



## Legislation Text

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**File #:** 18-1310, **Version:** 1

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Community Development Services, Department of Transportation, recommending the Board take the following actions pertaining to the White Meadow and Peavine Ridge Road Storm Damage Repair Project, CIP 78711, Contract 2771:

- 1) Authorize an increase to the 2018 CIP in the amount of \$40,534 for Construction Management - Staff and \$297,243 for Direct Construction Costs for a total construction phase increase of \$337,777;
- 2) Grant the request for bid relief requested by RNR Construction, Inc. in accordance with Public Contract Code §5100 et seq.;
- 3) Award the Construction Contract to the second bidder, MKD Construction, Inc. who has been determined to be the lowest responsive, responsible bidder;
- 4) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management; and
- 5) 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:** Local and State discretionary funding initially (100%), with Department of Transportation staff working with the Federal Emergency Management Agency and the California Office of Emergency Services to obtain reimbursement. (Local, State, and Federal)

### **DEPARTMENT RECOMMENDATION**

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

On Thursday, September 6, 2018, the Department of Transportation (Transportation), opened bids for the White Meadow and Peavine Ridge Road Storm Damage Repair Project (Project). Four bids were received ranging from \$605,889.00 to \$1,437,294.00.

RNR Construction, Inc. (RNR) submitted a request for bid relief on September 7, 2018. RNR stated they made an “inadvertent arithmetic mistake in the totals of bid items 11, 23, and 24”. RNR stated that “due to the mistakes, the bid of RNR should have been materially different than the bid submitted.” In further follow up with RNR, they stated they had a calculation error in their spreadsheet for bid item #11, roadway excavation, and a pricing conversion error in both bid items #23 and #24, rock slope protection. RNR stated these errors led to their bid being approximately \$150,000 short, leaving them unable to complete the Project for the price bid. RNR has provided their calculation sheets to Transportation showing these errors.

Public Contract Code (PCC) §5103 requires the following criteria to be met in order for the Board to grant bid relief:

- a) A mistake was made.
- b) He or she gave the public entity written notice within five working days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.
- c) The mistake made the bid materially different than he or she intended it to be.
- d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness

in inspecting the site of the work, or in reading the plans or specifications.

Transportation, along with County Counsel have determined that RNR met all the requirements of PCC §5103 to grant bid relief.

Transportation issued the All Bidders Letter on September 17, 2018, notifying the bidders of the recommendation to the Board for award and initiating the two-day bid protest period. The bid protest period ended at 5:00 p.m. on Wednesday, September 19, 2018 with no protests filed.

Transportation contacted the California Office of Emergency Services (CalOES) on September 14, 2018 and asked if the Federal Emergency Management Agency (FEMA) would balk at reimbursement for this Project since the low bid came in much higher than the engineer's estimate. CalOES stated that since multiple bids were submitted, FEMA would consider their competitive process requirements met and would not have a problem with the low bid being higher than the engineer's estimate.

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

Pursuant to Special Provisions Section 9-1.16F, "Retentions", Transportation will retain five percent (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 account and any interest earned thereon. A portion of the retention and interest will be retained in the escrow account until thirty-five (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. PCC Section 20142 and 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 \$33,648.45. This authority is also for a cumulative total of contingency CCOs not to exceed 10% of the original Contract value.

**DISCUSSION / BACKGROUND**

This Project is necessary to repair damage to White Meadow Road and Peavine Ridge caused by the storms of 2017. The Project has two site locations within mountainous terrain. Site I is located

along Peavine Ridge Road approximately 200 feet south of the intersection of White Meadow Road and Peavine Ridge Road (approximately four and one half miles northwest of the intersection of Ice House Road and White Meadow Road). Site II is located along White Meadow Road approximately 0.8 miles northwest of the intersection of Ice House Road and White Meadow Road. The Project consists of roadway, drainage and slope improvements to repair damages from intense rainfall including: roadway excavation, ditch excavation, roadway embankment, class 2 AB, HMA (Type A), rock slope protection, 18" CMP culvert, underdrains, shoulder backing, rolled erosion control product (netting), fiber rolls and hydroseeding. Both roadways will have a minimum of one lane open with reversing controls for the duration of this Project.

Due to the potential for federal funding, both CEQA and NEPA compliance are required. The CEQA Notice of Exemption was filed on May 18, 2017. FEMA has neither provided a Record of Environmental Consideration (REC) nor issued an email stating NEPA Categorical Exclusion is authorized. However, FEMA has advised that waiting for the written NEPA clearance is not required due to time constraints. FEMA has advised to make sure that permits and permit requirements are received and complied with as needed. No environmental permits were required for this Project as determined by the County's environmental consultant.

The Contract Documents include all required federal provisions and incorporate the current California Department of Transportation's Disadvantaged Business Enterprise (DBE) requirements. The DBE goal is 9%.

The Project was approved for advertisement on August 14, 2018 (Item 44).

### **ALTERNATIVES**

- 1) The Board could choose to not grant bid relief and not award the contract and direct Transportation to re-advertise for construction bids. Note: This is the second time this Project has been advertised.
- 2) The Board could cancel the Project. Note: The Board has previously approved the Project and the County would not be reimbursed with FEMA funds for the Project work completed to date.

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

County Counsel and Risk Management reviewed and approved the Contract Documents on April 10, 2018. County Counsel assisted Transportation to determine that RNR met all the requirements of PCC §5103 to grant bid relief.

### **CAO RECOMMENDATION**

It is recommended that the Board approve this item.

### **FINANCIAL IMPACT**

The Engineer's Estimate for the construction phase of the Project is \$1,091,211.25, which includes an estimated bid of \$872,969.00; construction management, survey, materials testing and design support during construction totaling \$130,945.35; and contingency of \$87,296.90.

Total Funding for this Project is included in the 2018 CIP Book approved by the Board on June 26, 2018 (Item 61) with an increase approved August 14, 2018 (Item 44).

This Project is eligible for 75% reimbursement by FEMA and 18.75% reimbursement by California

Office of Emergency Services. The remaining 6.25% is local and state discretionary funding. Transportation will continue working with these agencies to obtain the maximum allowable reimbursement.

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

**STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

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