



Legislation Text

File #: 18-0581, **Version:** 1

Community Development Services, Department of Transportation recommending the Board retroactively approve, with a starting date of April 9, 2018, and authorize the Chair to execute the following contract change orders on the Tree Mortality Project Phase III, Contract 2423, PW 17-30218:

- 1) Contract Change Order 1, in the amount of \$37,050, requiring that all limbs and slash are chipped and removed as the trees are felled instead of stacking the slash on site and having Cal Fire chip and remove the slash at a later date; and
- 2) Contract Change Order 2, with a not-to-exceed amount of \$20,000, reducing the allowable road closure time in order to accommodate the bus schedule for Camino Union School District.

FUNDING: California Disaster Assistance Act Funds (75% - State) and General Fund (25% - Local).

DEPARTMENT RECOMMENDATION

Community Development Services, Department of Transportation (Transportation) recommending the Board retroactively approve and authorize the Chair to execute the following contract change orders on the Tree Mortality Project Phase III (Project), Contract 2423, PW 17-30218:

- 1) Contract Change Order (CCO) 1, in the amount of \$37,050, requiring that all limbs and slash are chipped and removed as the trees are felled instead of stacking the slash on site and having Cal Fire chip and remove the slash at a later date; and
- 2) CCO 2, with a not-to-exceed amount of \$20,000, reducing the allowable road closure time in order to accommodate the bus schedule for Camino Union School District (CUSD).

DISCUSSION/BACKGROUND:

General

On March 7, 2018 Transportation opened bids for the Project. The low bid submitted by Joe Benigno Tree Service (JBTS) was \$244,593.00. The Board awarded the Project to JBTS on March 20, 2018 (Item 22). JBTS will begin tree removal operations on April 9, 2018, in order for the change orders to be included the Board will need to approve this item..

Contract Change Order 1

After the Project was awarded, JBTS pointed out that space on Pony Express Trail was limited, and it might be difficult to stack limbs and slash from the removed trees on Pony Express Trail so that Cal Fire could come by at a later date and chip the material as had been done on previous tree mortality projects. Transportation concurred. Transportation also concluded that stacking slash and limbs on the side of Pony Express Trail would also cause problems with drainage and sight distance. JBTS offered to chip and remove the slash and limbs as the trees were felled for \$37,050. Since Transportation was not able to confirm that this price was reasonable until March 30, 2018, CCO 1 is being submitted for retroactive approval.

Contract Change Order 2

CUSD has not been able to accommodate the planned full closures of Pony Express Trail (weekdays 9:00 a.m. until 4:00 p.m.) that are required for JBTS to remove the trees. In order to avoid any

disruption to CUSD's afternoon bus schedule while keeping the Project on schedule, CCO 2 will require JBTS to have Pony Express Trail opened at 1:30 p.m. instead of 4:00 p.m. every other Monday starting on April 9, 2018. JBTS bid the project to complete the work in 4 days. If the reduced closure duration on any of these Mondays pushes JBTS into additional days of work, CCO 2 requires the County to pay for JBTS's additional costs. If poor efficiency, mechanical breakdowns, or any other reason not associated with the reduced closure duration on these Mondays instead causes JBTS to incur additional costs, no additional compensation to JBTS will be provided. Since it was not confirmed that CUSD would be unable to accommodate the closure until April 4, 2018, CCO 2 is being submitted for retroactive approval.

Waiver of Competitive Bidding

Execution of CCOs 1 and 2 will push the cumulative value of CCOs on this Project to 23.3% 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 CCOs 1 and 2 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 (i.e., chipping and removal of the slash or working after 1:00 pm on Mondays) is functionally integrated with the base project (i.e., the tree felling). JBTS and its subcontractors were already mobilized and onsite 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 (i.e., the original contractor might have been required to perform the tree felling and then another contractor under a separate contract might have been required to chip and remove the slash) 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.

While it is not completely clear that this tree removal project meets the legal definition of a public works project, Transportation decided to bring this CCO to the Board out of an abundance of caution and as a best practice.

ALTERNATIVES

The Board could choose to not approve CCO 1. Transportation would direct JBTS to stack the slash on the side of Pony Express Trail. This would cause problems with roadway drainage and motorist sight distance until Cal Fire was able to arrive on site and chip and remove the slash.

The Board could choose to not approve CCO 2. Transportation would not pay JBTS for any impacts associated with the reduced closure durations on the Mondays described above. Should such impacts arise without JBTS being compensated for the impacts, JBTS would likely file a claim against the County.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel

CAO RECOMMENDATION

It is recommended that the Board approve this item. These changes were done due to public safety and education reasons.

FINANCIAL IMPACT

The engineer's estimate for the Project's construction cost was \$499,980. The low bid from JBTS was \$244,593. Therefore, while execution of CCOs 1 and 2 will add \$57,050 to the total Project cost, there sufficient budget remaining to absorb the cost of these CCOs.

CLERK OF THE BOARD FOLLOW UP ACTIONS

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

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

Rafael Martinez, Director
Community Development Services, Department of Transportation