% of the original Contract value.

### **ALTERNATIVES**

- 1) Do not award the contract and direct Transportation to re-advertise for construction bids.
- 2) Cancel the Project. Canceling the Project may include the consequence of reimbursing federal funding received to date.

### **PRIOR BOARD ACTION**

See Discussion/Background section above.

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

County Counsel and Risk Management reviewed and approved the Contract Documents on November 18, 2021.

### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

### **FINANCIAL IMPACT**

The estimated cost for the construction phase of the Project is \$93,001,334, which includes the bid amount of \$74,401,068; construction management, survey, materials testing and design support during construction totaling \$11,160,160; and contingency of \$7,440,106.

This Project requires a High Cost Agreement that specifies the County will use local funds in lieu of federal funds to finance the cost of work until the time that the Highway Bridge Program (HBP) federal funds become available. On February 23, 2021, Item 29, Legistar 20-0914, the Board approved the Director of Transportation to sign the High Cost Agreement and Rafael Martinez signed the agreement on March 2, 2021. Using Shimmick's bid prices and a contract duration of 700 working days, Transportation estimates that the terms of the High Cost Agreement may require the County to use its own funds to pay the Project's construction phase costs up to \$14.2 million in Federal fiscal year (FFY) 21/22, up to \$22.1 million in FFY 22/23, up to \$25.4 million in FFY 23/24, and up to \$16.7 million in FFY 24/25 (see table below). All of these expenditures are reimbursable per the terms of the High Cost Agreement.

Anticipated Expenditure, Obligation, and Advance Construction Expenditure Schedule (in Millions):

	<b>Federal Fiscal Year (Oct 1-Sept 30)</b>				
	<b>21/22</b>	<b>22/23</b>	<b>23/24</b>	<b>24/25</b>	<b>25/26</b>
(a) Estimated Construction Expenditures	\$30.5	\$27.9	\$23.3	\$11.3	\$0.0
(b) Cumulative Estimated Construction Expenditures	\$30.5	\$58.4	\$81.7	\$93.0	\$93.0
(c) Federal Fund Obligation	\$16.3	\$20.0	\$20.0	\$20.0	\$16.7

(d) Total Cumulative Funding Obligation	\$16.3	\$36.3	\$56.3	\$76.3	\$93.0
(b)-(d) Local AC Expenditure Obligation	\$14.2	\$22.1	\$25.4	\$16.7	\$0.0

The estimated expenditures are calculated using the Project's duration of 700 working days. The actual expenditures are expected to fluctuate based upon the Contractor's actual schedule.

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

- 1) Upon approval by County Counsel and Risk Management, Transportation will forward two (2) originals of the Construction Contract, together with the required bonds and insurance, and the approved Contract Routing Sheet to the Clerk for the Chair's signature.
- 2) The Clerk will forward one (1) fully executed Construction Contract to Transportation, attention of Brian Franklin, Office Engineer, for further processing.

#### **STRATEGIC PLAN COMPONENT**

Infrastructure

#### **CONTACT**

Rafael Martinez, Director  
Department of Transportation