



## Legislation Text

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**File #:** 18-0798, **Version:** 1

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Community Development Services, Department of Transportation, recommending the Board retroactively approve and authorize the Chair to execute Contract Change Order 2.1 with Trinity River Construction, Inc., in the amount of \$69,800.00 for the Starkes Grade Road Slipout Project, CIP 78715, PW 17-31204, Contract 2354; and make the following finding to waive the competitive bidding process for the change order: 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.

**FUNDING:** Local and State discretionary Road funding initially (100%), with Transportation staff working with the Federal Emergency Management Agency and California Office of Emergency Services to obtain reimbursement of up to 93.75% of total project costs.

### **DEPARTMENT RECOMMENDATION**

Community Development Services, Department of Transportation (Transportation), recommending the Board retroactively approve and authorize the Chair to execute Contract Change Order (CCO) 2.1 with Trinity River Construction, Inc. (Trinity), in the amount of \$69,800.00 for the Starkes Grade Road Slipout Project (Project), CIP 78715, PW 17-31204, Contract 2354; and make the following finding to waive the competitive bidding process for the change order: 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.

### **DISCUSSION / BACKGROUND**

The Board authorized Transportation to advertise this Project for bids on September 12, 2017 (agenda item 13). Transportation opened bids on January 4, 2018, and the Board awarded the Project to Trinity on January 23, 2018 (agenda item 21).

Construction started on March 26, 2018. Soon after excavation was started on the Project, two significant issues arose. First, the site contained a large amount of unsuitable material. "Unsuitable material" can be best defined as existing earthen material that is not suitable for construction purposes. At the Project site, the material in question was classified as unsuitable due to over saturation and due to the presence of excessive amounts of non-earthen material such as old timber, root balls, and other organic matter. In addition to the unsuitable material, there was far more groundwater present than could have been anticipated prior to excavation. When groundwater is an issue at a project site, the design must include measures to allow the groundwater to move through the site and discharge downstream. CCO 2 was written in the amount of \$53,535.00 to pay Trinity to remove the unsuitable material and, where necessary, replace it with appropriate material trucked in from a local quarry. CCO 2 also changed the drainage design and added subdrainage to mitigate the unusually large amount of groundwater at the site.

As work progressed on CCO 2, Transportation realized that there would not be enough budget in CCO 2 to complete the work required by CCO 2. Transportation staff knew that if Trinity were

directed to continue working, the budget provided by CCO 2 would be exceeded, as would Transportation's delegated cumulative CCO authority. However, Transportation staff also knew that if Trinity were directed to stop work while this matter was taken to the Board for consideration, Trinity would file delay claims that would expose the County to significant additional costs that might not be reimbursed by the Federal Emergency Management Agency (FEMA) or the California Office of Emergency Services (Cal OES). Therefore, Transportation staff directed Trinity to continue working, and CCO 2.1 is now being brought to the Board for retroactive approval.

#### Waiver of Competitive Bidding

Execution of CCO 2.1 will push the cumulative value of all CCOs on this Project to 15.71% 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 2.1 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. The Contractor 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 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 this change order. The contractor would likely then file a claim against the County to recuperate monies expended.

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

County Counsel

#### **CAO RECOMMENDATION**

It is recommended that the Board approve this item due to the nature of the project and its issues.

## **FINANCIAL IMPACT**

At the January 23, 2018 Board meeting (agenda item 33), Transportation informed the Board that the total Project cost was estimated at \$1,450,000. A breakdown of the budget is as follows:

Total Project budget	\$1,450,000
Planning, design, and right of way	\$ (200,000)
Construction management	\$ (180,000)
Trinity's bid price	<u>\$ (901,584)</u>
Amount remaining for CCOs	\$ 168,216
CCOs written to date(excluding CCO 2.1)	<u>\$ (71,859)</u>
Balance	\$ 96,357

Adequate funding for CCO 2.1 remains in the Project's budget that was presented to the Board on January 23, 2018. No additional funding is being requested.

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

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 2.1.
- 2) The Clerk of the Board will return a fully executed copy of CCO 2.1 to John Kahling at Transportation (Headington) for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure

## **CONTACT**

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