



Legislation Text

File #: 18-0186, **Version:** 1

Community Development Services, Department of Transportation, recommending the Board approve and authorize the Chair to execute Contract Change Order 17 with Vinciguerra Construction in the amount of \$76,420 to resolve claims filed by Vinciguerra Construction on the U.S. 50/Missouri Flat Road Interchange - Phase 1B.2 Project, CIP 71359, PW 16-31149, P&C 034-C1799, and confirm that it is in the public's interest to waive competitive bidding for the work described therein.

FUNDING: Congestion Mitigation and Air Quality (49% - Federal) and Master Circulation & Funding Plan Financing (51% - Local).

DEPARTMENT RECOMMENDATION

Community Development Services, Department of Transportation (Transportation), recommending the Board approve and authorize the Chair to execute Contract Change Order (CCO) 17 with Vinciguerra Construction (Vinciguerra) in the amount of \$76,420 to resolve claims filed by Vinciguerra Construction on the U.S. 50/Missouri Flat Road Interchange - Phase 1B.2 Project (Project), CIP 71359, PW 16-31149, P&C 034-C1799, and confirm that it is in the public's interest to waive competitive bidding for the work described therein.

DISCUSSION / BACKGROUND

General

On February 1, 2017, Transportation opened bids for the Project. The low bid submitted by Vinciguerra Construction was \$1,298,579.80. The Board awarded the Project to Vinciguerra on February 28, 2017 (Item 21). The bike path was opened for public use on December 11, 2017 and the Project was accepted as complete by the Board on January 23, 2018 (Item 24).

Contract Change Order 17

During construction, Vinciguerra filed 11 notices of potential claim against the County wherein Vinciguerra alleged the County owed Vinciguerra for performing work that was not covered by the contract documents. Transportation met with Vinciguerra on January 22, 2018 and negotiated final settlement of Vinciguerra's claims for a payment of \$76,420, which Transportation proposes to formalize with Board approval of CCO 17.

Waiver of Competitive Bidding

Execution of CCO 17 will push the cumulative value of CCOs on this Project to 12.4% 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 17 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. Vinciguerra and its subcontractors were already mobilized and onsite doing the base project construction. These factors allow this integration 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 (i.e., the original contractor might have been required to perform earthwork and then another contractor under a separate contract might have been required to construct the bike path) 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 CCO 17. The Contractor would likely pursue its claims against the County with the State of California legal system to recuperate the claimed monies.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

The Project is included in the adopted 2017 Capital Improvement Program. Total payments to Vinciguerra will be within the budgeted amount for direct construction costs previously authorized by the Board via the adoption of the 2017 Capital Improvement Program.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 17.
- 2) The Clerk of the Board will return a fully executed copy of CCO 17 to John Kahling at Transportation (Headington) for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Rafael Martinez, Director
Community Development Services, Department of Transportation