



Legislation Details (With Text)

File #: 24-0960 **Version:** 1

Type: Agenda Item **Status:** Approved

File created: 5/14/2024 **In control:** Board of Supervisors

On agenda: 6/11/2024 **Final action:** 6/11/2024

Title: Department of Transportation recommending the Board take the following actions related to the Patterson Drive Emergency Culvert Repair Project, Project number 36204002, Contract number 8597:
 1) Retroactively approve and authorize the Board Chair to execute Contract Change Order 2 with Doug Veerkamp General Engineering, Inc. in the amount of \$20,928.23 (4/5 vote required);
 2) Retroactively approve and authorize the Board Chair to execute Contract Change Order 3 with Doug Veerkamp General Engineering, Inc. in the amount of \$33,930.84 (4/5 vote required); and
 3) Find that a competitive bidding exception to Public Contract Code Section 20137 exists for Contract Change Orders 2 and 3 as it would have been impractical, and the waiver of competitive bidding is appropriate.
 (District 3)

FUNDING: Road Fund. (100%)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Contract Change Order #2.pdf, 2. B - Contract Change Order #3.pdf, 3. C - Agreement 8597.pdf, 4. D - Patterson Update Memo.pdf, 5. Executed Contract Change Order #2, 6. Executed Contract Change Order #3, 7. Executed Notice of Acceptance - Contract No. 8597, CIP No. 36204002

Date	Ver.	Action By	Action	Result
6/11/2024	1	Board of Supervisors	Approved	Pass

..Title

Department of Transportation recommending the Board take the following actions related to the Patterson Drive Emergency Culvert Repair Project, Project number 36204002, Contract number 8597:

- 1) Retroactively approve and authorize the Board Chair to execute Contract Change Order 2 with Doug Veerkamp General Engineering, Inc. in the amount of \$20,928.23 (4/5 vote required);
- 2) Retroactively approve and authorize the Board Chair to execute Contract Change Order 3 with Doug Veerkamp General Engineering, Inc. in the amount of \$33,930.84 (4/5 vote required); and
- 3) Find that a competitive bidding exception to Public Contract Code Section 20137 exists for Contract Change Orders 2 and 3 as it would have been impractical, and the waiver of competitive bidding is appropriate.

(District 3)

FUNDING: Road Fund. (100%)

DISCUSSION / BACKGROUND

On March 12, 2024 (Legistar 24-0464, Item 14), the Board adopted Resolution 041-2024, finding that an emergency existed on Patterson Drive in Diamond Springs due to a sinkhole resulting from a failed culvert. The Board also authorized the Director of Transportation to take all necessary actions to approve, authorize, and award the emergency repair project. The contract for the Patterson Drive

Emergency Culvert Repair Project (Project) was awarded by the Director on April 9, 2024, and the Notice to Proceed was issued to Doug Veerkamp General Engineering, Inc. (DVGE) for April 10, 2024. DVGE began work at risk on April 1, 2024, in accordance with Standard Specification 8-1.04B.

During the course of construction, a number of unanticipated issues arose that required Transportation to authorize extra work not shown in the Project bid documents.

Three Contract Change Orders (CCOs) were required for the Project. CCO 1 is a no-cost change order for drainage system revisions needed to maintain the Project schedule.

CCO 2, in the amount of \$20,928.23, provides for the following extra work items performed by DVGE:

- 1) Additional removal of one oak tree.
- 2) Extension of the existing failed 30" CMP replacement to the west County right of way limit, approximately 14 lineal feet beyond the limits shown in the Project bid documents.
- 3) Additional trench excavation and backfill associated with the extension of the culvert replacement to the west County right of way line.

CCO 3, in the amount of \$33,930.84, provides for the following extra work items performed by DVGE:

- 1) Additional water pumping, saturated material excavation, and slurry-cement backfill throughout the entire trench zone that was caused by the existing failed and rotted-out 30" CMP culvert.
- 2) Repair / reconstruction needed to the existing 30" CMP culvert upstream of the new replacement 30" HDPE culvert section to facilitate a sound concrete collar connection between the old and new culverts.
- 3) Additional traffic control, trench inspection, water pumping, saturated material excavation, slurry-cement backfill, and wasted concrete delivery caused by rainwater inundation of the work zone during the April 4, 2024 and April 5, 2024 storm.
- 4) Water pumping and trench monitoring over the weekend of April 6, 2024 and April 7, 2024.
- 5) Placement of Tensar Biaxial Geogrid BX1200 subgrade reinforcement throughout the bottom of trench under Patterson Drive to help reinforce the basement material supporting the new culvert.
- 7) Additional 20 lineal feet of curb and gutter on the west side of Patterson Drive to assure adequate drainage to the new GCP inlet and prevent ponding of water adjacent to the roadway shoulder and traveled way.
- 8) New 4" PVC casing and repaired existing 1" PVC irrigation lines that were damaged during the concrete driveway apron demolition on the east side of Patterson Drive.

The contingency budget for this Project was established at \$18,900, or 10% of the original contract amount. Any Contract Change Orders (CCOs) resulting in a cumulative contingency encumbrance over this amount requires 4/5 Board approval. Transportation submitted a memorandum to the Board on April 8, 2024 (Attachment D), to inform the Board of the contingency status and the likelihood of the Project exceeding the 10% cumulative contingency amount for the CCOs. As stated in that memorandum, Transportation is now returning to the Board to recommend retroactive approval of these CCOs.

Waiver of Competitive Bidding

Execution of CCOs 2 and 3 will increase the cumulative value of all CCOs on the Project to 29% 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 CCOs 2 and 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 scope of the Project, 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 orders. DVGE would likely file a claim against the County to recuperate monies expended during the completion of the extra work.

PRIOR BOARD ACTION

March 12, 2024 - Legistar 24-0464, Item 14 - Approval of Resolution 041-2024 declaring the failed culvert an emergency and granting the Road Commissioner authority to take all necessary actions to authorize road repairs required to fix the sinkhole and related damage on Patterson Drive.

March 19, 2024 - Legistar 24-0550, Item 30 - Update on the emergency road repairs.

April 2, 2024 - Legistar 24-0613, Item 14 - Update on the emergency road repairs.

April 9, 2024 - Legistar 24-0670, Item 27 - Update on the emergency road repairs.

April 23, 2024 - Legistar 24-0764, Item 17 - Update on the emergency road repairs.

April 30, 2024 - Legistar 24-0816, Item 16 - Update on the emergency road repairs and terminate the emergency status.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

The construction contract for the Project was signed by the Director of Transportation on April 9, 2024. The total budget for direct construction is \$207,900.00, which includes an \$18,900.00 contingency budget. Approval of CCOs 2 and 3 results in a total project cost of \$262,759.07 which is a contingency budget overrun of \$35,959.07. Funding for this overrun will be provided by Road Fund, which is funding the entire Project.

CLERK OF THE BOARD FOLLOW UP ACTIONS

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

STRATEGIC PLAN COMPONENT

N/A

CONTACT

Rafael Martinez, Director
Department of Transportation