



## Legislation Text

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**File #:** 18-0200, **Version:** 1

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Community Development Services, Department of Transportation, recommending the Board consider the following pertaining to the Silver Fork Road at South Fork American River - Bridge Rehabilitation, FENIX Contract 2741, PW 16-31152, CIP 77124, P&C 298-C1799:

- 1) Reject the bid submitted by the lowest bidder, Syblon Reid Contractors, as being non-responsive for failure to meet the Disadvantaged Business Enterprise goal and failure to demonstrate a Good Faith Effort to meet the goal;
- 2) Award the Construction Contract to the second low bidder, Granite Construction Company, who submitted the lowest responsive, responsible bid of \$1,803,642.00;
- 3) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management;
- 4) Approve the increase in cost to the project from the previously approved Engineer's estimated amount to the bid amount;
- 5) Approve issuance of Notice to Proceed and begin project construction concurrently with the process for Advance Construction conversion to Highway Bridge Program funds; and
- 6) 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.

**FUNDING:** Highway Bridge Program (100%). (Federal Funds)

### **DEPARTMENT RECOMMENDATION**

On February 1, 2018, Community Development Services, Department of Transportation (Transportation) opened bids for the Silver Fork Road at South Fork American River - Bridge Rehabilitation (Project), Capital Improvement Program (CIP) 77124. Five bids were received ranging from \$1,640,981.20 to \$2,156,456.50.

Syblon Reid Contractors (SRC) submitted the lowest bid, but failed to meet the Disadvantaged Business Enterprise (DBE) goal and failed to demonstrate an adequate Good Faith Effort (GFE) toward meeting the goal. Due to this non-responsive bid, Transportation recommends rejecting the bid submitted by SRC and awarding the Contract to the second lowest bidder, Granite Construction Company (Granite), who submitted the lowest responsive, responsible bid.

### Award and Sign Construction Contract with Lowest Responsive, Responsible Bidder:

The DBE goal for the Project is 11%. Per the Contract Documents, if the top three bidders did not submit their DBE information with their bid, they were required to submit this information by 4:00 P.M. on the fifth business day after the bid opening, which for this Project was February 8, 2018. A request was sent via email to the second and third lowest bidders to this regard, as well as a request for DBE quotes to the lowest bidder. The low bidder, SRC, submitted a DBE Commitment form and GFE with their bid and followed up with DBE quotes on February 7, 2018. Their DBE Commitment form shows they committed to a DBE goal of 4.4%. Transportation reviewed SRC's DBE Commitment form and GFE submittal based on the DBE regulations in 49 CFR 26 and Appendix A to 49 CFR 26 and found that SRC failed to both meet the goal and demonstrate an adequate GFE

toward meeting the goal for the following reasons:

- 1) SRC did not provide enough opportunities for DBEs to meet the Project goal (10 of 62 bid items made available for DBE participation);
- 2) SRC did not solicit an adequate number of potential DBE firms (53 of 300+) within the items of work they made available for DBE participation;
- 3) SRC solicited two firms that did not perform the types of work on this Project;
- 4) SRC rejected two DBE quotes (West Coast Water & Trucking, Inc. and a portion of Construction Area Signs, Inc.) that would have increased their DBE participation on the Project;
- 5) The reason given by SRC for rejection of bids / portion of bids was “too high”;
- 6) The second low bidder and fourth low bidder met the goal;
- 7) SRC did not provide follow-up documentation for firms that said they were interested in bidding but no bid was submitted; and
- 8) The second low bidder, Granite, made over 50% of the bid items and 82% of the total bid amount available for DBE participation, and they exceeded the Project DBE goal with a 12.6% commitment.

In conformance with 49 CFR 26.53, on February 12, 2018, SRC was provided the opportunity to file for an administrative reconsideration meeting (meeting), where another party not involved in the initial review evaluates the GFEs. SRC exercised their right and requested the meeting via email on February 14, 2018. On February 14, 2018, Transportation requested California Department of Transportation (Caltrans) perform an independent review of their GFE determination, and received a “Review of GFE Determination Memorandum” back from the Caltrans on March 1, 2018 concurring with Transportation’s determination. After the meeting, held on March 2, 2018, Transportation concurred with its original findings and provided SRC with a final Administrative Reconsideration Determination letter on March 5, 2018. Per prior Counsel direction, at the meeting, SRC was verbally provided an additional day to protest the reconsideration determination. SRC provided no additional protest. Pursuant to this determination, Transportation recommends rejection of SRC’s bid for being non-responsive.

Granite submitted a DBE Commitment form and GFE documentation by 4:00 P.M. on February 8, 2018. The DBE Commitment form shows that Granite committed to a DBE goal of 12.6%. Transportation has reviewed Granite’s DBE Commitment form submittal and finds that the firms listed are certified DBEs under the California Unified Certification Program and meet the criteria for a DBE; that Granite provided sufficient written confirmation from each DBE firm that each is participating in the Contract; and, that Granite has committed to exceeding the Contract DBE goal.

Transportation issued the All Bidders Letter on Monday, February 12, 2018, notifying bidders of the recommendation to the Board for award of the contract to Granite and initiating the five-day bid protest period. The bid protest period ended at 5:00 P.M. on Tuesday, February 20, 2018, with no protests filed. An additional one-day protest period after the administrative reconsideration meeting, through March 5, 2018, was extended to SRC, with no protests filed.

Granite submitted the lowest responsive, responsible bid in the amount of \$1,803,642.00. Transportation recommends award of the Construction Contract to Granite who submitted the lowest responsive, responsible bid.

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

Pursuant to Special Provisions Section 9-1.16F, "Retentions," Transportation will retain 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 Escrow Account and any interest earned thereon. A portion of the retention and interest will be retained in the Escrow Account until 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 \$180,364.20. PCC Section 20142 and County 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 \$102,682.10 for this Contract. This authority is also for a cumulative total of Contingency CCOs not to exceed 10% of the original Contract value.

### **DISCUSSION / BACKGROUND**

The work to be performed includes, but is not limited to, rehabilitation of the existing steel plate girder bridge over the South Fork of the American River; construction of a new reinforced concrete retaining wall; guardrail construction; and grading, paving, drainage, fencing, and pavement delineation work associated with the reconstruction of the roadway approaches. Other items or details not mentioned above, that are required by the Plans, Standard Plans, Standard Specifications, or these Special Provisions must be performed, constructed or installed.

Bridge rehabilitation includes, but is not limited to, demolition of bridge deck and railing; remove, prep./paint, re-install existing steel plate girders on refurbished abutment seats with new bearing pads; install nelson studs on top flange of girders; form, rebar, place concrete bridge deck; install new barrier railing; construct approach slabs; and install type B seals at bridge joints.

In order to perform girder removal and replacement activities, road closures are needed on this Project for four (4) separate nights at four (4) hours each to close Silver Fork Road between U.S. Highway 50 and Robin Circle. The road closures are necessary to accommodate crane set up and work access for the removal and relocation of the bridge girders for each of the two (2) stages of work. The closure times will be limited to 12:00 A.M. until 4:00 A.M. Access through the closed area will be accommodated for emergency personnel and law enforcement as needed. Road closure and detour notifications will be posted one week in advance of the closure. Transportation will notify the

public of this road closure via the County website, a press release, and changeable message signs at the site. The Road Closure Authorization is drafted under Resolution No. 139-2016 approved by the Board on September 13, 2016 (Item 34) and was signed by the Interim Director, Community Development Agency on January 20, 2017. Additionally, Transportation has also communicated with emergency response, United States Forest Service, Kyburz Water, the associated Silver Fork campgrounds, and Caltrans to ensure these closure periods are not problematic.

Transportation has obtained a Caltrans Encroachment Permit for the placement of changeable message signs on U.S. Highway 50.

Due to federal funding, both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance are required. A CEQA Notice of Determination / Negative Declaration was filed on February 20, 2015 and the Initial Study / Mitigated Negative Declaration (ISMND) was approved by the Board on February 10, 2015 (Item 11). A Caltrans NEPA Categorical Exclusion Determination was issued on February 24, 2015.

All required environmental permits have been obtained for the Project and are included in Appendix C of the Contract Documents. All required right of way has been acquired for the Project.

Water line relocation coordination with Kyburz Water is in progress. This work is scheduled to be performed by Kyburz Water and is not part of the Contract. Coordination and correspondence with Kyburz Water has been ongoing. An Encroachment Agreement dated August 23, 2016 was signed by the Transportation Division Director and Kyburz Water that details the responsibility for relocation and payment of any additional costs incurred by the County for Kyburz Water water line relocation. On February 2, 2018, a letter was sent to Kyburz Water that referenced the Encroachment Agreement and provided a tentative Project construction schedule. This schedule requires by the date of April 1, 2018, dependent on weather conditions, the removal of the water line conflicting with the Project work and relocation to a temporary water line that will not conflict with the work.

Since federal funds for construction of the Project were programmed beyond early 2018, Transportation requested authorization to proceed under Advance Construction (AC) procedures. With an AC authorization, local funds are used to perform work eligible for future federal reimbursement until construction funding can be obligated for the current year. Transportation applied for AC authorization (E-76) on January 24, 2017 and received the E-76 for construction phase activities.

Now that the Project was advertised under AC, Caltrans has instructed Transportation to convert the AC to 100% Highway Bridge Program (HBP) funds with the Project construction award package. This is also reflected in the updated Federal Transportation Improvement Program for the Project, which indicates that the HBP funds are planned for conversion in Fiscal Year 2017/2018. Correspondence email was sent to Caltrans on March 13, 2018 stating the recommended award to the lowest responsive, responsible bidder, will increase HBP funding needed. To facilitate start of the Project and completion prior to next winter rainy season, Transportation is requesting the Board allow issuance of the Notice to Proceed and start of Project construction concurrently with the process for AC conversion to HBP funds.

As a federally funded Project, the Contract Documents incorporate the current federal DBE requirements. The DBE goal is 11%.

## **ALTERNATIVES**

- 1) Do not award the Contract and direct Transportation to re-advertise for construction bids.
- 2) Award the Contract but do not approve issuance of Notice to Proceed and begin Project construction concurrently with the process for AC conversion to 100% HBP funds. Depending on the time frame for the AC conversion, this may push the Project to a second season and incur additional costs for Project delays and winterization.
- 3) Cancel the Project. Note: The Board previously approved the Project on December 19, 2017 (Item 23) and the County would not be reimbursed by HBP for the Project work completed to date.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel and Risk Management have reviewed and approved the Contract Documents.

## **CAO RECOMMENDATION / COMMENTS**

It is recommended that the Board approve this item.

## **FINANCIAL IMPACT**

A budget for this Project in the amount of \$1,767,670 was approved for the 2017 CIP update with the advertise item on December 19, 2017 (Item 23). Funding for this Project will be 100% provided by HBP. A revised budget based on the actual construction contract award for this Project will be included in the upcoming 2018 CIP update.

The current estimate for the construction phase of the Project is \$2,380,807, which includes the bid of \$1,803,642; construction management, surveying, materials testing, and design support during construction totaling approximately \$396,801; and a contingency of \$180,364.

The difference in cost between the Engineer's estimate and the amount bid is attributed to:

- 1) The risk associated with the bridge removal item and the potential reuse of the structural members were underestimated;
- 2) The remote nature of the Project, small overall quantities, and environmental sensitivity appear to be reflected in many of the bid item costs that do not appear to follow historical averages; and
- 3) The bid environment appears to be more unpredictable now than in years past as reflected by an overall higher pricing of historically consistent bid item costs.

## **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 securing the Chair's signature.
- 2) The Clerk will forward one (1) fully executed Construction Contract to CDS Transportation, attention of Brian Franklin, Office Engineer, for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure

## **CONTACT**

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