



Legislation Text

File #: 18-1361, **Version:** 1

Community Development Services, Department of Transportation, recommending the Board retroactively approve and authorize the Chair to execute Contract Change Order 2 with Granite Construction Company in the amount of \$182,820 for the Cosumnes Mine Road & Bridge Storm Damage Repairs Project, Contract 2719, PW 18-31209, CIP 78700/78701/78712; 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. (Est.Time: 5 Min.)

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)

DISCUSSION / BACKGROUND

The Board authorized Community Development Services, Department of Transportation (Transportation) to advertise the Cosumnes Mine Road & Bridge Storm Damage Repairs Project (Project) for bids on May 8, 2018 (Item 27). Transportation opened bids on May 31, 2018, and the Board awarded the Project to Granite Construction Company (Granite) on June 12, 2018 (Item 47).

Construction began on August 6, 2018 with dewatering and excavation of the washout area at the north abutment of the bridge where the storm damage occurred. Once the abutment footings were exposed, Transportation observed that the footings were founded on material different than what was anticipated in the geotechnical study. Due to limited access near the north bridge foundation, the nearest location a boring was able to be drilled was approximately 45 feet north of the existing footings. The information obtained from the boring was different than the actual subsurface conditions at the repair area. Once the actual foundation subgrade conditions were realized, it was determined that the new retaining wall footing would need to be lowered approximately three (3) feet deeper than originally designed and increased in thickness by six (6) inches. This required an increase in height of the retaining walls. These changes also resulted in increased quantities of structural concrete, reinforcing steel, excavation, backfill, and rock slope protection.

As work progressed and estimates made, Transportation realized that there would not be enough contingency budget in the contract to complete the work required by Contract Change Order No. 2 (CCO 2). Transportation staff knew that if Granite were directed to continue working, Transportation's delegated cumulative contract change order authority would be exceeded. However, Transportation staff also knew that if Granite were directed to stop work while this matter was taken to the Board for consideration, Granite 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 Granite to continue working and CCO 2 is now being brought to the Board for retroactive approval.

Waiver of Competitive Bidding

Execution of CCO 2 will push the cumulative value of all CCOs on this Project to 11.53% of the original contract amount. Public Contract Code section 20137 requires that changes to a 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 Project supports the conclusion that competitive bidding for the work described in CCO 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 CCO work is functionally integrated with the base Project. Granite 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 not to approve this CCO. Granite would likely file a claim against the County to recuperate monies expended.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

It is recommended that the Board approve this item.

FINANCIAL IMPACT

Total funding for the Project in the amount of \$4,647,948 was approved by the Board on March 13, 2018 (Item 23). A breakdown of the budget is as follows:

Total Project budget	\$ 4,647,948
Planning, design, and right of way	\$ (537,650)
Construction management	\$ (250,907)
Granite's bid price	<u>\$ (1,672,715)</u>
Amount remaining for CCOs	\$ 2,186,676

CCOs written to date (excluding CCO 2) \$ (10,000)
Balance \$ 2,176,676

Adequate funding for CCO 2 remains in the Project's budget that was presented to the Board on March 13, 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.
- 2) The Clerk of the Board will return a fully executed copy of CCO 2 to Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

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